# DELHI
# SALES TAX CASES

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

**Editor-in-Chief**
Raj K. Batra

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# IN THE ALLAHABAD HIGH COURT

[Manoj Mishra and Deepak Verma, JJ]

Criminal Misc. Writ Petition No. 3225 of 2020

Shahzad Alam & 2 Ors. ... Petitioner

Versus

State of U.P. & 3 Ors. ... Respondent

**DATE OF ORDER : 24.02.2020**

GOODS AND SERVICES TAX – FIRST INFORMATION REPORT UNDER SECTIONS 420, 424, 467, 468, 120-B OF I.P.C. AND SECTIONS 122/132 OF GOODS AND SERVICES TAX ACT – SEARCH AND SEIZURE UNDER SECTION 67 OF CGST ACT ON THE BASIS OF VEHICLE SEIZED WITH GOODS WITHOUT PROPER DOCUMENTS – NO BUSINESS ACTIVITY AT DECLARED PLACE OF BUSINESS – ONLY DOCUMENTS PREPARED – DOCUMENTS OF 61 FIRMS – INSPECTIONS OF PLACES OF ALL SUCH FIRMS – QUASHING PLEADED ON THE GROUND – THAT NO FIRM WHOSE RUBBER STAMPS WERE FOUND MADE ANY COMPLAINT – NO ALLEGATION OF EVASION – RECOVERY NOT SUPPORTED BY ANY PUBLIC WITNESS – NO OFFENCE CAN BE SAID TO BE COMMITTED WITHOUT A FINDING OF EVASION – DEPARTMENT OPPOSED THE QUASHING – FIR CLEARLY SPELL OUT CREATION OF BOGUS FIRMS AND FABRICATION OF FALSE INVOICES – PLEA FOR QUASHING – WHETHER JUSTIFIED?

*The FIR specifically alleges that information was gathered not only from search and seizure operations but also on the basis of explanation submitted by the suspects pursuant to the summons served upon them. Whether search and seizure operation memorandums, in absence of public witness, would have sufficient reliability is an issue to be examined at the stage of trial and not at this stage.*

*In Vinod Raghuvanshi vs. Ajay Arora and Ors.: (2013) 10 SCC 581 (para 30), the Apex Court had taken the view that an investigation should not be shut out at the threshold if the allegations have some substance.*

*We find that the allegations are in respect of getting bogus firms registered under the GST Code and of preparing bogus invoices for the purpose of evading tax. The above allegations have been made on the basis of search and seizure operations and the enquiry that followed. As to how the bogus tax invoices were used or were to be used would be determined on the basis of material collected during the course of investigation. The submission of the learned counsel for the petitioners that there could be no registration of first information report without a specific order under the GST Code in respect of evasion of tax is not acceptable for the simple reason that the GST Code does not impliedly or explicitly repeals the provisions*

*of Indian Penal Code or the Code of Criminal Procedure and therefore an offence punishable under the Indian Penal Code can very well be reported and investigated as per law. A Division Bench of this Court of which one of us (Manoj Misra, J.) was a member in Criminal Misc. Writ Petition No. 7303 of 2019: Govind Enterprises vs. State of U.P. and others, decided on 30.05.2019, after scanning through number of decisions of the Apex Court as well as High Court rejected such prayer.*

*Another submission made by the petitioner's counsel, that in absence of complaint from those firms whose papers were found, no FIR ought to be registered, is unworthy of acceptance, particularly when those firms were found non-existent. For the reasons aforesaid, as the impugned first information report discloses commission of cognizable offence, the prayer to quash the first information report cannot be accepted. The petition is dismissed without prejudice to the right of the petitioners to apply for bail.*

Present for Appellants : Mr. Mohit Bihari Mathur

Present for Respondent : Government Pleader

**JUDGMENT**

Heard learned counsel for the petitioners; the learned A.G.A. for the State respondents 1, 2 and 3; and perused the record.

The instant petition seeks quashing of the first information report dated 06.02.2020 registered as Case Crime No. 0350 of 2020 at P.S. Sihani Gate, District- Ghaziabad, under Sections 420, 424, 467, 468, 120-B I.P.C. and section 122/132 of Goods and Services Tax Act (hereinafter referred to as GST Act).

The impugned first information report has been lodged by Commercial Tax Officer (Special Investigation Cell), Commercial Tax, Range A, Ghaziabad alleging that on scanning of information available at GST Portal and information received from the mobile squad of Commercial Tax Department regarding the vehicles seized with goods without proper documents, exercising power under Section 67 of the GST Act, the Joint Commissioner (Investigation), Trade Tax, Range A, Ghaziabad, by order dated 06.11.2019, constituted and authorized a team of officers to carry out search and seizure operations at declared places of business. It is alleged that when the team visited the declared place, it found that it was not functioning as a registered office of any firm; no business activity could be noticed; no goods were found; and the person present there, namely, Shubham Sharma, informed that the place was not being used

for any business but only for preparing documents. Shubham Sharma informed the team that he works for Dilshad Malik (petitioner no.2). The electricity connection of the premises was found in the name of Shahzad Alam (petitioner no.1). In the room, tax invoices and E-way bills of 61 firms were found. In addition thereto, rubber stamps and seals of the Proprietor/ Authorized signatory of 16 firms were found. A cheque book of Nirala Traders and Bilty Book of two transporters and original tax invoices of one Ravi Industries was found. Upon search of another room, one Abid was found, who disclosed that he works for Junaid Malik. In that premises, a bill and electricity bill was found which was in the name of Dilshad Malik. In that room, a rubber stamp/seal of the Proprietor of M/s. A.K. Metal Traders with a specified GST number was found. What was noticed was that none of the firms whose papers were found had the specified address as their place of business. Consequently, on the basis of information received, separate teams were constituted to make inspection of the firms whose documents were found there and, upon enquiry, majority of those firms were found non-existent. The place from where papers, rubber stamps and seals were recovered was discovered to be under the control of Shahzad Alam and Dilshad Malik (petitioner no.1 and petitioner no.2, respectively). On the basis of above inspection/inquiry, a prima facie conclusion was drawn that Dilshad Malik and Shahzad Alam had been indulging in preparing and utilizing bogus tax invoices for evading tax. As a result, summons were issued under Section 70 of the GST Act seeking their explanation. On the basis of the explanation submitted, further enquiry was conducted by the Inspection Team, upon which, it was found that Shahzad Alam is a resident of New Islam Nagar, Meerut and the place which was earlier inspected has been in the name of Shahzad Alam which had been let out to Azad Malik (petitioner no.3). In his explanation, Shahzad Alam stated that he carries no business from that specified place. The said explanation was not found correct because the Joint Team had found original papers of M/s. Capital Industries (GSTN number specified) whose proprietor was Shahzad Alam. It is stated in the FIR that Azad Malik was also interrogated. He stated that he had taken the place on rent from Shahzad Alam for keeping old generators and for selling spare parts. When he was enquired in respect of papers found there, he stated that he has no knowledge as to how those papers were found there. Later, however, he submitted a written submission claiming responsibility for the documents seized from the specified place and claiming that his earlier statement was made under some misconception. It is alleged that thereafter Dilshad Malik (petitioner no.2) was also summoned. In his statement made to the Team, he stated that he works on commission and that he has no firm registered in his name though he stated that the room which was searched earlier was

taken by him on rent but no rent deed was prepared. However, he could not provide the details as to since when the premises was taken on rent. It is alleged in the FIR that the statement of Dilshad Malik (petitioner no.2) was contrary to the records as M/s. K.L. Enterprises was registered in his name and trade was also shown in the name of the firm.

By narrating the facts noticed above, derived on the basis of the inspection/enquiry, conclusion was drawn that Dilshad Malik and Shahzad Alam had set up bogus firms for the purpose of evading tax and had been preparing false documents/invoices for that end and that Azad Malik had been working as their Agent.

Learned counsel for the petitioners has challenged the impugned first information report, inter-alia, on the following grounds:-

(a) that no firm/company whose rubber stamps were allegedly found at the specified place made a complaint of utilizing their seals for preparing bogus documents;

(b) that there is no specific allegation in respect of evasion of tax in any specific transaction or movement of goods;

(c) that the recovery is not supported by any public witness; and

(d) that unless and until a specific finding is returned in respect of evasion of GST, no offence can be said to be committed, as alleged in the first information report.

The learned A.G.A. has opposed the prayer for quashing the first information report by submitting that the allegations made in the impugned first information report clearly spell out creation of bogus firms and fabrication of false invoices. As to how these invoices have been utilized and to what extent tax had been evaded is a matter of investigation and since the impugned first information report discloses commission of cognizable offences, the prayer to quash the first information report cannot be accepted.

We have heard the rival submissions and have perused the record carefully. The allegations in the impugned first information report are in respect of getting bogus firms declared/registered under the GST Act and fabricating documents / invoices with a view to evade Tax. The impugned first information report appears to have been lodged after scanning information available at the GST Portal and information received from

mobile squad in respect of seizure of goods/vehicles without documents as also after gathering information from search and seizure operation and the enquiry that ensued, which led to an inference that the declared place of business was bogus. Rather, the place was being used for the purpose of preparing false documents/invoices.

As to how those invoices have been utilized or were to be utilized would be a matter of investigation. The FIR specifically alleges that information was gathered not only from search and seizure operations but also on the basis of explanation submitted by the suspects pursuant to the summons served upon them. Whether search and seizure operation memorandums, in absence of public witness, would have sufficient reliability is an issue to be examined at the stage of trial and not at this stage.

In Vinod Raghuvanshi Vs. Ajay Arora and Ors.: (2013) 10 SCC 581 (para 30), the Apex Court had taken the view that an investigation should not be shut out at the threshold if the allegations have some substance.

In the instant case, we find that the allegations are in respect of getting bogus firms registered under the GST Code and of preparing bogus invoices for the purpose of evading tax. The above allegations have been made on the basis of search and seizure operations and the enquiry that followed. As to how the bogus tax invoices were used or were to be used would be determined on the basis of material collected during the course of investigation.

The submission of the learned counsel for the petitioners that there could be no registration of first information report without a specific order under the GST Code in respect of evasion of tax is not acceptable for the simple reason that the GST Code does not impliedly or explicitly repeals the provisions of Indian Penal Code or the Code of Criminal Procedure and therefore an offence punishable under the Indian Penal Code can very well be reported and investigated as per law. A Division Bench of this Court of which one of us (Manoj Misra, J.) was a member in Criminal Misc. Writ Petition No. 7303 of 2019 : Govind Enterprises vs. State of U.P. and others, decided on 30.05.2019, after scanning through number of decisions of the Apex Court as well as High Court including statutory provisions, held as follows:-

"Upon careful consideration of the rival submissions, the decisions noticed above, the relevant provisions of the U.P. Act as also the

Penal Code and the Code, we find that Sections 69, 134, and 135 of the U.P. Act are applicable in respect of offences punishable under the U.P. Act. They have no application on offences punishable under the Penal Code. Further, there is no provision in the U.P. Act, at least shown to us, which may suggest that the provisions of the U.P. Act overrides or expressly or impliedly repeals the provisions of the Penal Code. There is also no bar in the U.P. Act on lodging an FIR under the Code for offences punishable under the Penal Code even though, for the same act/ conduct, prosecution can be launched under the U.P. Act. Rather, section 131 of the U.P. Act impliedly saves the provisions of the Penal Code by providing that no confiscation made or penalty imposed under the provisions of the Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of the U.P. Act or under any other law for the time being in force.

The argument of the learned counsel for the petitioner that except for offences specified in sub-section (5) of section 132, sub-section (4) of section 132 of the U.P. Act renders all offences under the U.P. Act non cognizable, therefore no FIR can be lodged, is not acceptable, because subsection (4) speaks of offences under the U.P. Act and not in respect of offences under the Penal Code. It is noteworthy that section 135 of the U.P. Act makes a significant departure from general law by providing that in any prosecution for an offence under the U.P. Act, which requires a cuplable mental state on the part of the accused, the court shall presume the existence of such mental state. The same does not hold true for offences punishable under the Penal Code. Hence, to prove mensrea, which is one of the necessary ingredients of an offence punishable under the Penal Code, the standard of proof would have to be higher to prove commission of an offence punishable under the Penal Code than what would be required to prove an offence punishable under the U.P. Act. As such, the offences punishable under the Penal Code are qualitatively different from an offence punishable under the U.P. Act.

In view of the reasons recorded above, and by keeping in mind the provisions of Section 26 of the General Clauses Act, 1897 as also the law laid down by the apex court in that regard, which we have noticed above, we are of the considered view that the contention of the learned counsel for the petitioner that no first information report can be lodged against

the petitioner under the provisions of the Code of Criminal Procedure for offences punishable under the Indian Penal Code, as proceeding could only be drawn against him under the U.P. Goods and Services Tax Act, 2017, is liable to be rejected and is, accordingly, rejected. "

**[Note : U.P. Act should be read as U.P. Goods and Services Tax Act, 2017).**

Another submission made by the petitioners' counsel, that in absence of complaint from those firms whose papers were found no FIR ought to be registered, is unworthy of acceptance, particularly when those firms were found non-existent. For the reasons aforesaid, as the impugned first information report discloses commission of cognizable offence, the prayer to quash the first information report cannot be accepted.

The petition is dismissed without prejudice to the right of the petitioners to apply for bail.

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

Writ Petition No. 6345 of 2018

Bharti Airtel Ltd. ... Petitioner

Versus

Union of India & Ors. ... Respondent

**DATE OF ORDER : 05.05.2020**

RETURN – FORM GSTR-3B – CENTRAL GOODS AND SERVICES TAX – RECTIFICATION OF FORM GSTR -3B – RULE 61(5) OF THE GST RULES – FORM GSTR-3B AND CIRCULAR NO. 26/26/2017 – GST DATED 29.12.2017 – CIRCULAR PROVIDES FOR RECTIFICATION / ADJUSTMENT IN THE MONTH IN WHICH ERROR WAS NOTICED – WHETHER ULTRA VIRES THE PROVISIONS OF CGST ACT AND CONTRARY TO ARTICLES 14, 19 AND 265 OF THE CONSTITUTION OF INDIA.

CIRCULARS ISSUED BY REVENUE – NATURE THERE?

*We see no reason as to why the rectification/adjustment is being allowed in the month subsequent to when such errors relate, and the Respondents have restricted the mechanism of rectification to the same tax period, in which they were noticed and sought to be rectified. In our view, para 4 of Circular No. 26/26/2017-GST dated 29.12.2017 is not in consonance with*

*the provisions of CGST Act, 2017. The impugned circular expressly states that the time period for filing of Form GSTR-2 and GSTR-3 for the months of July, 2017 to March, 2018 would be worked by a committee, as system-based.*

*Five judge bench in Commissioner of Central Excise, Bolpur vs. Ratan Melting and Wire Industries (supra) referred to its earlier decision in Kalyani Packaging Industry vs. Union of India (2004) 6 SCC 719 and observed that Para 11 of Dhiren Chemical Industries (supra) was rightly clarified therein. In this background, the Court held in paragraph 7 as under:*

> *"7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."*

*The rectification of the return for that very month to which it relates is imperative and,accordingly, we read down para 4 of the impugned Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred. Accordingly, we allow the present petition and permit the Petitioner to rectify Form GSTR-3B for the period to which the error relates, i.e. the relevant period from July, 2017 to September, 2017.We also direct the Respondents that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim made therein and give effect to the same once verified.*

| | | |
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| Present for Appellants | : | Mr. Tarun Gulati, Sr. Adv. with<br>Mr. Sparsh Bhargava, Mr. Vipin Upadhyay,<br>Mr. Shashi Mathews, Mr. Kamal Arya, Advs. |
| Present for Respondent | : | Mr. Harpreet Singh, Sr. Standing counsel for<br>R-2 to 4 with Ms. SuhaniMathur, Adv |

## JUDGMENT

**SANJEEV NARULA, J.**

1. Bharti Airtel Limited (hereinafter referred to as 'Petitioner') has preferred the present petition under Article 226 of the Constitution of India impugning inter alia,Rule 61 (5) of the GST Rules, Form GSTR- 3B and Circular No. 26/26/2017-GST (hereinafter referred to as the 'impugned circular') dated 29.12.2017 as ultra vires the provisions of Central Goods and Services Tax Act, 2017 (CGST Act) and contrary to Articles 14, 19 and 265 of the Constitution of India. The challenge to the a forenoted provisions is principally for the reason that Petitioner is being prevented from correcting its monthly GST returns, and consequently seeking refund of the excess taxes paid.

**Brief Factual Background - Controversy**

2. To fully comprehend the tax provisions and circulars that are coming in the way of the Petitioner to correct the errors it has noticed, we would have to advert to the facts of the case and also reflect upon the statutory scheme of the GST filings and also take note of the circumstances that led to this situation. To begin with, let us briefly note the facts - Petitioner is engaged in the business of providing telecommunication services in India, including Delhi, by virtue of license granted by the Department of Telecommunication, Government of India. With the implementation of GST, it took registration in each and every State and Union Territory and now has 50 registrations under GST laws for making payment of CGST, SGST and IGST. Since the compliance regime under the GST laws is significantly different and the statutory provisions provide for a complete electronic model of compliances, Petitioner remoulded its system from the centralized registration under the erstwhile service tax regime, to multiple registrations under GST in order to bring it in conformity with the new laws. This included introduction of the technical changes for enabling filing of the statutory Forms GSTR-1, 2 and 3. However, while putting the new law into practice, Government could not operationalise Forms GSTR-2 and 3 and, as a result a summary scheme of filing Form GSTR- 3B was introduced. The petitioner states that this half-baked step of the Respondents is the root cause in the failure of the system in detecting the errors which in the course of time created the situation wherein the petitioner finds itself.

3. The Petitioner recounts that during the initial phase of the GST regime it was facing issues on the electronic system i.e. Goods and Services Tax Network (GSTN) portal created by the Government as the same was not

equipped to handle the transition from the erstwhile regime to GST. In this transition phase, several issues cropped up which had a significant impact on tax paid, the output liability, and the ITC of the Petitioner and led to occurrence of several inadvertent errors. To illustrate a few, invoices were accidently missed while filing Form GSTR-3B; credit notes pertaining to the invoices issued under the erstwhile regime were overlooked and, asa result, the output tax liability was over-reported; certain transactions like stock transfer from one place of business to another under the same GST Registration was reported as supply; in few instances, due to inadvertent error, NIL Form GSTR-3B were filed, though actually there was output tax liability. To sum it up, the paramount grievance of the Petitioner is that during the period from July, 2017 to September, 2017 (hereinafter referred to as 'the relevant period'), the Petitioner in its monthly GSTR- 3B recorded the ITC based on its estimate. As a result, when the Petitioner had to discharge the GST liability for the relevant period, the details of ITC available were not known and the Petitioner was compelled to discharge its tax liability in cash, although, actually ITC was available with it but was not reflected in the system on account of lack of data. The exact ITC available for the relevant period was discovered only later in the month October 2018, when the Government operationalized Form GSTR-2A for the past periods. Thereupon, precise details were computed and Petitioner realized that for the relevant period ITC had been under reported. The Petitioner alleges that there has been excess payment of taxes,by way of cash, to the tune of approximately Rs. 923 crores. This was occasioned toa great degree due to non-operationalization of Forms GSTR-2A, GSTR-2 and GSTR-3 and the system related checks which could have forewarned the petitioner about the mistake. Moreover, since there were no checks on the Form GSTR-3B which was manually filled up by the Petitioner, the excess payment of tax went unnoticed. Petitioner now desires to correct its returns, but is being prevented from doing so, as there is no enabling statutory procedure implemented by the Government.

**Impugned Circular- Existing Framework**

4. On 01.09.2017, by the Circular No. 7/7/2017-GST, the Government provided for system based reconciliation of information furnished in Form GSTR-1 and Form GSTR-2 with Form GSTR-3B. Paragraph 6 of this circular specifically reiterated the fact that any differences in the details of outward supplies and ITC will be corrected in that particular month to which the details pertain. Paragraph 9 of this circular further provided that where the eligible ITC recorded in the GSTR-3B is less than the ITC shown in GSTR-2, then the ITC will be correctly reflected in the GSTR-3 of that very month. Thus, the Circular provided for reconciliation between

the information furnished in the Form GSTR-3B with that reflected in Form GSTR-1 and Form GSTR-2. It also provided that if the details of eligible ITC have been reported incorrectly, the same maybe reported correctly in the Form GSTR-2 for the concerned tax period.

5. However, on 29.12.2017, by issuing Circular No. 26/26/2017-GST, the Government kept the Circular No. 7/7/2017-GST in abeyance due to continuing extension of time lines to file Form GSTR-1, 2 and 3 and non-availability of facility to file Form GSTR-2. As a matter of fact, Para 3.2 of the impugned circular states that since Form GSTR-2 and 3 could not be operationalized, the Circular dated 07.07.2018 is kept in abeyance till such time these two returns are operationalized. Thereafter, para 4 of the impugned circular states that Form GSTR-3B can be corrected only in the month in which the errors were noticed.

6. In the above background, Petitioner's grievance is that there is no rationale for not allowing rectification in the month for which the statutory return has been filed. This is also totally contrary to the statutory scheme of the CGST Act - which provides that the data filled by a registered person will be validated in that month itself, and thereafter any unmatched details be rectified in the month in which it is noticed. Accordingly, Petitioner impugns Rule 61 (5) From GSTR-3B and Circular No. 26/26/2017-GST dated 29.12.2017 as ultra vires the provisions of CGST Act to the extent, they do not provide for the modification of the information to be filled in the return of the tax period to which such information relates. The aforesaid provisions are also impugned on the ground that they are arbitrary, in violation of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India.

**Submissions of Learned Counsel**

7. Mr. Tarun Gulati, learned Sr. Counsel for the Petitioner argued that impugned circular is ultra vires the CGST Act and the Rules. He submits that as per the Sections 37 to 43 of the CGST Act, a scheme for filling details of outward supplies,inward supplies, return of inward or outward supplies, ITC availed, tax paid, was to be followed. In these terms, the Petitioner has a statutory right to fill all the necessary details, when the aforesaid provisions of the Act became enforceable. He submits that the inability of the Respondents to run their IT system as per the structure provided under the CGST Act cannot prejudice the rights of a registered person. Mr. Gulati explains that on account of major shift from the single service tax registration regime, to GST, it resulted in Petitioner having to collate crores of transactions both on the output side and input side. Besides, registrations were to be obtained in 29 States and 7 Union Territories. This

required enormous compilation of data and was a humongous task. The possibility of error in compilation of data cannot be ruled out especially since the in built self-check mechanism contemplated under the CGST Act had not been activated. Elaborating further, Mr. Gulati submits that Form GSTR-3B,prescribed under Rule 61 (5) is only a summary return that has been introduced by the Government in absence of Form GSTSR-2 and 3 being made operational. This Form is filled in manually and, therefore, has no in built checks and balances that could ensure that the data uploaded by the Petitioner was accurate, verified and validated. The summary scheme introduced by Rule 61 (5) being in complete variance with the machinery originally contemplated under the GST Scheme, stifled the rights of the Petitioner by not permitting the validation of the data prior to the same being uploaded. In absence of such validation, the chances of incorrect data being uploaded cannot be eliminated. This resulted in adverse consequences in the nature of imposition of interest and penalty under the provisions of CGST Act.

8. Mr. Gulati further argued that the delay in operationalizing Form GSTR- 2A, a process which was statutorily mandated, cannot defeat the rights of the Petitioner to take and use credit in the month in which it was due. Since the statutory scheme originally envisaged under the Act could not be implemented and a summary scheme has been adopted, the Government should allow the assessees to exercise their rights available under the provisions of the Act. Mr. Gulati, placed reliance upon the judgment of the Gujarat High Court in the case of APP & Company Chartered Accountants V. Union of India, 2019-TIOL-1422-HC-AHM-GST and submitted that the Court has observed that Form GSTR-3B was not a return required to be filed under Section 39 of CGST Act and was only a temporary facility and as such delay in claiming credit cannot delay the period for which the same is claimed i.e. the last date for filing the Form GSTR-3B. Reliance was also placed upon the decision of Andhra Pradesh High Court in the case of Panduranga Stone Crushers v. Union of India, 2019-TIOL-1975-HC-AP-GST and also upon the decision of Punjab &Haryana High Court in the case of Adfert Technologies Pvt. Ltd. v. Union of India &Ors., 2019-VIL-537-P&H. It was further submitted that this Court has also in plethora of cases including Lease Plan India Pvt. Ltd. v. Govt. of NCT & Ors. [order dated 13.09.2019 - W.P. (C) 3309/2019] and Blue Bird Pure Pvt. Ltd v. Union of India &Ors., [order dated 22.07.2019 - W.P.(C) 3798/2019] , observed that GST is still in a”trial and error” phase and has permitted the assesses to rectify/revise the returns. Lastly, it was argued that the revision of Form GSTR-3B is revenue neutral since the Respondents have already realised the tax leviable under the law. Moreover, the eligibility of the Petitioner in

respect of the ITC claimed under the rectified/amended returns can be verified prior to rectification.

9. Per contra, Mr. Harpreet Singh, learned Sr. Standing counsel on behalf of the GST department submitted that the impugned circular in the present petition does provide for the rectification of mistakes pertaining to earlier tax period in any subsequent tax period. He submitted that such changes have to be incorporated in the return for the tax period in which the error is noted. The assessee cannot,however, reflect the change in Form GSTR-3B of the original tax period. The rationale behind such a restriction was sought to be explained by referring to sub-section (9) of Section 39 of the CGST Act, 2017.

10. Mr. Singh, further submitted that vide Section 17 (c) (i) of the CGST(Amendment) Act, 2018, certain amendments have been carried out in the aforesaid provision. He clarified that the amended provisions have not been made operational yet, since notification No. 02/2019-Central Tax dated 29.01.2019 clearly provides that Section 17 of the CGST (Amendment) Act, 2018 shall not come into force. Nevertheless, even if this amendment would eventually come into effect, it shall apply prospectively from a future date and would not apply to the tax period from July, 2017 to September, 2017, which is the relevant period in question.

11. Mr. Singh submitted that it is not that as if the Act does not provide for rectification at all. In respect of particulars furnished for an earlier tax period, made at a later date in Form GSTR-3B, rectification shall get reflected in the return in the earlier tax period. In this manner, the original return shall not get amended in light of the corrections made post-facto. The Circular No. 26/26/2017-GST dated 29.12.2017 clarifies the same, and is aligned with the provisions of the statute. In this regard, it is to be noted that GST, being an indirect tax is levied along the entire supply chain The tax paid on outward supplies entitles the recipient of such supplies to avail ITC for the same. Thus, if changes made to particulars furnished by the supplier are allowed to be reflected in the relevant previous tax period (Form GSTR- 3B for which return has already been filed), it would require modification of the particulars furnished in Form GSTR-3B (of such earlier tax period) by the recipient. For example- if the supplier reduces tax liability for an earlier tax period (for which Form GSTR-3B has already been filed), this would require modification of the recipient's Form GSTR-3B (which has already been filed) by way of commensurate reduction in ITC availed by him. This would enhance the compliance burden for the recipient. Another complexity would arise if such recipient is an exporter and claims refund of

unutilized ITC under section 54(3) of CGST Act, 2017 read with rule 89 (4) of CGST Rules, 2017. In cases where refund has already been sanctioned and disbursed, the reduction of available ITC by recipient would make it a fit case for erroneous refund,thereby inviting demand under section 73 of the CGST Act, 2017. Thus, in order toward of such complexities, the impugned circular and the provisions provide for rectification of GSTR-3B in the period subsequent to when the error etc. is noticed by an assessee and not for the period to which such error etc. pertains to.

**Analysis**

12. The controversy in the present case actually lies in a narrow compass.

The grievance of the Petitioner pertains to the rectification of Form GSTR- 3B for the period from July to September, 2017. This is the tax period/month in which the error has crept in. Though, the question before us is a short one, however, since the same concerns the scheme of the CGST Act, we would have to delve into the concepts of filing of returns and the statutory provisions governing the same. The Scheme of filing of returns as envisaged by the CGST Act is explained herein below:

a) Section 37(1) of the CGST Act provides that a registered person is required to file a return (Form GSTR-1) containing details of his outward supply for the tax period i.e. a month. These details of outward supplies of a registered person are communicated to the recipients in an auto-populated return (Form GSTR-2A) under Section 37(1) read with Section 38(1) of the CGST Act.

b) Section 38(1) of the CGST Act provides that a registered person shall verify, validate, modify or delete such details of inward supplies communicated under Section 37(1) of the CGST Act in the Form GSTR-2A. Thereafter, under Section 38(2) of the CGST Act the recipient files a return (Form GSTR-2) containing details of his inward supplies based on Form GSTR 2A. These details are then communicated to the suppliers under Section 38(3) of the CGST Act and suppliers can accept or reject the details under section 37(2) and Form GSTR-1, shall stand amended accordingly. It is important to note that the details of inward supplies provided in Form GSTR-2 are auto-populated in the ITC ledger of the recipient of such supplies on submissions of this form.

c) Section 38(5) of the CGST Act and 39(9) of the CGST Act provide that details that have remained unmatched shall be rectified in the return to be furnished for the month during which such omission or incorrect particulars are noticed.

d) Section 39 of the CGST Act provides that every registered person shall furnish a return (From GSTR-3) of inward and outward supplies, ITC, tax payable, tax paid and such other particulars as may be prescribed.

13. On a plain reading of the above provisions, it clearly emerges that the statutory scheme, as envisaged under the Act provided a facility for validation of monthly data through the IT System of the Government wherein the output of one dealer (Form GSTR-1), becomes the input of another dealer and gets auto-populated in Form GSTR-2 (Inward Supplies). These details had to be electronically populated in Form GSTR-3 (Monthly Return) and tax had to be paid based on this return. The CGST Act and the CGST Rules as envisaged provided for verification,validation, modification and deletion of information for each period by interaction,over the IT System, between the supplier and the recipient so as to reflect the correct details pertaining to the tax period in that particular tax period itself (i.e. a month). In short, the CGST Act contemplated a self-policing system under which the authenticity of the information submitted in the returns by registered person is not only auto-populated but is verified by the supplier and confirmed by the recipient in the same month. The statutory provisions, therefore, provided not just for a procedure but a right and a facility to a registered person by which it can be ensured that the ITC availed and returns can be corrected in the very month to which they relate, and the registered person is not visited with any adverse consequences for uploading incorrect data.

14. Now, let us also examine the rectification scheme under the Act. The statute provides for a 2-stage rectification procedure by which the errors or omissions can be rectified by a registered person.

a) The 1st stage of rectification can happen under Section 37(1) read with Sections 38 (1), 38 (3) and 37 (2) of the CGST Act wherein a registered person could rectify the errors or omissions pertaining to a tax period in the return to be furnished for such tax period itself through a self-policing and auto-populated interaction on the system.

b) The 2nd stage of rectification is provided under Section 38 (5) and 39(9) of the CGST Act wherein, in respect of only unmatched details -which could not be corrected at the first stage, rectification could be done in the return to be furnished for the month during which such omission or incorrect particulars were noticed.

15. While the GST regime envisaged the filing process and recording of ITC and payment of taxes as above, admittedly, due to system issues and under preparedness with regard to the extent of data to be processed, Form GSTR-2, and 3 were not made operational; and have been now completely done away with. Form GSTR-2A was made operational only in September 2018 by the Government. This Form is also valid in respect of the past periods commencing July 2017. The Respondents do not dispute that the statutory scheme envisaging the filing of return GSTR-2 and 3 could not be put into operation and has been indefinitely deferred. This makes it abundantly clear that neither the systems of the Government were ready, nor were the systems of the suppliers all across the country geared up to handle such an elaborate electronic filing and reconciliation system introduced for the first time.

16. Since Forms GSTR-2 and 3 could not be operationalized by the Government,the Government introduced Rule 61(5) (which was amended vide Notification No. 17/2017-Central Tax, dated 27.07.2017) and the Rule 61(6) in the CGST Rules, and provided for filing of monthly return in Form GSTR-3B which is only a summary return. Mr. Singh appearing for the Revenue does not controvert the submission of Mr. Gulati that Form GSTR- 3B is filled in manually by each registered person and has no inbuilt checks and balances by which it can be ensured that the data uploaded by each registered person is accurate, verified and validated. Therefore,the design and scheme of the Act as envisioned has not been entirely put into operation as yet. In these circumstances we find merit in the submission of Mr. Gulati that if the statutorily prescribed form i.e. GSTR-2 & 3 had been operationalized by the Government - as was envisaged under the scheme of the Act, the Petitioner with reasonable certainty would have known the correct ITC available to it in the relevant period, and could have discharged its liability through ITC, instead of cash. We also find force in the submission of Mr. Gulati that since Form GSTR-2 & 2A were not operationalized - and because the systems of various suppliers were not fully geared up to deal with the change in the compliance mechanism, the Petitioner perhaps didnot have the exact details of the input tax credit available for the initial three months i.e. the relevant period. In this situation, since Petitioner's ITC claim was based on estimation and the exact amount for

the relevant period was not known, Petitioner discharged the GST liability for the relevant period in cash, although, in reality, ITC was available with it (though it was not reflected in the system on account of lack of data). Indisputably, if the statutorily prescribed returns i.e. GSTR 2 and GSTR 3 had been operationalized by the Government, the Petitioner would have known the correct ITC amount available to it in the relevant period, and could have discharged its liability through ITC. As a consequence, the deficiency in reporting the eligible ITC in the months of July - September 2017 in the form GSTR- 3B has resulted in excess payment of cash by the Petitioner.

17. Now that the correct figures are known to the Petitioner, and limited rectification of returns is permissible, why is Petitioner's grievance not redressed? The answer lies in the refund provisions that we shall now allude to briefly. These provisions are the stumbling block for the petitioner to remedy the situation. ITC is taken on the basis of the invoices issued to a registered person providing input/output services. This ITC is credited to the electronic credit ledger [Section 2(46) of the CGST Act] under section 49(2) of the CGST Act. The output tax liability of the supplier can be paid through utilization of ITC available in the electronic credit ledger, or by utilization of the amount available in the electronic cash ledger [Section 2(43) of the CGST Act] under section 49 (1) of the CGST Act. Section 54 (1) of the CGST Act provides for the refund of the amount of excess paid tax. The said provision read with Circular dated 29.12.2017, deals with the refund of excess tax paid. Under the proviso to section 54 (1) read with Section 49(6), refund of excess input tax credit is allowable only in two situations - where there is zero (0) rated tax, or inverted duty structure. Further, refund of cash is allowed in case of excess balance in electronic cash ledger in accordance with Section 46 (6) of CGST Act. Refund can also be claimed if tax is paid on supply which is not provided, either wholly or partially, and for which invoice has not been issued. Furthermore, refund can be given under Section 77 of the Act which deals with tax wrongfully collected and paid to Central Government or State Government. Therefore, the above provisions would not entirely remedy the situation for the Petitioner. For this reason,we cannot countenance the stand of the Respondents as stated in their additional affidavit. Respondents are unreasonably harping on the mistake on the part of the Petitioner for not utilizing of input tax credit on account of erroneous reporting. While the Respondents may be correct in stating that the case of the Petitioner may not qualify as "payment of excess tax", but one cannot ignore the circumstances narrated above. In the first instance, the Petitioner has made payment of taxes in cash, only because the extent of input tax credit could not be computed. In terms of para 4 of

Circular No. 26/26/2017-GST, adjustment of tax liability of input tax credit is permissible in subsequent months. For the months of September/October, 2018, the output liability for the said months was adjusted by following the procedure as provided in the said circular. However, Mr. Gulati has explained, the output tax liability has substantially reduced on account of low tariff in the telecom sector. As a result, the input tax credit which has accumulated on account of erroneous reporting,cannot be fully utilized in the prevailing tariff structure. The surplus input tax credit is expected to grow, for the later months as well, and there would be further inflow of input tax credit. In these circumstances, the adjustment of the tax liability in subsequent tax period would not recompense the Petitioner. Mr. Gulati has drawn our attention to the tabulations placed on record to illustrate his point. Moreover,even if there is a possibility to adjust the accumulated ITC in future, that cannot be aground to deprive the Petitioner the option to fully utilize the input tax credit which it is statutorily entitled to do so.

18. While arriving at this conclusion we also have to take into account that the Respondents have absolutely failed in operationalizing the forms that were originally envisaged under the Act. The scheme of the CGST Act as introduced, contemplated validation and verification of data which was to be uploaded vide Form GSTR-2 & 3. However, in absence of such statutory forms being operationalized on account of lack of technical infrastructure, Form GSTR-3B was introduced and it was required tobe filled in manually. There cannot be any dispute that Form GSTR-3B has been brought into operation instead of Form GSTR-2 and GSTR-3. This Form GSTR-3B as introduced by Rule 61 (5) being at variance with the other statutory provisions does not permit the data validation before it is uploaded. As per the Respondents, Form GSTR-3B is a return not in addition to GSTR-3, but in place of it, till such time GSTR-3 gets operationalized. Form GSTR-3B which has been brought into operation by virtue of Section 168 of the CGST Act, in comparison with Form GSTR-3 is a truncated version. Thus, we find merit in the submission of Mr. Gulati that with this change brought in by the Respondents, the form originally contemplated got fundamentally altered.

As a result, the checks and balances which were prescribed in the original forms got effaced and it cannot be ruled out that this possibly caused inaccuracies to creep in the data that is required to be filled in.

19. Acknowledging the fact that manual filling of forms can result in errors,Respondents permitted rectification by way of the Circular No. 7/7/2017- GST issued by CBEC, relevant portion whereof reads as under:

"3. As per the provisions of sub-rule (5) of rule 61 of the Rules, the return inFORM GSTR-3B was required to be furnished when the due dates for filing ofFORM GSTR-1 and FORM GSTR-2 have been extended. After the return inFORM GSTR-3B has been furnished, the process of reconciliation betweenthe information furnished in FORM GSTR-3B with that furnished in FORMGSTR-1 and FORM GST-2 would be carried out in accordance with theprovisions of sub-rule (6) of rule 61 of the Rules.

4. x x x

5. x x x

6. Correction of erroneous details furnished in FORM GSTR- 3B:

In case the registered person intends to amend any details furnished in FORM GSTR 3B, it may be done in the FORM GSTR- 1 or FORM GSTR-2, as the case may be. For example, while preparing and furnishing the details in FORM GSTR-1, if the outward supplies have been under reported or excess reported in FORM GSTR-3B, the same maybe correctly reported in the FORM GSTR-1. Similarly, if the details of inward supplies or the eligible ITC have been reported lessor more than what they should have been, the same maybe reported correctly in the FORM GSTR-2. This will get reflected in the revised output tax liability or eligible ITC, as the case may be, of the registered person. The details furnished in FORM GSTR-1 and FORM GSTR-2 will be auto-populated and reflected in the return in FORM GSTR-3 for that particular month."

(emphasis supplied) The portion of the said circular underlined above,provided for reconciliation and restatement of tax liability based on the amended ITCof the relevant month. Later, Respondent introduced the impugned circular No. 26/26/2017- GST dated 29.12.2017, whereby the earlier Circular No. 7/7/2017-GST has been kept in abeyance. Para 3 of the said Circular provides for amendment/rectification of errors, para 4 imposes a restriction on the same and stipulates that the rectification of errors can be done concurrently in the month in which the error is noticed, and not in the month to which the data relates. The relevant portion of the said circular is reproduced hereinbelow:

" 3. Amendment / corrections / rectification of errors:

3.1 Various representations have been received wherein registered persons have requested for clarification on the

procedure for rectification of errors made while filing their FORM GSTR-3B. In this regard, Circular No. 7/7/2017-GST dated 1st September 2017 was issued which clarified that errors committed while filing FORM GSTR - 3B may be rectified while filing FORM GSTR-1 and FORM GSTR-2 of the same month. Further, in the said circular,it was clarified that the system will automatically reconcile the data submitted in FORM GSTR-3B with FORM GSTR-1 and FORM GSTR-2, and the variations if any will either be offset against output tax liability or added to the output tax liability of the subsequent months of the registered person.

3.2 Since, the GST Council has decided that the time period of filing of FORM GSTR-2 and FORM GSTR -3 for the month of July 2017 to March 2018 wouldbe worked out by a Committee of officers, the system based reconciliation prescribed under Circular No.7/7/2017-GST dated 1st September 2017 can only be operationalized after the relevant notification is issued. The said circular is therefore kept in abeyance till such time.

3.3 The common errors while submitting FORM GSTR-3B and the steps needed to be taken to rectify the same are provided in the table annexed herewith. The registered person needs to decide at which stage of filing ofFORM GSTR-3B he is currently at and also the error committed by him. The corresponding column in the table provides the steps to be followed by him to rectify such error.

4. It is clarified that as return in FORM GSTR-3B do not contain provisions for reporting of differential figures for past month(s), the said figures may be reported on net basis alongwith the values for current month itself inappropriate tables i.e. Table No. 3.1, 3.2, 4 and 5, as the case may be. It maybe noted that while making adjustment in the output tax liability or input tax credit, there can be no negative entries in the FORM GSTR-3B. The amount remaining for adjustment, if any, may be adjusted in the return(s) in FORM GSTR- 3B of subsequent month(s) and, in cases where such adjustment is not feasible, refund may be claimed. Where adjustments have been made inFORM GSTR-3B of multiple months, corresponding adjustments in FORM GSTR-1 should also preferably be made in the corresponding months."

(emphasis supplied)

20. The earlier circular has not been rescinded by the impugned circular dated 29.12.2017, but only kept in abeyance. Be that as it may, we see no reason as to why the rectification/adjustment is being allowed in the month subsequent to when such errors relate, and the Respondents have restricted the mechanism of rectification to the same tax period, in which they were noticed and sought to be rectified. In our view, para 4 of Circular No. 26/26/2017-GST dated 29.12.2017 is notin consonance with the provisions of CGST Act, 2017. The impugned circular expressly states that the time period for filing of Form GSTR-2 and GSTR-3 for the months of July, 2017 to March, 2018 would be worked by a committee, as system-based reconciliation can only be operationalized after the relevant notification is issued. Thus, the impugned circular, in unequivocal terms, recognizes the concept of system-based reconciliation of ITC and output liability for the same tax period as per the statutory provisions. We, therefore, do not find any cogent reasoning behind the logic for restricting rectification only in the period in which the error is noticed and corrected, and not in the period to which it relates. There is no provision under the Act that has been brought to our notice which would restrict such rectification. In fact,the Respondents' contention is to the effect "thus, the Act does not provide that the data filled by a registered person has to be validated in that month itself. Accordingly Circular No. 26/26/2017-GST dated 29.12.2017 was issued providing that rectification of errors can be done, concurrently in that month in which the errors is known and not in the month to which the data relates" is palpably flawed. The restriction if any, that can be introduced by way of a circular, has to be in conformity with the scheme of the Act and the provisions contained therein. In fact, as noticed above, the earlier Circular No. 7/7/2017-GST does recognize that the reconciliation is based on amended ITC of the relevant month. This is in terms of provisions of CGST Act and the Respondents' contention is contrary to the same. Thus, the constraint introduced by para 4 of the impugned circular, is arbitrary and contrary to the provisions of the Act and, therefore, we have no hesitation in declaring it to be so. It is trite proposition of law that circular issued by the Board cannot be contrary to the Act and the Government cannot impose conditions which go against the scheme of the statutory provisions contained in the Act. The subordinate legislation must conform to the statute under which it is made, and they cannot whittle down the benefits granted under statutory provision.

The Respondents have failed to fully enforce the scheme of the Act, and cannot take benefit of its own wrong of suspension of the Statutory Forms and deprive the rectification/amendment of the returns to reflect ITC pertaining to a tax period to which the return relates to. Petitioner has a

substantive right to rectify/adjust the ITC for the period to which it relates. The rectification/ adjustment mechanism for the months subsequent to when the errors are noticed is contrary to the scheme of the Act. The Respondents cannot defeat this statutory right of the Petitioner by putting in a fetter by way of the impugned circular. Since the Respondents could not operationalize the statutory forms envisaged under the Act,resulting in depriving the Petitioner to accurately reconcile its input tax credit, the Respondents cannot today deprive the Petitioner of the benefits that would have accrued in favour of the Petitioner, if , such forms would have been enforced. The Petitioner, therefore, cannot be denied the benefit due to the fault of the Respondents.

21. In this regard, we may note the views of the Supreme Court in some of the judgments. In the case of Commissioner of Central Excise, Bolpur vs. Ratan Melting and Wire Industries, (2008) 13 SCC 1, a reference was made by a bench of three Judges in Ratan Melting & Wire Industries Case, (2005) 3 SCC 57 to a bench of five judges to determine the issue of what is the binding effect of a judgment of Supreme Court vis-à-vis CBEC circulars. The reference was necessitated in the backdrop of a confusion created on account of the view expressed by a five judge bench of the Supreme Court in para 11 of Dhiren Chemical Industries Case, (2002) 2 SCC 127 which states that "...regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the revenue." In order to elucidate the position in this respect, the five judge bench in Commissioner of Central Excise, *Bolpur vs.Ratan Melting and Wire Industries* (supra) referred to its earlier decision in Kalyani Packaging Industry vs. Union of India (2004) 6 SCC 719 and observed that Para 11 of Dhiren Chemical Industries (supra) was rightly clarified therein. In this background, the Court held in paragraph 7 as under :

> "7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the CentralGovernment and of the State Government are concerned they representmerely their understanding of the statutory provisions. They are not bindingupon the court. It is for the court to declare what the particular provision ofstatute says and it is not for the executive.

> Looked at from another angle, acircular which is contrary to the statutory provisions has really no existence inlaw."
>
> (emphasis supplied)

22. Besides, in the case of TATA Teleservices Ltd. Vs. Commissioner of Customs, (2006) 1 SCC 746, the question before the Supreme Court was whether the telephone LSP 340 imported would be entitled to the benefit of the exemption granted by Notification No. 21/2002-Cus. dated 1.03.2002 to cellular telephones. The controversy arose because CBEC issued a circular being Circular No. 57/2003 dated June 2003 which defined the phrase "cellular phones" and clarified that a telephone would not be considered as a cellular phone, merely because it works on cellular technology. The basic fact was that LSP 340 utilized cellular technology and was mobile, although within a limited range. Contrary views were taken by different High Courts and, therefore, the matter came up in appeal before the Supreme Court. The Court while deciding this question, held as under:

> "10. We are of the view that the reasoning of the Bombay Bench of the Tribunal as well as that of the Andhra Pradesh High Court must be affirmed and the decision of the Delhi Tribunal set aside insofar as it relates to the eligibility of LSP 340 to the benefit of the exemption notification. The Andhra Pradesh High Court was correct in coming to the conclusion that the Board had, in the impugned circular, predetermined the issue of common parlance that was a matter of evidence and should have been left to the Department to establish before the adjudicating authorities. The Bombay Bench was also correct in its conclusion that the circular sought to impose a limitation on the exemption notification which the exemption notification itself did not provide. It was not open to the Board to whittle down the exemption notification in such a manner..."
>
> (emphasis supplied)

23. We would also like to add that the Respondents have also not been able to expressly indicate the rationale for not allowing the rectification in the same month to which the Form GSTR-3B relates. The additional affidavit filed by the Respondents as per the directions of this Court, also skirts this question and has only attempted to give some explanation which is not convincing and lacks objectivity and rationality. Respondents have admitted that the facility of Form GSTR-2A was not available prior to 2018 and, as such, for the months of July, 2017 to September, 2017 the scheme

as envisaged under the CGST Act was not implemented. Respondents have also clearly acknowledged that there could be errors in Form GSTR-2A which may need correction by the parties and have, in fact, permitted the rectification,clearly reinforcing the stand of the Petitioner. The refund of excess cash balance in terms of Section 49 (6) read with Section 54 of the CGST Act does not effectively redress Petitioner's grievance. Therefore, the only remedy that can enable the Petitioner to enjoy the benefit of the seamless utilization of the input tax credit is byway of rectification of its annual return i.e. GSTR-3B. The hypothetical situations canvassed by Mr. Singh, would not deter us from granting the relief sought by the Petitioner.

Each case would have to turn on its own facts. As and when a situation is brought to our notice, we would have to test the legality of the provision at that stage. Merely if there is any fanciful or absurd outcome in a given situation, as illustrated by Mr. Harpreet Singh, it does not mean that the Petitioner should not be given the benefit of rectification if the same is genuine. The correction mechanism is critical to sustaining successful implementation of GST.

24. Thus, in light of the above discussion, the rectification of the return for that very month to which it relates is imperative and, accordingly, we read down para 4 of the impugned Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred. Accordingly, we allow the present petition and permit the Petitioner to rectify Form GSTR-3B for the period to which the error relates, i.e. the relevant period from July, 2017 to September, 2017. We also direct the Respondents that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim made therein and give effect to the same once verified. In view of the fact that the final relief sought by the Petitioner has been granted and the petition is allowed, no separate order is required to be passed in the application seeking interim relief. Accordingly, the said application is disposed of as such.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
[Abhay S. Oka, CJ and Ashok S, Kinagi, J]

Writ Appeal No. 188 of 2020

Union of India and Ors. ... Appellants

Versus

M/s. LC Infra Projects Pvt. Ltd.,
(formerly known as Laxmi Constructions) ... Respondent

**DATE OF ORDER : 03.05.2020**

CENTRAL GOODS AND SERVICES TAX – INTEREST UNDER SECTION 50(1) – DEMAND RAISED – CONSEQUENTIAL ACTION TAKEN – ACCOUNT ATTACHED – SHOW CAUSE NOTICE – NOT ISSUED – NOTICE OF DEMAND – CONSEQUENTIAL ACTION OF ATTACHMENT – BOTH THE ACTIONS – WHETHER JUSTIFIED?

*The appellant accepted before the learned Single Judge that no notice as contemplated under Section 73 of the GST Act was issued to the respondent assessee before quantifying interest amount and attaching Bank account of the respondent-assessee.*

*The learned Single Judge rightly held in paragraph 6 of the impugned judgment that issuance of show Cause Notice is sine qua non to proceed with the recovery of interest payable in accordance with sub section (1) of Section 50 of the GST Act.*

*The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law obviously for recovery of interest.*

*We concur with the ultimate view taken by the learned Single Judge that before recovery of interest payable in accordance with Section 50 of the GST Act, a show Cause Notice is required to be issued to the assessee. Hence, no case for interference is made out. The appeal is accordingly dismissed.*

Annexure-K, which is the order of attachment, also will have to be set aside.

**JUDGMENT**

Heard learned counsel appearing for the appellant.

2. We have permitted the learned counsel for the appellant to argue on the footing that the case is made out for condonation of delay.

3. Before the learned Single Judge, the challenge was two fold. Firstly, to the notice of demand dated 4th March 2019 (Annexure-J to the writ petition) by which a demand for interest in accordance with sub section (1) of Section 50 of Central Goods and Service Tax Act 2017 (for short 'GST Act') was made.

4. On the basis of the said demand, consequential action was taken by the tax authorities on 7th March 2019 (Annexure-L) by which the account of the respondent-assessee was attached on account of non payment of interest. This is the second challenge in the writ petition.

5. Perusal of the impugned order shows that the learned counsel appearing for the appellant accepted before the learned Single Judge that no notice as contemplated under Section 73 of the GST Act was issued to the respondent assessee before quantifying interest amount and attaching Bank account of the respondent-assessee. In paragraph 6, the learned Single Judge has held that issuance of a show Cause Notice is sine qua non to proceed with the recovery of interest payable under Section 50 of the GST Act and penalty leviable under the provisions of the GST Act and the Rules. It is further held that interest payable under Section 50 of the GST Act has been determined by the third respondent – Authority without issuing a show Cause Notice which is in breach of the principles of natural justice. Therefore, both the orders at Annexures - J and L were quashed by the learned Single Judge by the impugned order with liberty to the third respondent to proceed in accordance with law.

6. The learned counsel appearing for the appellant invited our attention to sub section (1) of Section 50 of the GST Act and the impugned demand vide Anenxure-J. He would urge that the demand of interest is on account belated payment of tax based on the self-assessment. He would, therefore, submit that as the tax was payable as per the self-assessment made by the assessee, it was not necessary to issue a show cause notice to the respondent-assessee as the demand was only as regards to payment of interest under Sub Section (1) of Section 50 of the GST Act. His second submission is that as the demand was not for a tax and only for interest, a notice under Sub Section (1) of Section 73 of the GST Act was not all

necessary. He submitted that as a consequence of failure to pay interest, consequential action of attachment of the bank account has been taken. His submission is that Annexure-J could not have been held to be illegal on the ground of breach of the principles of natural justice.

7. We have given careful consideration to the submissions.

8. Sub section (1) of Section 50 reads thus:

> "50. (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."

Further, sub section (1) to sub section (3) of Section 73 of the GST reads thus:

> "73. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.
>
> (2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.
>
> (3) Where a notice has been issued for any period under sub-section, 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."

9. Under sub section (1) of Section 50 of the GST Act, interest can be demanded if an assessee fails to pay the tax or any part thereof within the specified period.

10. On the factual aspect, whether there was a failure on the part of the assessee to pay the tax or any part thereof within the period prescribed, the assessee is entitled to be heard as he could always point out on the basis of the material on record produced that there was no delay in payment of tax.

11. On plain reading of sub section (1) of Section 73 of the GST Act, it is applicable when any tax has not been paid or short paid. It contemplates that a show Cause Notice is to be issued to the assessee calling upon 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 of the GST Act.

12. Assuming that sub section (1) of Section 73 is not applicable, in our view, before penalizing the assessee by making him pay interest, the principles of natural justice ought to be complied with before making a demand for interest under sub section (1) of Section 50 of the GST Act. Consequence of demanding interest and non-payment thereof is very drastic.

13. Therefore, the learned Single Judge rightly held in paragraph 6 of the impugned judgment that issuance of show Cause Notice is sine qua non to proceed with the recovery of interest payable in accordance with sub section (1) of Section 50 of the GST Act.

14. The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law obviously for recovery of interest.

15. Though a perusal of paragraph 4 of the impugned order shows that the same is based on concession made by the learned counsel for the appellant, in paragraph 6 the learned Single Judge has laid down the law.

16. For the reasons which we have recorded earlier, we concur with the ultimate view taken by the learned Single Judge that before recovery interest payable in accordance with Section 50 of the GST Act, a show Cause Notice is required to be issued to the assessee. Hence, no case for interference is made out. The appeal is accordingly dismissed.

Interim applications do not survive. Further, we make it clear that as far as Annexure-K is concerned, as the main demand for interest has been set aside, Annexure-K, which is the order of attachment, also will have to be set aside. We make it clear that we have not gone into the question whether the principles of natural justice are required to be complied with before taking action in accordance with Rule 145 of the Rules framed under the GST Act.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

## IN THE SUPREME COURT OF INDIA
[A.K. Sikri and Rohinton Fali Nariman, JJ.]

Civil Appeal Nos. 8070-8073 of 2016, 8074-8075 of 2016, 8076 of 2016, 8077-8078 of 2016, 8079-8082 of 2016, 8083-8086 of 2016, 8087-8089 of 2016, 8090-8093 of 2016, 8094-8099 of 2016, 8100 of 2016, 8105-8114 of 2016, 8115-8116 of 2016, 8117 of 2016, 8118 of 2016, 8119-8122 of 2016, 8123 of 2016, 8124 of 2016, 8125-8126 of 2016, 8127-8131 of 2016, 8132-8134 of 2016, 8135-8138 of 2016, 8139-8141 of 2016, 8142 of 2016, 143 of 2016 and 8144-8146 of 2016

Jayam and Co. ... Appellants

Versus

Assistant Commissioner and Ors. ... Respondent

**DATE OF ORDER: 05.08.2016**

RETROSPECTIVE AMENDMENT OF TAX LAW – VAT / SALES TAX – VIRES OF AMENDMENT CHALLENGED – GROUND OF CHALLENGE – AS BEING CONFISCATORY AND UNREASONABLE AND ARBITRARY – HON'BLE HIGH REPELLED THE CHALLENGE ON BOTH COUNTS – APPEAL TO SUPREME COURT.

BENEFIT OF INPUT TAX CREDIT – CONCESSION GRANTED BY STATUTE SUBJECT TO CONDITIONS – PROVISION AMENDED TO THE DETRIMENT OF THE DEALERS – VESTED RIGHT ACCRUED IN FAVOUR OF DEALER – RETROSPECTIVE AMENDMENT – WHETHER INTRA VIRES! – WHETHER VIOLATIVE OF ARTICLE 14 AND 19(1)(G) OF THE CONSTITUTION?

*In the writ petitions filed by the Appellants/dealers, vires of newly inserted Sub-section (20) of Section 19 of the Tamil Nadu Value Added Tax Act, 2006, vide amendment brought by Amendment Act 22 of 2013 were*

*challenged. This provision was given retrospective effect from January 01, 2007 by Tamil Nadu Value Added Tax (Special Provision) Act, 2010. The retrospectivity of the provision was also questioned by the dealers. The dealers had argued that this provision is confiscatory in nature as well as unreasonable and arbitrary and was, therefore, violative of Article 14 and 19(1)(g) of the Constitution and repugnant to the general scheme of the charging provisions of Section 3(2) and 3(3) of the VAT Act. On both the counts, the dealers' challenge was repelled by the High Court vide impugned judgment.*

*Hon'ble Supreme Court, while partly allowing the appeal held:*

> *It is a trite law that whenever concession is given by statute or notification etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the 'dealers' to get the benefit of Input Tax Credit (ITC) but its a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it was not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount was to be the basis.*

*The High Court primarily gone by the fact that there was no unforeseen or unforeseeable financial burden imposed for the past period. That was not correct. Moreover, as can be seen, Sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, i.e., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC was entirely different before this amendment. A provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between January 01, 2007 to August 19, 2010. Thus, while upholding the vires of Sub-section (20) of Section 19, Amendment Act 22 of 2010 was set aside and struck down whereby this amendment was given retrospective effect from January 01, 2007.*

Present for Appellant/Petitioner/Plaintiff:

S.K. Bagaria, V. Giri, Sr. Advs., E.R. Kumar, Sameer Parekh, K. Ajit Singh, Abhishek Vinod Deshmukh, Aditya Sharma, Aakansha

Nehra, Akash Jindal, Chaitanya Safaya, Shally Bhasin, Vasudha Gupta, Lakshmeesh Kamath, Mahesh Agarwal, Sadapurna Mukherjee, E.C. Agrawala, F.R. Kumar, Advs., Parekh & Co., K.V. Vijaya Kumar, Jayanth Muth Raj, Malavika J., Sureshan P., Hemalatha, P.R. Kovilan, Geetha Kovilan, Sanand Ramakrishnan, S. Nandakumar, Parivesh Singh, P. Srinivasan, Prateek Gupta, Ranjeet Singh, Naresh Kumar, K.K. Mani, T. Archana, Gautam Narayan, R.A. Iyer, Shatrajit Banerji, Nikhil Swami, Divya Swami, Prabha Swami, Anil Kaushik, Anand Padamanabhan, J. Amritha Sarayoo and Shashi Bhushan Kumar, Advs.

Present for Respondents/Defendant:

Subramonium Prasad, Sr. Adv., B. Balaji, Utkarsh Srivastava, Arvind Athithan, Ram Subramanian and Muthuvel Palani, Advs.

**JUDGMENT**

**A.K. Sikri, J.**

1. Leave granted.

2. We have heard the matter in detail finally at this stage on all issues that are raised. We are of the opinion that special leave petitions need to be granted only on the issue as to whether Sub-section (20) of Section 19 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as VAT Act') could be given retrospective effect.

3. All these appeals arise out of common judgment dated July 17, 2013 rendered in batch of writ petitions. In the writ petitions filed by the Appellants (hereinafter referred to as 'dealers'), vires of newly inserted Sub-section (20) of Section 19 of the VAT Act, vide amendment brought by Amendment Act 22 of 2013 were challenged. This provision though came into force on August 19, 2010, by the aforesaid Amendment Act, was given retrospective effect from January 01, 2007 by Tamil Nadu Value Added Tax (Special Provision) Act, 2010 (hereinafter referred to as 'Act, 2010'). The retrospectivity of the provision was also questioned by the dealers. The dealers had argued that this provision is confiscatory in nature as well as unreasonable and arbitrary and is, therefore, violative of Article 14 and 19(1)(g) of the Constitution and repugnant to the general scheme of the charging provisions of Section 3(2) and 3(3) of the VAT Act. On both the counts, the dealers' challenge has been repelled by the High Court vide impugned judgment July 17, 2013.

4. We have heard learned Counsel for the parties at length. Before us, Mr. Bagaria, learned senior Counsel appearing for the dealers in some of these appeals had also argued that even if the aforesaid provision was valid, it was not properly interpreted by the High Court. We have considered this additional submission as well. We may record, at the outset, that insofar as this submission based on interpretation of this provision as well as challenge laid to the constitutional validity of the said provision are concerned, we do not find any merit therein and are of the opinion that the High Court by a well-reasoned and detailed judgment rightly rejected these contentions. It is because of this reason that leave in the special leave petitions is granted only to limited extent as indicated in the beginning of this order. However, before coming to the issue of retrospectivity, we would delve into these two aspects briefly as that discussion would be required in order to understand the question of retrospectivity.

5. The Appellants are 'dealers' and registered as such under the provisions of VAT Act. For example, the Appellant in Civil Appeal No. 24023-26 of 2013 deals in electronic home appliances. It purchases appliances from local registered dealers on payment of VAT under the VAT invoice issued by the vendors. Thereafter, the Appellant re-sells to consumers under VAT invoice charging appropriate VAT on their selling price. It had purchased LCD Televisions from M/s. LG Electronics Private Limited for re-sale. The vendors, i.e., M/s. LG Electronics had charged VAT on the selling price, as per the VAT invoice issued by M/s. LG Electronics to the dealers. Based on the price shown in the invoice, VAT was paid. Under the scheme of VAT Act, as would be seen hereinafter, on re-sale when the VAT is paid by the dealer, the dealer is entitled to avail Input Tax Credit (for short, 'ITC'), i.e., he is entitled to get the credit of the VAT which was paid by the dealer to M/s. LG Electronics on purchase of these T.V. sets from the said vendors.

6. It so happened that after the original tax invoice and availing ITC, the vendor had given discount and purchase credit note was issued for a lesser price. The dealer took into account the price it paid to M/s. LG Electronics after adjusting the discount that was subsequently given to the dealer to arrive at net cost and adding VAT which was limited to the vendors by the dealer, the goods were re-sold at a lesser price. This is illustrated before us in the following manner:

**PURCHASE DETAILS**

| S. No. | Description | Price (Rs.) | VAT (10%) (Rs.) |
|---|---|---|---|
| 1 | As per Tax Invoice of the Seller | 100 | 10 |
| 2 | Less: Discount actually allowed by seller under its applicable incentive / discount scheme by issuing credit note. | 10 | |
| | Net purchase price after discount | | |

**SALE DETAILS**

| S. No. | Description | Amount (Rs.) |
|---|---|---|
| 1 | Sale Price | 95 |
| 2 | VAT actually on the sale price @ 10% | 9.50 |

7. From the aforesaid, it is clear that the dealer had paid to the vendor VAT of Rs. 10/-. However, at the time of re-sale VAT actually allowed was Rs. 9.50. That is the effect of Sub-section (20) of Section 19, which reads as under:

> Section 19(20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed.

8. First submission of the dealer was that the price could not have been taken as per the tax invoice but net price at which it was ultimately purchased after discount should have been taken. In the given illustration, it was Rs. 90/-. On this basis, argument raised on interpretation was that since the goods were purchased at Rs. 90/- and sold at Rs. 95/-, Sub-section (20) of Section 19 had no application at all. Detail submissions were made with reference to the provisions of Sale of Goods Act to buttress the submission that net purchase price would be the “price” of goods. However, according to the Revenue, purchase price had to be taken as Rs. 100/-, as mentioned in the original tax invoice, without deducting the discount of Rs. 10/- allowed by the issuing of credit note. On this basis, the Revenue took the decision that since the goods were purchased at Rs. 100/- but sold at

Rs. 95/- (Section 19(20) became applicable). The High Court has accepted the contention of the Revenue. As mentioned above, detailed reasons in this behalf are given. Suffice it to state that as per the scheme of the VAT Act itself, it is the price as per the tax invoice which has to be taken into consideration. In view of this Specific Statutory Scheme, general principles laid down in the Sale of Goods Act would not be applicable.

9. We may mention that Section 19 deals with ITC and this Section is to be understood keeping in view the entire scheme of the VAT Act. VAT Act, obviously, deals with payment of value added tax on the goods sold by the dealers. It is not necessary to go into definitions of various expressions like 'business', 'dealer', 'goods', 'sale', 'turnover' etc. Since we are concerned with grant of ITC, we would reproduce the definitions of those expressions which are relevant for this purpose. These are:

> Section 2(24) "input tax" means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business.
>
> Section 2(36) "tax invoice" means an invoice issued by a registered dealer who sells taxable goods to another registered dealer in the State showing the tax charged separately and containing such details as may be prescribed.
>
> Section 2(41) "turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in Clause (33), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgage, tenant or otherwise, shall be excluded from his turnover.
>
> *Explanation I:* "Agricultural or horticultural produce" shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or dying;
>
> *Explanation II:* Subject to such conditions and restrictions, if any,

as may be prescribed in this behalf--

(i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time or, or before the delivery thereof;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover;

*Explanation III:* Any amount, realised by a dealer by way of sale of his business as a whole, shall not be included in the turnover;

*Explanation IV:* Any amount, charged by a dealer by way of tax separately without including the same in the price of the goods sold, shall not be included in the turnover

10. After giving the definitions of various terms Under Section 2, Sections 3 to 12 deal with levy of taxes on various kinds of transactions. For example, Section 3 deals with levy of taxes on sale of goods; Section 4 talks about levy of taxes on transfer of right to make use of any goods for any purpose and Section 5 prescribes the levy of tax on transfer of goods involved in works contract. From Section 13 onward, some concessions/ deductions are allowed. Section 13 deals with deduction of tax at source in works contract. Section 14 is about the reversal of tax credit. Likewise, Section 15 deals with those sales which are exempted from tax. In this scheme of deductions and concessions comes Section 19 which allows grant of ITC. Pertinently, however, scrutiny of this provision reveals that ITC is not allowed on all kinds of transactions. On certain types of sales, no ITC is admissible at all. Nature of those sales where ITC is inadmissible is stipulated in Sub-sections (5) to (9) of Section 19. For understanding this pertinent aspect of the scheme, at this juncture, we reproduce Section 19 in its entirety as under:

Input tax credit

(1) There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule:

PROVIDED that the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of-

(i) re-sale by him within the State; or

(ii) use as input in manufacturing or processing of goods in the State; or

(iii) use as containers, labels and other materials for packing of goods in the State; or

(iv) use as capital goods in the manufacture of taxable goods;

(v) sale in the course of inter-State Tax Act, 1956 (Central Act 74 of 1956);

(vi) agency transactions by the principal within the State in the manner as may be prescribed.

3(a) Every registered dealer, in respect of purchases of capital goods, for use in the manufacture of taxable goods, shall be allowed input tax credit in the manner prescribed.

(b) Deduction of such input tax credit shall be allowed only after the commencement of commercial production and over a period of three years in the manner as may be prescribed. After the expiry of three years, the unavailed input tax credit shall lapse to Government.

(c) Input tax credit shall be allowed for the tax paid Under Section 12 of the Act, subject to Clauses (a) and (b) of this Sub-section.

(4) Input tax credit shall be allowed on tax paid or payable in the State on the purchase of goods, in excess of three percent of tax relating to such purchases subject to such conditions as may be prescribed,--

(i) for transfer to a place outside the State otherwise than by way of sale; or

(ii) for use in manufacture of other goods and transfer to a place outside the State, otherwise than by way of sale:

PROVIDED that if a dealer has already availed input tax credit there shall be reversal of credit against such transfer.

(5) (a) No input tax credit shall be allowed in respect of sale of goods exempted Under Section 15

(b) No input tax credit shall be allowed on tax paid or payable in other States or Union Territories on goods brought into this State from outside the State.

(c) No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under Sub-section (2) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(6) No input tax credit shall be allowed on purchase of capital goods, which are used exclusively in the manufacture of goods exempted Under Section 15.

Provided that on the purchase of capital goods which are used in the manufacture of exempted goods and taxable goods, in put tax credit shall be allowed to the extent of its usage in the manufacture of taxable goods in the manner prescribed. (7) No registered dealer shall be entitled to input tax credit in respect of--

(a) goods purchased and accounted for in business but utilised for the purpose of providing facility to the proprietor or partner or director including employees and in any residential accommodation; or

(b) purchase of all automobiles including commercial vehicles, two wheelers and three wheelers and spare parts for repair and maintenance thereof, unless the registered dealer is in the business of dealing in such automobiles or spare parts; or

(c) purchase of air-conditioning units unless the registered dealer is in the business of dealing in such units.

(8) No input tax credit shall be allowed to any registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.

(9) No input tax credit shall be available to a registered dealer for tax paid or payable at the time of purchase of goods, if such--

(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax credit against purchase of such goods, there shall be reversal of tax credit; or

(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or

(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.

(10) (a) The registered dealer shall not claim input tax credit until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

(b) If the original tax invoice is lost, input tax credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer subject to such conditions as may be prescribed.

(11) In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later.

(12) Where a dealer has availed credit on inputs and when the finished goods become exempt, credit availed on inputs used therein, shall be reversed.

(13) Where a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue, the assessing authority shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date.

(14) Where the business of a registered dealer is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the registered dealer shall be entitled to transfer the input tax credit lying unutilized in his accounts to such sold, merged, amalgamated, leased or transferred concern. The transfer of input tax credit shall be allowed only if the stock of inputs, as such, or in process, or the capital goods is also transferred to the new ownership on which credit has been availed of are duly accounted for, subject to the satisfaction of the assessing authority.

(15) Where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of two per cent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.

(16) The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order.

(17) If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

(18) The excess input tax credit, if any, after adjustment under Sub-section (17), shall be carried forward to the next year or refunded, in the manner, as may be prescribed.

(19) Where any registered dealer has availed input tax credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered.

(20) Not withstanding any thing contained in this section, where

any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed.

11. From Sub-section (10) onwards, provisions are made to follow the procedure and fulfill the requisite conditions for availing ITC. For the purposes of this particular issue, Sub-section (10) is the material provision. This provision, which is couched in negative terms, categorically stipulates that such ITC would be admissible to the registered dealer and he would not be entitled to claim this credit 'until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from where the goods are purchased.....'. Further, such original tax invoice should evidence the amount of input tax. So much so, even if the original tax invoice is lost, the obligation cast on the registered dealer is to obtain duplicate or carbon copy of such tax invoice from the selling dealer and only then input tax is allowed.

From the aforesaid scheme of Section 19 following significant aspects emerge:

(a) ITC is a form of concession provided by the Legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.

(b) Concession of ITC is available on certain conditions mentioned in this Section.

(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax.

12. It is a trite law that whenever concession is given by statute or notification etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the 'dealers' to get the benefit of ITC but its a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect do hors the issue of ITC as per the Section 19 of the VAT Act, possibly the arguments of Mr. Bagaria would have assumed some

relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of Sections of the VAT Act, read along with other provisions of the said Act as referred to above.

13. For the same reasons given above, challenge to constitutional validity of Sub-section (20) of Section 19 of VAT Act has to fail. When a concession is given by a statute, the Legislature has power to make the provision stating the form and manner in which such concession is to be allowed. Sub-section (20) seeks to achieve that. There was no right, inherent or otherwise, vested with dealers to claim the benefit of ITC but for Section 19 of the VAT Act. That apart, we find that there were valid and cogent reasons for inserting Section 19(20). Main purport was to protect the Revenue against clandestine transactions resulting in evasion of tax. High Court has discussed this aspect in detail and our task would be accomplished in reproducing those paras as we are concurring with the discussion:

> 64. Let us now point out the background/reasons for inserting Section 19(20) by Amendment Act 22 of 2010, by referring to the Chart, the sample instance is detailed in the Chart in paragraph (34). Let us recapitulate the entries in the Chart. Based on the sale price, i.e., Rs. 36,780/- in the tax invoice, an amount of Input Tax Credit, i.e., Input Tax Credit of Rs. 4,597.50 was available to the Petitioner when he re-sells goods. Based on the Credit Note, the same goods are re-sold within the State at a lesser price than what was purchased, i.e., Rs. 33,777.78 (taking into account discount price, there is a profit margin for the dealer) and thereby the output tax payable to the Government is reduced, leaving excess Input Tax Credit at the hands of the dealer. The said excess credit in the hands of the dealer might be adjusted to their other liabilities or might claim refund of the said excess Input Tax Credit. Taking excess Input Tax Credit and later in the guise of credit note giving discount and reducing the price of the goods which reduces the Output tax payable to the Government dwindles State revenue.
>
> 65. Learned Advocate General contended that seller and buyer coalition is issuing purchase invoice at an escalated price thereby taking benefit of excess Input Tax Credit and later in the guise of credit notes giving discount, reduced the price of the same goods and thereby reducing the output tax payable to the Government creates a dent of the State revenue. Learned Advocate General further submitted that excess Input Tax Credit available in the

hands of the dealer is being adjusted to their other liabilities and the dealer might also make a claim of refund of Input Tax Credit as per Section 19(18) of the Act which were ultimately resulted in creating dent on the State revenue.

66. To contend as to how the so called discount and reduction of sale price caused revenue loss to the Government, the learned Advocate General has drawn our attention to the illustration stated in paragraph (6) of the counter which reads as under:

| | |
|---|---|
| Purchase price of 10 Washing Machines | …Rs. 1,00,000/- |
| Tax paid on purchase at 12.5% (ITC allowed) | …Rs. 12,500/- |
| Sale price after discount | …Rs. 75,000/- |
| Tax payable on sales at 12.5%<br>Excess ITC available | …Rs. 9,375/- |
| (Difference between ITC and Output Tax)<br>Rs. 12,500 – Rs. 9,375 | …Rs. 3,125/- |
| Excess ITC Adjusted | …Rs. 3,125/- |

67. As rightly contended by the learned Advocate General, the "Input Tax Credit" adjusted in the above illustration comes to Rs. 3,125/- in a single transaction and that it would run to several lakhs and crores for a year for a single dealer. The excess Input Tax Credit earned by the Petitioners is being adjusted against the outstanding tax due or carried forward to next year or refunded. If this trend is allowed to continue, the concept of VAT that meant for payment of tax on every value addition gets defeated.

68. In order to protect the revenue and with a vie to curb the clandestine transactions resulting in evasion of tax, in respect of second and subsequent sales, Section 19(20) was introduced, where any dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of "Input Tax Credit" over and above the output tax of those goods, shall be reversed.

69. Constitutional Validity of fiscal legislation: When there is a challenge to the constitutional validity of the provisions of a Statute, Court exercising power of judicial review must be conscious of the limitation of judicial review must be conscious of the limitation of judicial intervention, particularly, in matters relating to the

legitimacy of the economic or fiscal legislation. While enacting fiscal legislation, the Legislature is entitled to a great deal of latitude. The Court would interfere only where a clear infraction of a constitutional provision is established. The burden is on the person, who attacks the constitutional validity of a statute, to establish clear transgression of constitutional principle. Observing that the law relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc., in *R.K. Garg v. Union of India* [MANU/SC/0074/1981 : (1981) 4 SCC 675, this Court held as under:

xxx xxx xxx xxx xxx

14. With this, let us advert to the issue on retrospectivity. No doubt, when it comes to fiscal legislation, the Legislature has power to make the provision retrospectively. In *R.C. Tobacco Pvt. Ltd. v. Union of India* MANU/SC/0581/2005 : (2005) 7 SCC 725, this Court stated broad legal principles while testing a retrospective statute, in the following manner:

(i) A law cannot be held to be unreasonable merely because it operates retrospectively;

(ii) The unreasonability must lie in some other additional factors;

(iii) The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be unreasonable as to violate constitutional norms;

(iv) Where taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of tax or that is confiscatory, Courts will be justified in striking down the impugned statute as unconstitutional;

(v) The other factors being period of retrospectivity and degree of unforeseen or unforeseeable financial burden imposed for the past period;

(vi) Length of time is not by itself decisive to affect retrospectively.

15. At the same time, this Court has also held that retrospective legislation would be admissible in cases of validation laws, i.e., where the laws as initially passed was held to be inoperative by the court and when there is a new provision inserted, it should normally be prospective.

We may refer to the judgment of this Court in *Tata Motors Ltd. v. State of Maharashtra and Ors.* MANU/SC/0464/2004 : (2004) 5 SCC 783. In that case, the Appellant-Assessee company, manufactured motor vehicle chassis and spare parts. It procured steel in primary form covered by Entry 6 of Schedule B to the Bombay Sales Tax Act, 1959 for use in the manufacturing process which resulted also in iron and steel crap which was covered by the said entry. Therefore, in Assessment Year 1982-83, the Appellant therein claimed set-off of a certain amount in terms of Rule 41-E for the quantum of iron and steel purchased which was converted into iron and steel scrap. The claim was allowed. Subsequently, Maharashtra Act 9 of 1989 was enacted and by Sections 26 and 27, the benefit of Rule 41-E was denied altogether for the period 1-7-1981 to 31-3-1988 where the manufactured goods falling under Schedule B were in the nature of waste goods/scrap goods/by-products. The validity of such retrospective amendment to Rule 41-E was unsuccessfully challenged before the High Court. The High Court took the view that the impugned amendment of Rule 41-E was clarificatory to remove the doubts in interpretation. However, by the Bombay Sales Tax (Amendment) Rules, 1992 Rule 41-E was amended. That amendment removed the exclusionary Clause of goods manufactured out of waste or scrap goods or products and restored the position as it stood prior to 1981. The Appellant's appeal and Anr. connected appeal were heard simultaneously.

The Appellant-Assessee contended that retrospective operation of a provision depriving the Assessee of the vested statutory right and covering a long period (eight years in that case) imposed a prima facie unreasonable restriction and was, therefore, unconstitutional. More so, when the original provision was subsequently reintroduced deleting the amendments and there was no material to justify the special treatment given for the said eight years. The Respondent State could not meet the said contention. The Assessee company further contended that since the CST Act had not been extended to Dadra and Nagar Haveli, where the Assessee's branch office was located, the requirement under Rule 41-D for registration of the Assessee under the CST Act in that place was impossible of performance and should, therefore, be ignored.

16. Though the latter contention was rejected, the first contention noted above, touching upon the retrospectivity of the amendment, was accepted and while allowing the appeal the matter was dealt with in the following manner:

15. It is no doubt true that the legislature has the powers to make

laws retrospectively including tax laws. Levies can be imposed or withdrawn but if a particular levy is sought to be imposed only for a particular period and not prior or subsequently it is open to debate whether the statute passes the test of reasonableness at all. In the present case, the High Court sustained the enactment by adverting to Rai Ramkrishna case when the benefit of the Rule had been withdrawn for a specific period. The learned Counsel for the State contended that the amendments had been made to overcome certain defects arising on account of the decision of the Tribunal in regard to the modalities of working out the relief. But, the impugned amendment brought about by Section 26 is not for that purpose. Assuming that it was the legislative policy not to grant set-off in respect of waste or scrap material generated, it becomes difficult to appreciate the stand of the State in the light of the fact that the original Rule continued to be in operation (with certain modifications) subsequent to 1-4-1988. The reason for withdrawal of the benefit retrospectively for a limited period is not forthcoming. It is no doubt true that the State has enormous powers in the matter of legislation and in enacting fiscal laws. Great leverage is allowed in the matter of taxation laws because several fiscal adjustments have to be made by the Government depending upon the needs of the Revenue and the economic circumstances prevailing in the State. Even so an action taken by the State cannot be so irrational and so arbitrary so as to introduce one set of Rules for one period and another set of Rules for another period by amending the laws in such a manner as to withdraw the benefit that had been given earlier resulting in higher burdens so far as the Assessee is concerned, without any reason. Retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground, when challenged on the ground of unconstitutionality. Unfortunately, the State could not succeed in doing so. The view of the High Court that the impugned amendment of Rule 41-E was of clarificatory nature to remove the doubts in interpretation cannot be upheld. In fact, the High Court did not elaborate as to how the impugned legislation is merely clarificatory. In that view of the matter, although we recognise the fact that the State has enormous powers in the matter of legislation, both prospectively and retrospectively, and can evolve its own policy, we do not think that in the present cases any material has been placed before the Court as to why the amendments were confined only to a period of eight years and not either before or subsequently and, therefore, we are of the view that the impugned

provision, namely, Section 26 deserves to be quashed by striking down the words "not being waste goods or scrap goods or by-products" occurring in the said Section 26 of Maharashtra Act 9 of 1989 and the authorities concerned shall rework assessments as if that law had not been passed and give appropriate benefits according to law to the parties concerned.

17. The entire gamut of retrospective operation of fiscal statues was revisited by this Court in a Constitution Bench judgment in *Commissioner of Income Tax (Central) - I, New Delhi v. Vatika Township Private Limited* MANU/SC/0810/2014 : (2015) 1 SCC 1 in the following manner:

33. A Constitution Bench of this Court in *Keshavlal Jethalal Shah v. Mohanlal Bhagwandas* [MANU/SC/0164/1968 : AIR 1968 SC 1336 : (1968) 3 SCR 623], while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows: (AIR p. 1339, para 8)

8.... The amending Clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.

34. It would also be pertinent to mention that assessment creates a vested right and an Assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See *CED v. M.A. Merchant* [MANU/SC/0144/1989 : 1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404].)

35. We would also like to reproduce hereunder the following observations made by this Court in *Govind Das v. ITO* [MANU/SC/0248/1975 : (1976) 1 SCC 906 : 1976 SCC (Tax) 133], while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force: (SCC p. 914, para 11)

11. Now it is a well-settled Rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a

> statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general Rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that
>
> 'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.
>
> (Emphasis supplied)

18. When we keep in mind the aforesaid parameters laid down by this Court in testing validity of retrospective operation of fiscal laws, we find that the amendment in-question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforeseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, Sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, i.e., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgment, 'dealer' was entitled to ITC of Rs. 10/- on re-sale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs. 9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between January 01, 2007 to August 19, 2010. Thus, while upholding the vires of Sub-section (20) of Section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from January 01, 2007.

19. Appeals are partially allowed to the aforesaid extent. No orders as to costs.

# IN THE HIGH COURT OF DELHI AT NEW DELHI

[Manmohan and Sanjeev Narula, JJ]

W. P. (C) 4409 of 2020

Rishi Bansal ... Petitioner
Proprietor of Bansal Sales Corporation

Versus

Union of India Through Secretary
Ministry of Finance & Ors. ... Respondents

**DATE OF ORDER: 22.07.2020**

INPUT TAX CREDIT – ALLEGED INADMISSIBLE – TAX PAYER ASKED TO DEPOSIT WITHOUT INITIATING ANY ADJUDICATION PROCESS – EITHER UNDER SECTION 73 OR SECTION 74 – NO SHOW CAUSE NOTICE – NO TAX PERIOD MENTIONED – TAX PAYER ASKED TO DEPOSIT THROUGH A LETTER – SUMMON U/S 70 ISSUED – FOR RECORDING STATEMENT AND SUBMITTING DRC – WHETHER JUSTIFIED? RECOVERY OF ALLEGED DISPUTED DEMAND STAYED.

*Counsel for respondent nos. 2 and 3 states that the intent behind issuing the impugned letter dated 11th June, 2020 was to give an opportunity to the petitioner to come forward and either explain the transaction or deposit the tax with minimum interest and penalty under Section 74(5) of the CGST Act without going through the adjudication procedure. He clarifies that if after the investigation the respondent is not satisfied with the petitioner's response, it shall follow the adjudication process for recovery.*

*The aforesaid statement made by learned counsel for respondent nos. 2 and 3 is accepted by this Court and said respondents are held bound by the same. It is clarified, as a matter of abundant caution, that as the demand is disputed by the petitioner, no coercive steps shall be taken for recovery of the said demand without following the adjudication process.*

| | | |
|---|---|---|
| Present for Petitioner | : | Mr. A.K. Babbar with<br>Mr. Surendra Sharma, Advocates |
| Present for Respondent | : | Mr. Ravi Prakash with Mr. Farman Ali,<br>Mr. Aman Malik and Mr. Mohammad<br>Shahan Ulla, Advocates for R-1.<br>Mr. Harpreet Singh, Advocate for R-2 and 3.<br>Mr. Anuj Aggarwal, ASC with<br>Mr.Ankit Monga, Advocate for R-4. |

**ORDER**

The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

Present writ petition has been filed challenging the letter dated 11th June, 2020 and summon dated 06th July, 2020 issued by respondent No.3 whereby the petitioner has been asked to deposit Rs.2,69,21,228/- being alleged as inadmissible input tax credit and file DRC-03 challan without initiating any adjudication process either under Section 73 or Section 74 of Central Goods and Services Tax Act, 2017 (for short "CGST Act").

Learned counsel for petitioner states that the alleged amount is being asked to be deposited without issuing any show cause notice or mentioning any tax period. He further submits that to pressurize the petitioner, a summon dated 06th July, 2020 under Section 70 has been issued to the petitioner asking him to appear for recording of his statement and for submitting DRC-03 for Rs.2,69,21,228/-.

Issue notice.

Mr. Ravi Prakash, learned counsel accepts notice on behalf of respondent no. 1. Mr. Harpreet Singh, learned counsel accepts notice on behalf of respondent nos. 2 and 3. Mr. Anuj Aggarwal, learned counsel accepts notice on behalf of respondent no. 4.

Mr. Harpreet Singh, learned counsel for respondent nos. 2 and 3 states that the intent behind issuing the impugned letter dated 11th June, 2020 was to give an opportunity to the petitioner to come forward and either explain the transaction or deposit the tax with minimum interest and penalty under Section 74(5) of the CGST Act without going through the adjudication procedure. He clarifies that if after the investigation the respondent is not satisfied with the petitioner's response, it shall follow the adjudication process for recovery.

The aforesaid statement made by learned counsel for respondent nos. 2 and 3 is accepted by this Court and said respondents are held bound by the same. It is clarified, as a matter of abundant caution, that as the demand is disputed by the petitioner, no coercive steps shall be taken for recovery of the said demand without following the adjudication process. However, the petitioner is directed to appear before the respondent nos. 2 and 3 and cooperate in the investigation process.

Keeping in view the aforesaid, learned counsel for petitioner states that he does not wish to press the writ petition any further. Consequently, writ petition and application stand disposed of.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

# IN THE MADURAI BENCH OF MADRAS HIGH COURT

[G.R. Swaminathan, J]

W.P. (MD) No. 9531 of 2021
W.M.P (MD) NO. 8587 of 2020

Tvl. Vectra Computer Solutions
Rep. by its Partner,
K.K. Suresh Babu ... Petitioner

Versus

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

**DATE OF ORDER : 25.03.2021**

REGISTRATION – GOODS AND SERVICES TAX – CANCELLATION OF REGISTRATION FOR NON FILING OF RETURNS – RETURNS FILED – NOTICE RECEIVED BY PETITIONER POINTING OUT DEFECTS – NO REPLY FILED – TAX AND PENALTY LEVIED – WHETHER JUSTIFIED?

*Though very many grounds have been urged on either side, the order impugned in this writ petition has to be quashed on the simple ground that no personal hearing was granted. The learned counsel appearing for the petitioner drew my attention to Section 75(4) of the CENTRAL GOODS AND SERVICES TAX ACT, 2017 which states that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*

*I carefully went through the contents of the notice dated 29.10.2019 issued by the third respondent. Nowhere in the said notice, personal hearing has been afforded to the petitioner herein. In the impugned order also, it is nowhere mentioned that such opportunity was afforded to the petitioner.*

*On this sole ground, the order impugned in this writ petition is quashed. The matter is remitted to the file of the third respondent to pass orders afresh in accordance with law. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.*

Present for Petitioner : Mr. B. Rooba, for
Mr. Raja Veeramanikandan

Present for Dealer/Respondent : Mrs. J. Padmavathi Devi,
Special Government Pleader

**Judgment**

Heard the learned counsel on either side.

2. The petitioner has registered themselves on the file of the second respondent. The petitioner was filing returns under the Tamil Nadu Value Added Tax Act, 2006 and subsequently, under the GST regime also. The petitioner's registration was cancelled on 06.09.2018 on the ground of non-filing of returns. The said defect was subsequently rectified by the petitioner. The petitioner also remitted GST dues to the tune of Rs.66,781/- together with late fee. The petitioner received notice dated 29.10.2019 in which certain defects have been pointed out. The defect includes sales omission and purchase omission also. It was also proposed to levy tax on service charges paid and discount paid. For the reasons best known to the petitioner, no reply was submitted. Thereafter, the impugned order came to be passed levying tax and penalty on the petitioner.

3. Questioning the same, this writ petition has been filed.

4. Though the respondents filed a detailed counter affidavit, the learned Government Advocate took me through its contents. In the counter affidavit, it has been pointed out that the impugned order can as well be challenged under Section 107 of the Act. Therefore according to the respondents, this writ petition is not maintainable.

5. Though very many grounds have been urged on either side, the order impugned in this writ petition has to be quashed on the simple ground that no personal hearing was granted. The learned counsel appearing for the petitioner drew my attention to Section 75(4) of the CENTRAL GOODS AND SERVICES TAX ACT, 2017 which states that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

6. I carefully went through the contents of the notice dated 29.10.2019 issued by the third respondent. Nowhere in the said notice, personal hearing has been afforded to the petitioner herein. In the impugned order also, it is nowhere mentioned that such opportunity was afforded to the petitioner.

7. On this sole ground, the order impugned in this writ petition is quashed. The matter is remitted to the file of the third respondent to pass orders afresh in accordance with law. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

# IN THE HIGH COURT OF BOMBAY AT GOA

[M.S. Sonak and Smt. M.S. Jawlkar, JJ]

Writ Petition No. 252 of 2020

M/s Pernod Ricard India Pvt. Ltd.,
Represented through its Manager
and duly constituted Attorney ... Petitioner

Versus

State of Goa & Ors. ... Respondents

**DATE OF ORDER: 05.04.2021**

BIAS – DOCTRINE OF BIAS – ACTUAL BIAS *VS.* REASONABLE APPREHENSION OF BIAS OR REASONABLE LIKELIHOOD OF BIAS – OFFICER AS ASSESSING OFFICER MADE AN ADVERSE ORDER FOR A.Y. 2008-09 – APPEAL CAME UP BEFORE SAME OFFICER AS APPELLATE AUTHORITY – OFFICER RECUSED FROM HEARING – DESPITE PROTEST PROCEEDED TO DISPOSE OF APPEAL FOR 2010-11 – PETITIONER HAD EXPRESSED APPREHENSION OF BIAS – PETITIONER PLEADED THAT HE WAS DEPRIVED OF RIGHT OF AN EFFECTIVE APPEAL – OTHER GROUNDS RAISED ABOUT *VIRES* OF PROVISION – ISSUE RAISED BEFORE TRIBUNAL – TRIBUNAL REJECTED – WRIT PETITION TO HIGH COURT – HIGH COURT REMANDED FOR FRESH CONSIDERATION BY FIRST APPELLATE AUTHORITY.

*After having heard Mr. Gulati for some time, we found prima facie merit in the contention based on the Doctrine of Bias, and therefore, we called upon the learned Advocate General to address us on the said issue. If this issue was to be decided in favor of the petitioner, then, there would arise no necessity of going into other issues raised by Mr. Gulati, including, in particular, the issue of the vires of the provisions of the Goa Entry Tax Act, 2000. In such cases, if the matter can be disposed of on some other point, then, it would not be appropriate to go into the issue of vires. The issue of vires is required to be decided only if the same is necessary and not merely because we have the powers to decide the same.*

*According to us, there is no necessity to go into the various issues raised by the learned counsel for the parties, including the issue of vires because we are satisfied that in the peculiar facts and circumstances of the present case, Shri Ashok Rane should not have taken up and disposed of the petitioner's appeal against the order dated 29.03.2014 for the Assessment Year 2010-11 but followed the same course of action, which he quite correctly followed concerning the connected appeal of this very petitioner for the Assessment Year 2008-09.*

*This is not a case where any distinguishing features existed or were pointed out by Shri Ashok Rane when it came to deciding the appeal for*

*the Assessment Year 2010-11. For the Assessment Year 2008-09, had held against the petitioner, virtually on the identical issue of both fact and law. The apprehension of bias entertained by the petitioner, in such circumstances, can hardly be said to be unreasonable or fanciful.*

*This issue of bias was specifically raised by the petitioner before the Tribunal. In the appeal memo, it was specifically stated that Shri Ashok Rane at the time of his recusal to hear the appeal for the Assessment Year 2008-09 had even agreed not to hear the appeal for the Assessment Year 2010-11. There was no denial on this aspect. However, the Tribunal, relying on the decision of this Court in Ganesh v. Parvatibai-MANU/MH/0994/2016 : (2018) 3 ALL MR 285 rejected the contention based on Doctrine of Bias, by simply observing that it is for the judge concerned to decide whether to recuse or not.*

*Applying the aforesaid principles to the facts and circumstances of the present case, we are satisfied that Shri Ashok Rane, ought not to have taken up and disposed of the petitioner's appeal against the order dated 29.03.2014 for the Assessment Year 2010-11. The Tribunal, with respect, erred or rather failed to exercise jurisdiction vested in it, in not upholding the petitioner's contention based on the Doctrine of Bias, in the peculiar facts and circumstances of the present case.*

*As a result, the impugned orders dated 14.01.2019 made by Shri Ashok Rane as the First Appellate Authority and the order of the Tribunal dated 27.02.2020 upholding the same, are liable to be set aside and are hereby set aside. The petitioner's appeal against the order dated 29.03.2014 is now restored to the file of the First Appellate Authority, which shall dispose of such appeal on its own merits and in accordance with law as expeditiously as possible and in any case within two months from the date of production of an authenticated copy of this order.*

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| Present for Appellants | : | Mr. Nakul Diwan, Sr. Advocate<br>with Mr. Rony John and<br>Mr. Kaif Noorani, Advocates |
| Present for Respondent | : | Mr. Devidas J. Pangam, Advocate General<br>with Ms. Sapna Mordekar,<br>Additional Government Advocate |

**Judgment**

1. Heard Mr. Tarun Gulati learned Senior Advocate who appears along with Mr. Rony John and Kaif Noorani for the Petitioner and Mr. D.

Pangam, the learned Advocate General who appears along with Ms. S. Mordekar, learned Additional Government Advocate for the Respondents.

2. The petitioner, by instituting the present petition seeks the following substantive reliefs:

(a) That this Hon'ble Court be pleased to issue an appropriate Writ, Order or Direction and declare that the levy of tax under Section 3 of the Entry Tax Act, the machinery provisions contained in Chapter IV and the levy of penalty under Section 19 of the Entry Tax Act are ultra vires Articles 265 and 300A of the Constitution with respect to the entry of all goods (other than motor vehicles) into a local area within the state of Goa;

(b) That this Hon'ble Court be pleased to issue an appropriate Writ, Order or Direction and declare that the Petitioner is not liable to pay tax or penalty in respect of the import of CAB into the State of Goa under the Entry Tax Act;

(c) That this Hon'ble Court be pleased to issue a issue an appropriate Writ, Order or Direction striking down the provisions of Section 3 of the Entry Tax Act insofar as it is invoked as a charging provision for the levy of tax on entry of goods into a local area within the State of Goa, for the reason that it does not provide for a measure or value on which the rate of tax is sought to be applied;

(d) That this Hon'ble Court be pleased to issue a writ of Certiorari or a Writ in the nature of Certiorari under Article 226 of the Constitution of India or any other Writ, Order or Direction, calling for the records and proceedings pertaining to the Impugned Order dated 27.02.2020 passed by the Goa Administrative Tribunal in Entry of Goods Appeal No. 1/2020, and after examining the validity, legality and propriety thereof, to be pleased to quash and set aside the same;"

3. Mr. Gulati, the learned Senior Advocate for the petitioner, to begin with, submitted that the order dated 27.03.2020 made by the Goa Administrative Tribunal (Tribunal) in Appeal No. 1/2020 warrants interference, because, the Tribunal, applied incorrect principles whilst considering the issue of bias raised by the petitioner, in the context of the order dated 14.01.2019, made by Shri Ashok Rane, the Additional Commissioner of Commercial Taxes (First Appellate Authority). He submits that the correct test is not actual bias but the reasonable apprehension of the bias or reasonable likelihood of bias. He submits that Shri Ashok Rane, as assessing officer, had already made an adverse order against

the petitioner on 27.03.2012 for the Assessment Year 2008-09. The appeal against the order dated 27.03.2012 and the appeal against order dated 29.03.2014 for the Assessment Year 2010-11, came up for consideration before Shri Ashok Rane, who, by then, had become the Appellate Authority. Shri Rane recused from hearing the appeal for the Assessment Year 200809 but despite the protest of the petitioner, proceeded to hear and dispose of the appeal for the Assessment Year 2010-11. Mr. Gulati submits that the petitioner had expressed reasonable apprehension of bias and such concerns could not have been brushed aside by Shri Rane or for that matter the Tribunal. Mr. Gulati submits that in this manner, the petitioner was deprived of the right of an effective appeal and on this ground along relief is due to the petitioner in terms of prayer clause (d) to the petition. He relied on Mohd. Chand and another v. State of U.P., through Secretary, Stamp and Registration, Lucknow and others, Narinder Singh Arora v. State (Govt. of NCT of Delhi),-MANU/SC/1478/2011 : (2012) 1 SCC 561, State of Punjab v. Davinder Pal Singh Bhullar-MANU/SC/1476/2011 : (2011) 14 SCC 770 and ICAI v. LK Ratna MANU/SC/0083/1986 : (1968) 4 SCC 537 in support of his submissions.

4. Mr. Gulati also submitted that before 20.05.2013 the goods on which entry tax was imposed were neither specified in the schedule nor was any rate of tax prescribed for the same. He submits that it is only w.e.f. 20.05.2013 that the Goa Tax on Entry of Goods Act, 2000 was amended to specify the foods and rates of tax of such goods. He submits that even the amended schedule does not refer to the goods with which the petitioner was concerned. He submits that in any case, the amendment of 2013 will not apply to the assessment years before 2013, which is the subject matter of the present petition. He, therefore, submits that the assessment orders and the demands made based thereof are liable to be set aside.

5. Mr. Gulati submits that in any case the provisions of Section 3 of the Entry Tax Act, the machinery provisions contained in Chapter 4, and penalty provisions in Article 19 are ultra vires Articles 265 and 300A of the Constitution of India and are liable to be declared as such.

6. After having heard Mr. Gulati for some time, we found prima facie merit in the contention based on the Doctrine of Bias, and therefore, we called upon the learned Advocate General to address us on the said issue. If this issue was to be decided in favor of the petitioner, then, there would arise no necessity of going into other issues raised by Mr. Gulati, including, in particular, the issue of the vires of the provisions of the Goa Entry Tax Act, 2000. In such cases, if the matter can be disposed of on some other point, then, it would not be appropriate to go into the issue of vires. The

issue of vires is required to be decided only if the same is necessary and not merely because we have the powers to decide the same.

7. Mr. Pangam, the learned Advocate General submitted that there was no question of bias involved because Shri Ashok Rane was concerned with a question of law. He submitted that merely because Mr. Rane had taken a particular view on the law, as an Assessment Officer, that did not preclude him from deciding an appeal involving a similar question of law. He submits that Shri Ashok Rane had recused himself in the appeal against the order dated 27.03.2012 for the Assessment Year 2008-09, because, he was the one, who made the order dated 27.03.2012 and could not have heard an appeal against his own order. Mr. Pangam however submitted that the order dated 29.03.2014 for the Assessment Year 2010-11 was not made by Shri Ashok Rane and therefore, there was no bias involved in Mr. Rane entertaining the appeal against the order dated 29.03.2014. He, therefore, urged that the contention of Mr. Gulati on the issue of bias may not be accepted.

8. Mr. Pangam submitted that this was not at all a case of retrospective application of tax legislations or this was also not a case where the taxing authorities lacked powers or jurisdiction to impose entry tax on the goods of the petitioner. He submitted that the provisions of the Entry Tax Act were intra vires and there was no merit in the challenges raised in this petition.

9. According to us, there is no necessity to go into the various issues raised by the learned counsel for the parties, including the issue of vires because we are satisfied that in the peculiar facts and circumstances of the present case, Shri Ashok Rane should not have taken up and disposed of the petitioner's appeal against the order dated 29.03.2014 for the Assessment Year 2010-11 but followed the same course of action, which he quite correctly followed concerning the connected appeal of this very petitioner for the Assessment Year 2008-09.

10. Now the record, makes it very clear that for the Assessment Year 2008-09, Shri Ashok Rane, who was then the Assessment Officer, held against the petitioner by rejecting the very contention which the petitioner eventually raised in respect of the assessment for the year 2010-11. The appeals against the orders made for both the assessment years came up for consideration before Shri Ashok Rane, who by then, was promoted and became the First Appellate Authority.

11. Shri Ashok Rane, quite correctly recused himself when it came to consideration of appeal against the order dated 27.03.2012 concerning Assessment Year 2008-09 because this order dated 27.03.2012 was made

by Shri Ashok Rane himself. Obviously, Shri Rane, could not have sat in an appeal against his own order thereby rendering the provisions for appeal, a useless formality.

12. Though, in the connected appeal, the order dated 29.03.2014 for the Assessment Year 2010-11, may not have been made by Shri Ashok Rane, the facts, as well as the issue of law involved in the said appeal, was virtually identical to the facts and issue of law involved in the appeal against the order dated 27.03.2012 for the Assessment Year 2008-09. The apprehension which the petitioner entertained that Shri Ashok Rane will not be in a position to objectively decide the appeal for the Assessment Year 2010-11, was, in the peculiar facts of the present case, quite a reasonable apprehension. In such matters, the question is not whether Shri Ashok Rane was actually or factually bias in the matter. The question is whether the petitioner had a reasonable apprehension that Shri Ashok Rane will be biased while deciding the connected appeal for the Assessment Year 2010-11.

13. This is not a case where any distinguishing features existed or were pointed out by Shri Ashok Rane when it came to deciding the appeal for the Assessment Year 2010-11. For the Assessment Year 2008-09, had held against the petitioner, virtually on the identical issue of both fact and law. The apprehension of bias entertained by the petitioner, in such circumstances, can hardly be said to be unreasonable or fanciful.

14. This issue of bias was specifically raised by the petitioner before the Tribunal. In the appeal memo, it was specifically stated that Shri Ashok Rane at the time of his recusal to hear the appeal for the Assessment Year 2008-09 had even agreed not to hear the appeal for the Assessment Year 2010-11. There was no denial on this aspect. However, the Tribunal, relying on the decision of this Court in Ganesh v. Parvatibai-MANU/MH/0994/2016 : (2018) 3 ALL MR 285 rejected the contention based on Doctrine of Bias, by simply observing that it is for the judge concerned to decide whether to recuse or not.

15. According to us, the Tribunal, completely misconstrued the ratio of the decision in Ganesh (supra) the issue involved in Ganesh (supra) was not in the least comparable to the issue involved in the present matter. Even the facts and circumstances in Ganesh (supra) bore no comparison to the peculiar facts and circumstances in the present case. According to us, therefore, the Tribunal was not justified in brushing aside the ground of bias raised by the petitioner, in the peculiar facts and circumstances in the present case.

16. In Mohd. Chand (supra), the learned Single Judge of the Allahabad High Court has held that the officer who had based the order as the Court of the first instance cannot legally test the correctness of his own decision while exercising powers as First Appellate Authority. In the event the appeal against the authority of the first instance is allowed to be heard by the same officer who passed the order impugned in appeal, it would make the appeal illusory and nugatory frustrating the purpose of its filing. The learned Single Judge explained that there is a conceptual difference between appeal and review and allowing the appeal to be heard by the same officer who had passed the basic order, would amount to reducing the appellate jurisdiction into a review jurisdiction. The learned Single Judge held that one of the fundamental principles of natural justice is that no man can be a judge in his own cause. The above principle is not confined to its literal interpretation to mean that if a person is a party in litigation he cannot sit and decide the same as a Judge but may also be extended in cases where he has some interest in the litigation or any party to the litigation and even to cases where he happens to be a witness of one of the parties. The said principle would also be attracted in a case where a Judge may not be a party to the cause of action in any manner aforesaid but has delivered the order/judgment which is to be tested in appeal. The learned Single Judge quoted the dictum of Lord Hewart, C.J., which says “Justice should not only be done but should manifestly and undoubtedly be seen to be done”.

17. Technically, Mr. Pangam may be right in submitting that Shri Ashok Rane had not made the order dated 29.03.2014 for the Assessment Year 2010-11 and therefore, was not barred from entertaining the petitioner’s appeal against the said order. However, the facts bear out that Shri Ashok Rane had made virtually an identical order, in identical facts and circumstances concerning this very petitioner for the Assessment Year 2008-09, which was the connected appeal before him. Having quite correctly recused himself from hearing the appeal for the Assessment Year 2008-09, the principles of natural justice required that Shri Ashok Rane recuses himself from hearing the appeal for the Assessment Year 2010-11 as well, in the absence of any distinguishing features for the said assessment year.

18. In Narinder Singh Arora (supra) the Hon’ble Apex Court held that it is well settled that a person who tries a cause should be able to deal with the matter placed before him objectively, fairly, and impartially. No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially. The broad principle evolved by this Court is that a person, trying a cause, must not only act fairly but

must be able to act above suspicion of unfairness and bias. The Hon'ble Apex Court referred to its earlier decision in Manak Lal v. Prem Chand Singhvi-MANU/SC/0001/1957 : AIR 1957 SC 425 and held that in such cases the test is not whether, in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

19. In G. Sarana v. University of Lucknow-MANU/SC/0067/1976 : (1976) 3 SCC 585 the Hon'ble Supreme Court held that the real question is not whether a member of an Administrative Board while exercising quasi-judicial powers or discharging quasijudicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration.

20. In Ranjit Thakur v. Union of India-MANU/SC/0691/1987 : (1987) 4 SCC 611, the Hon'ble Supreme Court held that as to the test of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, 'Am I biased?'; but to look at the mind of the party before him.

21. Applying the aforesaid principles to the facts and circumstances of the present case, we are satisfied that Shri Ashok Rane, ought not to have taken up and disposed of the petitioner's appeal against the order dated 29.03.2014 for the Assessment Year 2010-11. The Tribunal, with respect, erred or rather failed to exercise jurisdiction vested in it, in not upholding the petitioner's contention based on the Doctrine of Bias, in the peculiar facts and circumstances of the present case.

22. As a result, the impugned orders dated 14.01.2019 made by Shri Ashok Rane as the First Appellate Authority and the order of the Tribunal dated 27.02.2020 upholding the same, are liable to be set aside and are hereby set aside. The petitioner's appeal against the order dated 29.03.2014 is now restored to the file of the First Appellate Authority, which shall dispose of such appeal on its own merits and in accordance with law as expeditiously as possible and in any case within two months from the date of production of an authenticated copy of this order.

23. All contentions of all parties are expressly left open. In case, the petitioner is aggrieved by the orders made by the First Appellate Authority

and thereafter the Tribunal, liberty is granted to the petitioner to raise all contentions, including, the contention that the provisions of the Goa Entry Tax Act are ultra vires the Constitution. All defenses of the respondents are also kept open.

24. In this case interim relief was declined. Therefore if the Respondents have encashed the bank guarantees or the petitioner has paid the tax, the same shall abide by the orders that may be made by the First Appellate Authority.

25. The parties to appear before the First Appellate Authority (other than Shri Ashok Rane) on 26.04.2021 at 11.00 a.m. and file the authenticated copy of this order. The First Appellate Authority to dispose of both the appeals i.e. appeals against assessment orders for 2008-09 and 2010-11 since common issues of law and fact are involved.

26. The Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

27. All concerned to act based on the authenticated copy of this order.

## IN THE HIGH COURT OF TELANGANA AT HYDERABAD

[M.S. Ramachandra Rao and T. Vinod Kumar, JJ]

Writ Petition No. 9165 of 2021

M/s. Spacewood Furnishers Pvt. Limited ... Petitioner

Versus

The State of Telangana ... Respondent

**DATE OF ORDER : 09.04.2021**

ASSESSMENT – CENTRAL SALES TAX ACT – SHOW CAUSE NOTICE DATED 05.07.2019 – DETAILED RESPONSE FILED ON 29.03.2021 WITH A SPECIFIC REQUEST FOR PERSONAL HEARING – ASSESSMENT FRAMED ON 31.03.2021 WITHOUT CONSIDERING REPLY – WITHOUT PROVIDING HEARING VIOLATION OF PRINCIPLE OF NATURAL JUSTICE – ASSESSMENT ORDER SET ASIDE WITH COST TO PETITIONER.

*This Court is being burdened time-and-again to decide the correctness of such assessment orders being passed by the Assessing Officers in violation of principles of natural justice.*

*In this view of the matter, the Writ Petition is allowed; the impugned assessment order AO.No.41055 dt.31.03.2021 passed by the 2nd respondent is set aside; the matter is remitted back to the 2nd respondent for fresh consideration; 2nd respondent is directed to provide personal hearing to the petitioner and consider the response of the petitioner dt.29.03.2021 along with supporting material, and then pass a reasoned order in accordance with law and communicate the same to the petitioner. The 2nd respondent shall also pay costs of Rs.10,000/- (Rupees Ten thousand) personally to the petitioner within a period of four (04) weeks.*

Present for Appellants : Mr. B. Srinivas.

Present for Respondent : GP for Commercial Tax TG

**Judgment**

1. In this Writ Petition, petitioner has assailed the Assessment Order No.41055 dt.31.03.2021 passed by the 2nd respondent under the Central Sales Tax Act, 1956 for the period April, 2016 to March, 2017.

2. Counsel for the petitioner contends that the 2nd respondent had issued a show-cause notice on 05.07.2019, to which the petitioner had filed a detailed response dt.29.03.2021 making a specific request for personal hearing, but the impugned assessment order has been passed without considering the response of the petitioner dt.29.03.2021 and without affording a personal hearing.

3. Sri Sai Krishna, Assistant Government Pleader, attached to the office of the Advocate General, appearing for respondents is not able to show from the impugned order that the contents of the response dt.29.03.2021 filed by the petitioner, have been considered in the impugned assessment order passed by the 2nd respondent, and that personal hearing was afforded to the petitioner.

4. In the last one year, we have noticed at least 200 cases where the Assessing Officer under the CST Act has not issued show cause notice or if they issued notice, they have not considered the response of the assessees, and mechanically confirmed the demand mentioned in the show-cause notice and we have had to set aside all such orders and make a remand to the Assessing Officers.

5. In spite of specific warning by this Court to the Standing Counsel for the Commercial Taxes Department that this kind of conduct by the

Assessing Officers will not be countenanced, it appears that she same thing is continuing obviously because this Court has taken a lenient view in the earlier matters and had avoided imposing costs.

6. This Court is being burdened time-and-again to decide the correctness of such assessment orders being passed by the Assessing Officers in violation of principles of natural justice.

7. In this view of the matter, the Writ Petition is allowed; the impugned assessment order AO.No.41055 dt.31.03.2021 passed by the 2nd respondent is set aside; the matter is remitted back to the 2nd respondent for fresh consideration; 2nd respondent is directed to provide personal hearing to the petitioner and consider the response of the petitioner dt.29.03.2021 along with supporting material, and then pass a reasoned order in accordance with law and communicate the same to the petitioner. The 2nd respondent shall also pay costs of Rs.10,000/- (Rupees Ten thousand) personally to the petitioner within a period of four (04) weeks.

8. Communicate copy of this order to the Commissioner of Commercial Taxes, State of Telangana, and also to the 1st respondent in the Writ Petition.

9. Consequently, miscellaneous petitions pending, if any, shall stand closed.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Navin Chawla, J]

W.P. (C) 3551/2020 & 12626/2020

M/S VIKAS WSP LTD. & ORS. ... Petitioners

Versus

DIRECTORATE ENFORCEMENT & ANR. ... Respondents

**DATE OF ORDER: 18.11.2020**

LIMITATION VS PERIOD TO DO SOMETHING REQUIRED TO BE DONE UNDER A STATUTE OR PERIOD OF VALIDITY OF AN ORDER – EXTENSION OF PERIOD OF LIMITATION – WHETHER APPLICABLE TO PERIOD OF PROVISIONAL ATTACHMENT ORDERS UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002?

PREVENTION OF MONEY LAUNDERING ACT – PROVISIONAL ATTACHMENT ORDER – SECTION 5(1) OF PREVENTION OF MONEY LAUNDERING ACT, 2002, PROVIDES MAXIMUM PERIOD OF 180 DAYS OF VALIDITY OF PROVISIONAL

ATTACHMENT ORDER – EXTENSION OF PERIOD OF VALIDITY- WHETHER COVERED BY ORDERS OF HON'BLE SUPREME COURT IN SUO MOTO WRIT PETITION (CIVIL) NO. 3/2020 – EXTENDING ALL LIMITATION PERIODS – IN VIEW OF THE LOCKDOWN DECLARED BY THE CENTRAL GOVERNMENT DUE TO OUTBREAK OF COVID-19

*A reading of the provisions would clearly show that one hundred and eighty days from the passing of the Provisional Attachment Order is not prescribed as a period of limitation to do a particular Act, but as the outer period of validity of the Provisional Attachment Order itself. On expiry of the said period, in absence of an order passed by the Adjudicating Authority under sub-section (3) of Section 8 of the Act, the Provisional Attachment Order ceases to have effect or lapses on its own. Such lapsing does not require any confirmation from the Authority or any Court of law; it is automatic; it is preemptory in nature.*

*A reading of sub-section (1) of Section 5 with Section 2(1)(d) of the Act leaves no manner of doubt that the effect of the Provisional Attachment Order is deprivation of the right to property.*

*The Act clearly deprives the person against whom the Provisional Attachment Order is passed of his right to deal in the property against which the attachment is ordered. Such deprivation can therefore, be for a maximum of 180 days and no further, except where such order is confirmed by the Adjudicating Authority prior thereto under Section 8(3) of the Act. Once the 180 day period has lapsed without such order being passed under Section 8(3) of the Act, the Provisional Attachment Order ceases to have effect and therefore, there is no order before the Adjudicating Authority to confirm under Section 8(3) of the Act. The Adjudicating Authority therefore, becomes functus officio.*

*There is no power with any Authority or the Court to relax or extend the validity of the Provisional Attachment Order. In New India Assurance (supra), the Constitution Bench of the Supreme Court while considering Section 13(2) of the Consumer Protection Act, 1986, providing for the time to file response to the complaint by the respondent/opposite party and the power of the District Forum to extend such time beyond 15 days, observed as under:-*

> *"21. The legislature in its wisdom has provided for filing of complaint or appeals beyond the period specified under the relevant provisions of the Act and Regulations, if there is sufficient cause given by the party, which has to be the satisfaction of the concerned authority. No such discretion has been provided for under Section 13(2)(a) of*

*the Consumer Protection Act for filing a response to the complaint beyond the extended period of 45 days (30 days plus 15 days). Had the legislature not wanted to make such provision mandatory but only directory, the provision for further extension of the period for filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals. To carve out an exception in a specific provision of the statute is not within the jurisdiction of the Courts, and if it is so done, it would amount to legislating or inserting a provision into the statute, which is not permissible."*

*The reliance of the learned counsel for the respondents on the orders passed by the Supreme Court in Suo Motu Writ Petition (Civil) No. 3/2020, is also unfounded. The Supreme Court, in its order dated 23.03.2020, directed as under:-*

*"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).*

*To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.*

*We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities."*

*Clearly, the above order extended the period of limitation. In the present case, Section 5(1) and 5(3) do not provide the period of limitation, but the period of validity of the Provisional Attachment Order. The same would not stand extended due to the above order of the Supreme Court. This becomes more evident from the order dated 06.05.2020 passed by*

*the Supreme Court in I.A. 48411/2020, whereby it was pleased to extend the period of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under Section 138 of the Negotiable Instruments Act, 1881, observing as under:-*

> *"IA No.48411/2020 – FOR DIRECTIONS By way of filing this application for directions, the applicant has made the following prayer:*
>
> *To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under section 138 of the Negotiable Instruments Act, 1881; In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.*
>
> *In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.*
>
> *In view of the above, the instant interlocutory application is disposed of."*

*In fact, the most relevant in this series of orders to the present controversy is the order dated 10.07.2020, which clearly shows that the above referred two orders of the Supreme Court were only in relation to the period of limitation and did not extend the period to do something required under a Statute or the period of validity of an order, as in the present case. Realizing such difference, the Supreme Court extended the period to pass an Arbitral Award under Section 29A and for completion of pleadings under Section 23(4) of the Arbitration and Conciliation Act, 1996 as also for completing the process of compulsory pre-litigation, mediation*

*and settlement under Section 12A of the Commercial Courts Act, 2015, however, refused to extend the period of validity of a cheque. This itself shows that the orders of the Supreme Court are not a universal extension of time across the board, be it limitation or period prescribed for doing a particular thing, or as in the present case, the period of validity of an order. For ready reference, the order dated 10.07.2020 is quoted hereinbelow:-*

> *"Parties have prayed to this Court for extending the time where limitation is to expire during the period when there is a lockdown in view of COVID-19 or the time to perform a particular act is to expire during the lockdown.*
>
> *I.A. No. 49221/2020 -Section 29A of the Arbitration and Conciliation Act, 1996 WP(C) 3551/2020 Page 22 Taken on Board. No.*
>
> *In Suo Moto Writ Petition (C) No. 3/2020, by our order dated 23.03.2020 and 06.05.2020, we ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 shall be extended w.e.f. 15.03.2020 till further orders.*
>
> *Learned Attorney General has sought a minor modification in the aforesaid orders.*
>
> *Section 29A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of limitation but fixes a time to do certain acts, i.e. making an arbitral award within a prescribed time. We, accordingly, direct that the aforesaid orders shall also apply for extension of time limit for passing arbitral award under Section 29A of the said Act. Similarly, Section 23(4) of the Arbitration and Conciliation Act, 1996 provides for a time period of 6 months for the completion of the statement of claim and defence. We, accordingly, direct that the aforesaid orders shall also apply for extension of the time limit prescribed under Section 23(4) of the said Act.*
>
> *The application is disposed of accordingly.*
>
> *Pre-Institution Mediation and Settlement under Section 12A of the Commercial Courts Act, 2015.*
>
> *Under Section 12A of the Commercial Courts Act, 2015, time is prescribed for completing the process of compulsory pre-litigation, mediation and settlement. The said time is also liable to be extended. We, accordingly, direct that the said time shall stand*

*extended from the time when the lockdown is lifted plus 45 days thereafter. That is to say that if the above period, i.e. the period of lockdown plus 45 days has expired, no further period shall be liable to be excluded. I.A. No. 48461/2020- Service of all notices, summons and exchange of pleadings WP (C) No. 3551/2020 Page 23 Service of notices, summons and exchange of pleadings/ documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.*

*Extension of validity of Negotiable Instruments Act, 1881- I.A. Nos. 48461 and 48672/2020 (IA. No. 48671/2020, 48673/2020) I.A. No. 48671/2020 for impleadment is allowed. With reference to the prayer, that the period of validity of a cheque be extended, we find that the said period has not been prescribed by any Statute but it is a period prescribed by the Reserve Bank of India under Section 35-A of the Banking Regulation Act,1949. We do not consider it appropriate to interfere with the period prescribed by the Reserve Bank of India, particularly, since the entire banking system functions on the basis of the period so prescribed.*

*The Reserve Bank of India may in its discretion, alter such period as it thinks fit. Ordered accordingly. The instant applications are disposed of accordingly. (Emphasis supplied)*

*The above distinction is also apparent to the Government of India as it promulgated The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on 31.03.2020, extending the time limit for completion of any proceedings or passing of any order etc. specified in the Acts specified therein. However, the Prevention of Money Laundering Act, 2002 is not one of the "specified Acts" under the Ordinance. Therefore, the respondents cannot take benefit of even this Ordinance. On the other hand, the Ordinance clearly shows that the reliance of the respondents on the orders of the Supreme Court is liable to be rejected.*

*In view of the above, the 180 days from the date of the Provisional Attachment Order dated 13.11.2019 having expired without any order under Section 8(3) of the Act being passed by the Adjudicating Authority, it is held that the Adjudicating Authority has been rendered functus officio and cannot proceed with the Original Complaint, being O.C. No. 1228/2019 pending before it. The Notice/Summons dated 26.05.2020 is accordingly set aside.*

*In the present case I have intentionally refrained myself from making any comment on whether the period of total lockdown declared by the Central Government, that is from 24.03.2020 to 20.04.2020, can be excluded for computation of the 180 days, as it is not disputed that even on exclusion of this period, the 180 days would have expired on 16.06.2020, the returnable date of the notice issued by the Adjudicating Authority.*

| | | |
|---|---|---|
| Present for Appellants | : | Mr. Dayan Krishnan, Sr. Adv.<br>With Mr. Arshdeep Singh,<br>Mr. Jakshat Gupta, Mr. Sanjeevi Seshadri,<br>Ms. Rajshree Sharma, Advs. |
| Present for Respondents | : | Mr. Amit Mahajan, CGSC<br>With Ms. Mallika Hiremath and<br>Mr. Atul Tripathi, Advs. |

**JUDGMENT**

1. This petition raises an interesting question of the effect of the lockdown declared by the Central Government due to the outbreak of the COVID-19 Pandemic on the period of the Provisional Attachment Orders passed under Section 5(1) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'Act').

**BRIEF FACTS:**

2. The respondent no. 1, in exercise of its powers under Section 5(1) of the Act, passed a Provisional Attachment Order dated 13.11.2019, provisionally attaching certain properties of the petitioners amounting to Rs. 52,21,16,797/-, for a period of 180 days from the date of the said order.

3. The respondent no.1 thereafter, in terms of Section 5(5) of the Act, filed a complaint, being OC No.1228/2019, before the Adjudicating Authority on 05.12.2019.

4. The Adjudicating Authority, on 18.12.2019, issued a Show Cause Notice under Section 8(1) of the Act to the petitioners. However, before the proceedings could be concluded, on 23.03.2020, the Government of India declared a nationwide lockdown with effect from 24.03.2020 due to the spread of the COVID-19 Pandemic.

5. The lockdown declared by the Government of India was partially lifted on 20.04.2020 and the Adjudicating Authority, admittedly, began functioning in a restricted manner thereafter.

6. On 26.05.2020, the Adjudicating Authority issued the Impugned Notice/Summons to the petitioners by way of an e-mail, indicating the next date of hearing in the complaint to be 16.06.2020.

7. The petitioners filed the present petition on 15.06.2020 claiming therein that as the period of 180 days from the date of the Provisional Attachment Orders had expired, in terms of Section 5(3) of the Act, the said order ceased to have effect and therefore, the Adjudicating Authority had become functus officio and the proceedings in the complaint cannot proceed. Following prayers have been made in the petition:

> "(a) writ of certiorari or any other appropriate writ/ direction/ order in the nature of a writ quashing/ setting aside the Notice/ Summons dated 26.05.2020 issued by the Respondent no. 2 Adjudicating Authority through email in Original Complaint No. 1228/2019 dated 05.12.2019 intimating a fresh date of hearing and directing the Petitioner to join the proceedings and all consequential proceedings emanating therefrom; and
>
> (b) writ of declaration or any other appropriate writ/ direction/ order declaring that the Provisional Attachment Order No. 10/2019 dated 13.11.2019 issued by the Respondent No.1 ED and all proceedings emanating therefrom including Original Complaint No. 1228/2019 has lapsed and ceased to have any effect on and from the expiry of 180 day period provided under Section 5 PMLA i.e. from 12.05.2020."

**PETITIONERS SUBMISSIONS:**

8. The learned senior counsel for the petitioners has submitted that the provisions of sub-section (1) and sub-section (3) of Section 5 provide for the maximum period of the validity of a Provisional Attachment Order and on expiry of the said period, the Provisional Attachment Order ceases

to have effect without any further action/omission on part of any Authority. He submits that there is no provision in the Act by which such period can be extended by any Authority or even by a Court of law. He places reliance on the judgment of the Supreme Court in S.Kasi vs. State 2020 SCC OnLine SC 529.

9. He submits that the effect of an order under Section 5(1) of the Act is deprivation of the right of a person to enjoy his property. The same cannot be extended for an indefinite period. The right to enjoyment of a property is a Constitutional right guaranteed under Article 300A of the Constitution and cannot be denied to a person except in accordance with the procedure prescribed by law. In this regard, he places reliance on the judgment of the Supreme Court in M.C.Mehta vs. Union of India & Ors. 2020 SCC OnLine SC 648.

10. The learned senior counsel for the petitioners further submits that though the Supreme Court in its orders dated 23.03.2020, 06.05.2020 and 10.07.2020 passed in Suo Moto WP(C) No.3/2020- In Re: Cognizance for Extension of Limitation, has extended the period of limitation to file proceedings under the general or special laws, including the Arbitration and Conciliation Act, 1996 and the Negotiable Instruments Act, 1881, and also with respect to Section 29A and 23(4) of the Arbitration and Conciliation Act, 1996 etc., the same cannot extend the period of validity of a Provisional Attachment Order passed under Section 5(1) of the Act, as it is not a period of limitation. He further submits that the Government of India, by a Notification dated 31.03.2020 extended the period for completion of proceedings prescribed under various Acts, like the Wealth Tax Act, 1957, The Prohibition of Benami Property Transactions Act, 1988, etc., however, the period prescribed under the provisions of the Prevention of Money Laundering Act, 2002 has not been extended. Therefore, there is no occasion for this Court also to extend the period prescribed.

11. Placing reliance on the judgment of the Supreme Court in New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Pvt. Ltd. (2015) 16 SCC 20 and in Central Bureau of Investigation & Ors. vs. Keshub Mahindra & Ors. (2011) 6 SCC 216, he submits that where the statute does not vest any power with the Court to extend the period prescribed in the Act, the same must prevail and the Court cannot ignore the same on ground of equity.

12. He submits that even the Supreme Court would not have such power under Article 142 of the Constitution, leave alone this Court under Article 226 of the Constitution. In this regard, he places reliance on the

judgment of the Supreme Court in Assistant Commissioner (CT) LTU, Kakinada & Ors. vs. Glaxo Smith Kline Consumer Health Care Ltd. 2020 SCC OnLine SC 440.

13. In the alternative, he submits that even if the period of the lockdown declared by the Government of India has to be excluded, that is between 24.03.2020 to 20.04.2020, 180 days from passing of the Provisional Attachment Order would have expired by 16.06.2020, which was the next date of hearing, rendering the Adjudicating Authority functus officio thereafter.

14. He further submits that this Court on 06.07.2020 was pleased to stay further proceedings in the Complaint pending before the Adjudicating Authority. The period of 180 days having already expired as on 06.07.2020, even the benefit of the proviso to Section 5(1) of the Act would not be available to extend the period of validity of the Provisional Attachment Order.

**RESPONDENTS SUBMISSIONS:**

15. On the other hand, the learned counsel for the respondents submits that the Supreme Court by the above referred orders passed in Suo Moto W.P.(C) No.3/2020, has extended the period of limitation for various proceedings, which would also include proceedings before the Adjudicating Authority. He submits that the period of the Provisional Attachment Order, therefore, stands extended in terms of the said orders of the Supreme Court. Placing reliance on sub-section (1) of Section 8 of the Act, he submits that a notice of not less than 30 days has to be issued by the Adjudicating Authority on receipt of the Complaint under sub- section (5) of Section 5 of the Act. As the said period itself would get extended in terms of the Supreme Court order, it cannot be said that the Provisional Attachment Order would lose its validity only because such notice could not be issued due to the lockdown declared by the Government of India.

16. He further submits that the proceedings before the Adjudicating Authority is in the nature of a quasi-judicial proceedings and it is settled principal of law that a party cannot be prejudiced by the act or omission of a Court. He submits that the delay in completion of the proceedings before the Adjudicating Authority, not being attributable to the respondents, the respondents cannot be prejudiced by the same.

17. I have considered the submissions made by the learned counsels for the parties.

**REASONING AND FINDING:**

18. Sub-section (1) of Section 5 of the Act empowers the Director or any other officer not below the rank of the Deputy Director authorized by the Director of Enforcement in this regard, to pass an order provisionally attaching property of a person „for a period not exceeding 180 days from the date of the order". In terms of the third proviso to sub-section (1) of Section 5, this period is extended by 30 days from the date of the order vacating any stay order granted by the High Court on such Provisional Attachment Order or proceedings before the Adjudicating Authority. Sub-section (3) of Section 5 to the Act provides that every Provisional Attachment Order passed under sub-section (1) of Section 5 of the Act, shall cease to have effect after the expiry of the period of one hundred and eighty days or on the date of the order made under sub-section (3) of Section 8, "whichever is earlier". Therefore, one hundred and eighty days from the date of the order passed under sub-section (1) of section 5 of the Act, is the outer limit of the validity/life of such order and the same ceases to remain in effect, by efflux of time, beyond that date, in case no order confirming the Provisional Attachment Order is passed by the Adjudicating Authority under sub-section (3) of Section 8 of the Act prior thereto.

19. Sub-sections (1) and (3) of Section 5 of the Act are reproduced herein below:

"5. Attachment of property involved in money-laundering. —

(1) Where the Director, or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to

a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

xxxxx

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of section 8, whichever is earlier. (Emphasis supplied)

20. A reading of the above provisions would clearly show that one hundred and eighty days from the passing of the Provisional Attachment Order is not prescribed as a period of limitation to do a particular act, but as the outer period of validity of the Provisional Attachment Order itself. On expiry of the said period, in absence of an order passed by the Adjudicating Authority under sub-section (3) of Section 8 of the Act, the Provisional Attachment Order ceases to have effect or lapses on its own. Such lapsing does not require any confirmation from the Authority or any Court of law; it is automatic; it is preemptory in nature.

21. It is also to be noted that the Act, except in the third Proviso to Section 5(1) of the Act, does not provide for any extension of validity of the period of the Provisional Attachment Order. There are no exceptions; there is no provision for extension.

22. "Attachment" is defined under Section 2(1)(d) of the Act to mean as under:

> "2(1)(d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III."

23. Therefore, a reading of sub-section (1) of Section 5 with Section 2(1)(d) of the Act leaves no manner of doubt that the effect of the Provisional Attachment Order is deprivation of the right to property.

24. Article 300A of the Constitution creates a Constitutional right in every person to hold and enjoy his property, unless deprived by authority of law. In M.C. Mehta (supra), the Supreme Court has emphasized that when the statue prescribes a mode, the property deprivation cannot be done in other modes. It was further emphasized that Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. They should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted; they must be given a strict construction. It was further reiterated that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the Act are only creature of statute and must act within the four corners thereof. As reference to various precedents was made in this judgment, I would like to quote paragraph 107 of the same:-

> "107. Article 300A of the Constitution provides that nobody can be deprived of the property and right of residence otherwise in the manner prescribed by law. When the statute prescribes a mode, the property's deprivation cannot be done in other modes since this Court did not authorize the Committee to take action in the matter. An action could have been taken in no other manner except in accordance with the procedure prescribed by law as laid down in the decisions referred to at the Bar thus:
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> (a) State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, wherein this Court observed:
>
> > "59. .....In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

(b) K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1 in which it was opined:

> "168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression — propertyll in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognized by law.
>
> 169. This Court in State of W.B. v. Vishnunarayan and Associates (P) Ltd., while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorizes their rights."
>
> (emphasis supplied)

(c) In T.Vijayalakshmi vs. Town Planning Member, (2006) 8 SCC 502, the Court observed:

> "13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendment to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the Courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by

the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

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15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. "

(emphasis supplied)

(d) In the matter of State of U.P. v. Manohar, (2005) 2 SCC 126, this Court observed:

7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

"300-A. Persons not to be deprived of property save by authority of law.-

No person shall be deprived of his property save by authority of law."

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities "

(e) In Delhi Airtech Services (P) Ltd. v. State of U.P. (2011) 9 SCC 354, this Court held:

83. The expression —lawǁ which figures both in Article 21 and Article 300-A must be given the same meaning. In both the cases the law would mean a validly enacted law. In order to be valid law it must be just, fair and reasonable having regard to the requirement of Articles 14 and 21 as explained in Maneka Gandhi.

This is especially so, as —lawǁ in both the Articles 21 and 300-A is meant to prevent deprivation of rights. Insofar as Article

21 is concerned, it is a fundamental right whereas in Article 300-A it is a constitutional right which has been given a status of a basic human right.

(f) It was further argued that planning laws are expropriatory and should be strictly construed, and any ambiguity is to be construed in favour of the property owner as laid down in Delhi Airtech Services (P) Ltd. v. State of U.P. (supra) thus:

129. Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. (See Maxwell on The Interpretation of Statutes, 12 Edn. by P. St. J. Langan.)

130. This Court in Devinder Singh held that the Land Acquisition Act is an expropriatory legislation and followed the case of Hindustan Petroleum Corpn. v. Darius Shapur Chenai. Therefore, it should be construed strictly. The Court has also taken the view that even in cases of directory requirements, substantial compliance with such provision would be necessary.‖

(emphasis supplied)

(g) In Ramchandra Ravindra Waghmare v. Indore Municipal Corporation, (2017) 1 SCC 667, it was opined:

67. It was also submitted that town planning and municipal institutes are regulating and restricting the use of private property under the aforesaid Acts. They are expropriatory legislation‖. Thus they are liable to be construed strictly as laid down in Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.

(h) In Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705, it was held:

57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules. Regulations contained in such statute must be

interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See Balram Kumawat v. Union of India ; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd. and Union of India v. West Coast Paper Mills Ltd. ) The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction.

(i) In State of Gujarat v. Shantilal Mangaldas, (1969) 1 SCC 509, it was held:

55. …… Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all: (emphasis supplied)

(j) In Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, it was opined:

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.(emphasis supplied)

(k) In Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher, (2013) 5 SCC 627 it was held:

43. …… This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections and 127

> of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution. (emphasis supplied)

25. In the present case, the Act clearly deprives the person against whom the Provisional Attachment Order is passed of his right to deal in the property against which the attachment is ordered. Such deprivation can therefore, be for a maximum of 180 days and no further, except where such order is confirmed by the Adjudicating Authority prior thereto under Section 8(3) of the Act. Once the 180 day period has lapsed without such order being passed under Section 8(3) of the Act, the Provisional Attachment Order ceases to have effect and therefore, there is no order before the Adjudicating Authority to confirm under Section 8(3) of the Act. The Adjudicating Authority therefore, becomes functus officio.

26. As noted hereinabove, there is no power with any Authority or the Court to relax or extend the validity of the Provisional Attachment Order. In New India Assurance (supra), the Constitution Bench of the Supreme Court while considering Section 13(2) of the Consumer Protection Act, 1986, providing for the time to file response to the complaint by the respondent/ opposite party and the power of the District Forum to extend such time beyond 15 days, observed as under:-

> "21. The legislature in its wisdom has provided for filing of complaint or appeals beyond the period specified under the relevant provisions of the Act and Regulations, if there is sufficient cause given by the party, which has to be the satisfaction of the concerned authority. No such discretion has been provided for under Section 13(2)(a) of the Consumer Protection Act for filing a response to the complaint beyond the extended period of 45 days (30 days plus 15 days). Had the legislature not wanted to make such provision mandatory but only directory, the provision for further extension of the period for filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals. To carve out an exception in a specific provision of the statute is not within the jurisdiction of the Courts, and if it is so

done, it would amount to legislating or inserting a provision into the statute, which is not permissible."

27. It was further held that there may be some hardship or inconvenience caused to either party with strict compliance with a statutory provision, however, the Court has no choice but to enforce it in full rigor, so as to achieve the object of the statute; law prevails over equity, as equity can only supplement the law, and not supplant it. Paragraphs 23 to 29 of the judgment can be usefully quoted hereinunder:-

"23. This Court in the case of Lachmi Narain v. Union of India, (1976) 2 SCC 953 has held that —if the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the interest that the provision is to be mandatory‖. Further, hardship cannot be a ground for changing the mandatory nature of the statute, as has been held by this Court in Bhikraj Jaipurai v. Union of India, AIR 1962 SC 113=(1962) 2 SCR 880 and Fairgrowth Investments Ltd. v. Custodian, (2004) 11 SCC 472. Hardship cannot thus be a ground to interpret the provision so as to enlarge the time, where the statute provides for a specific time, which, in our opinion, has to be complied in letter and spirit.

24. This Court, in the case of Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451 has, in paragraph 23, held as under:

> 23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor. It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice.

25. While concluding, it was observed —that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal.

26. Further, it has been held by this Court in the case of Popat Bahiru Govardhane v. Special Land Acquisition Officer, (2013) 10

SCC 765 that the law of limitation may harshly affect a particular party but it has to be applied with all its vigour when the statute so prescribes and that the Court has no power to extend the period of limitation on equitable grounds, even if the statutory provision may cause hardship or inconvenience to a particular party.

27. The contention of the learned Counsel for the respondent is that by not leaving a discretion with the District Forum for extending the period of limitation for filing the response before it by the opposite party, grave injustice would be caused as there could be circumstances beyond the control of the opposite party because of which the opposite party may not be able to file the response within the period of 30 days or the extended period of 15 days. In our view, if the law so provides, the same has to be strictly complied, so as to achieve the object of the statute. It is well settled that law prevails over equity, as equity can only supplement the law, and not supplant it.

28. This Court, in the case of Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413, has observed that —when there is a conflict between law and equity the former shall prevail. In P.M. Latha v. State of Kerala, (2003) 3 SCC 541, this Court held that —Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law.‖ In Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577, this Court observed that —in a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.‖ In E.Palanisamy v. Palanisamy, (2003) 1 SCC 123, it was held that —Equitable considerations have no place where the statute contained express provisions.‖ Further, in India House v. Kishan N. Lalwani, (2003) 9 SCC 393, this Court held that — The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations.

29. It is thus settled law that where the provision of the Act is clear and unambiguous, it has no scope for any interpretation on equitable ground."

28. In view of the above dicta, the submission of the learned counsel for the respondents that as the delay in proceedings before the Adjudicating Authority cannot be blamed on the respondents, the respondents must not

be penalized and the time period should be extended, cannot be accepted. It is not a question of penalization of the respondents for the delay, but of application of the mandate of law from which there is no escape. Equally, the principle of Actus Curiae Neminem Gravabit can also have no application.

29. The reliance of the learned counsel for the respondents on the orders passed by the Supreme Court in Suo Motu Writ Petition (Civil) No. 3/2020, is also unfounded. The Supreme Court, in its order dated 23.03.2020, directed as under:-

> "This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).
>
> To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.
>
> We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities."

30. Clearly, the above order extended the period of limitation. In the present case, Section 5(1) and 5(3) do not provide the period of limitation, but the period of validity of the Provisional Attachment Order. The same would not stand extended due to the above order of the Supreme Court. This becomes more evident from the order dated 06.05.2020 passed by the Supreme Court in I.A. 48411/2020, whereby it was pleased to extend the period of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under Section 138 of the Negotiable Instruments Act, 1881, observing as under:-

> "IA No.48411/2020 – FOR DIRECTIONS By way of filing this application for directions, the applicant has made the following prayer:

To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under section 138 of the Negotiable Instruments Act, 1881; In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

In view of the above, the instant interlocutory application is disposed of."

31. In fact, the most relevant in this series of orders to the present controversy is the order dated 10.07.2020, which clearly shows that the above referred two orders of the Supreme Court were only in relation to the period of limitation and did not extend the period to do something required under a Statute or the period of validity of an order, as in the present case. Realizing such difference, the Supreme Court extended the period to pass an Arbitral Award under Section 29A and for completion of pleadings under Section 23(4) of the Arbitration and Conciliation Act, 1996 as also for completing the process of compulsory pre-litigation, mediation and settlement under Section 12A of the Commercial Courts Act, 2015, however, refused to extend the period of validity of a cheque. This itself shows that the orders of the Supreme Court are not a universal extension of time across the board, be it limitation or period prescribed for doing a particular thing, or as in the present case, the period of validity of an order. For ready reference, the order dated 10.07.2020 is quoted hereinbelow:-

"Parties have prayed to this Court for extending the time where limitation is to expire during the period when there is a lockdown in

view of COVID-19 or the time to perform a particular act is to expire during the lockdown.

I.A. No. 49221/2020 -Section 29A of the Arbitration and Conciliation Act, 1996 WP(C) 3551/2020 Page 22Taken on Board.No.

In Suo Moto Writ Petition (C) No. 3/2020, by our order dated 23.03.2020 and 06.05.2020, we ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 shall be extended w.e.f. 15.03.2020 till further orders.

Learned Attorney General has sought a minor modification in the aforesaid orders.

Section 29A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of limitation but fixes a time to do certain acts, i.e. making an arbitral award within a prescribed time. We, accordingly, direct that the aforesaid orders shall also apply for extension of time limit for passing arbitral award under Section 29A of the said Act. Similarly, Section 23(4) of the Arbitration and Conciliation Act, 1996 provides for a time period of 6 months for the completion of the statement of claim and defence. We, accordingly, direct that the aforesaid orders shall also apply for extension of the time limit prescribed under Section 23(4) of the said Act.

The application is disposed of accordingly.

Pre-Institution Mediation and Settlement under Section 12A of the Commercial Courts Act, 2015.

Under Section 12A of the Commercial Courts Act, 2015, time is prescribed for completing the process of compulsory pre-litigation, mediation and settlement. The said time is also liable to be extended. We, accordingly, direct that the said time shall stand extended from the time when the lockdown is lifted plus 45 days thereafter. That is to say that if the above period, i.e. the period of lockdown plus 45 days has expired, no further period shall be liable to be excluded. I.A. No. 48461/2020- Service of all notices, summons and exchange of pleadings WP (C) No. 3551/2020 Page 23 Service of notices, summons and exchange of pleadings/ documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during

the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.

Extension of validity of Negotiable Instruments Act, 1881- I.A. Nos. 48461 and 48672/2020 (IA. No. 48671/2020, 48673/2020) I.A. No. 48671/2020 for impleadment is allowed. With reference to the prayer, that the period of validity of a cheque be extended, we find that the said period has not been prescribed by any Statute but it is a period prescribed by the Reserve Bank of India under Section 35-A of the Banking Regulation Act,1949. We do not consider it appropriate to interfere with the period prescribed by the Reserve Bank of India, particularly, since the entire banking system functions on the basis of the period so prescribed.

The Reserve Bank of India may in its discretion, alter such period as it thinks fit. Ordered accordingly. The instant applications are disposed of accordingly. (Emphasis supplied)

32. The above distinction is also apparent to the Government of India as it promulgated The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on 31.03.2020, extending the time limit for completion of any proceedings or passing of any order etc. specified in the Acts specified therein. However, the Prevention of Money Laundering Act, 2002 is not one of the “specified Acts” under the Ordinance. Therefore, the respondents cannot take benefit of even this Ordinance. On the other hand, the Ordinance clearly shows that the reliance of the respondents on the orders of the Supreme Court is liable to be rejected.

33. The reliance of the learned counsel for the respondents on Section 8(1) of the Act to contend that the orders of Supreme Court would apply to extend the validity of the Provisional Attachment Order, is also unfounded and is liable to be rejected. Section 8(1) does not again, provide for any period of limitation but for a period of notice. It reads as under:-

8. Adjudication.-- (1) On receipt of a complaint under sub- section (5) of section 5, or applications made under sub- section (4) of

section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

WP(C) No. 3551/2020 Page 25 Provided that where a notice under this sub-section specifies ant property as being held by a person on behalf of any other person, a copy of such notice shall be served upon such other persons.

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property." (Emphasis supplied)

34. At this stage reference to the judgment of the Supreme Court in S. Kasi (supra) would also be apposite. The Supreme Court while considering the effect of the order dated 23.03.2020 passed in Suo Moto W.P.(C) No. 3/2020 on the right of the accused under Section 167(2) of the Code of Criminal Procedure to be released on bail on non-submission of charge sheet within the prescribed period by the prosecution, held as under:-

"16. The reason for passing the aforesaid order for extending the period of limitation w.e.f. 15.03.2020 for filing petitions/applications/ suits/ appeals/all other proceedings are indicated in the order itself. Two reasons, which are decipherable from the order of this Court dated 23.03.2020 for passing the order are :-

i) The situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that are being faced by the litigants across the country in filing their petitions/applications /suits /appeals/ all other proceedings within the period of limitation prescribed.

ii) To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in

respective Courts/Tribunals across the country including this Court.

17. The limitation for filing petitions/ applications/ suits/appeals/ all other proceedings was extended to obviate lawyers /litigants to come physically to file such proceedings in respective Courts/ Tribunals. The order was passed to protect the litigants/lawyers whose petitions/ applications/ suits/appeals/all other proceedings would become time barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/ applications/ suits/appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. The order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period of filing charge sheet by police as contemplated under Section 167(2) of the Code of Criminal Procedure. The Investigating Officer could have submitted/filed the charge sheet before the (Incharge) Magistrate. Therefore, even during the lockdown and as has been done in so many cases the charge-sheet could have been filed / submitted before the Magistrate (Incharge) and the Investigating officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate(Incharge)

18. If the interpretation by the learned Single Judge in the impugned judgment is taken to its logical end, due to difficulties and due to present pandemic, Police may also not produce an accused within 24 hours before the Magistrate's Court as contemplated by Section 57 of the Code of Criminal Procedure, 1973. As noted above, the provision of Section 57 as well as Section 167 are supplementary to each other and are the provisions which recognizes the Right of Personal Liberty of a person as enshrined in the Constitution of India. The order of this Court dated 23.03.2020 never meant to curtail any provision of Code of Criminal Procedure or any other statute which was enacted to protect the Personal Liberty of a person. The right of prosecution to file a charge sheet even after a period of 60 days/90 days is not barred. The prosecution can very well file a charge sheet after 60 days /90 days but without filing a charge sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-

filing of the charge sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167, Cr.P.C. Following observations of Madras High Court in the impugned judgment are clearly contrary to the order dated 23.03.2020 of this Court:-

> "....The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed under Section167 (2) of the Code of Criminal Procedure also."

35. The above judgment clearly highlights the reason and the limit of the order dated 23.03.2020 passed by the Supreme Court. It also highlights that the said order was never meant to curtail any provision of other statute which is enacted to protect the personal liberty of a person. In my opinion, in a similar manner, the order dated 23.03.2020 was not meant to deny any person his/her property rights.

36. I may also usefully refer to the order of the Calcutta High Court in Knight Riders Sports Pvt. Ltd. vs. Adjudicating Authority (PMLA) and Ors., 2020 SCC OnLine Cal 1311, wherein allowing the petitioner therein to withdraw his petition, the High Court observed as under:-

> WP (C) No. 3551/2020 Page 28 "5. On hearing learned counsel, this Court is of the view that under Section 5(1)(b) of the PMLA, an order of provisional attachment remains in force only for a period of 180 days from the date of the order passed by the Director with regard to the proceeds of crime which the concerned Director has reasons to believe are likely to be concealed, transferred or dealt with in a manner which may frustrate any proceedings relating to confiscation of such proceeds of crime under Chapter III of the PMLA. Section 5(3) further provides that every order of attachment made under Section 5(1) shall cease to have effect after the expiry of 180 days or on the date of an order made under Section 8(3) or whichever is earlier. Section 8(3) deals with a situation where the Adjudicating Authority makes an order in writing confirming the attachment of the property made under Section 5(1) or for retention of the property etc. Admittedly, no such order has been passed by the Adjudicating Authority against the petitioner under Section 8(3). It should be mentioned that the Adjudicating Authority has been served with copies of the petition.

> 6. If the concerned Act provides certain windows to a party in relation to a provisional order of attachment expressed in the clear language of Section 5(1)(b), this Court cannot come in the way of the petitioner taking advantage of the said exit route. Needless to say, allowing withdrawal of this petition will not prejudice any of the rights or contentions of the parties in the event of future proceedings before this Court or any other forum."

37. In view of the above, the 180 days from the date of the Provisional Attachment Order dated 13.11.2019 having expired without any order under Section 8(3) of the Act being passed by the Adjudicating Authority, it is held that the Adjudicating Authority has been rendered functus officio and cannot proceed with the Original Complaint, being O.C. No. 1228/2019 pending before it. The Notice/Summons dated 26.05.2020 is accordingly set aside.

38. In the present case I have intentionally refrained myself from making any comment on whether the period of total lockdown declared by the Central Government, that is from 24.03.2020 to 20.04.2020, can be excluded for computation of the 180 days, as it is not disputed that even on exclusion of this period, the 180 days would have expired on 16.06.2020, the returnable date of the notice issued by the Adjudicating Authority.

39. Accordingly, the petition is allowed. There shall be no order as to costs.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISIDICTION
[L. Nageswara Rao, S. Ravindra Bhat, JJ]

Transferred Case (Civil) No. 245/2020

Lalit Kumar Jain ... Petitioner

Versus

Union of India & Ors. ... Respondents

**Date Of Order: 21.05.2021**

INSOLVENCY AND BANKRUPTCY CODE, 2016 – CENTRAL GOVERNMENT ISSUES A NOTIFICATION DATED 15.11.2019 – PERSONAL GUARANTEES BY DIRECTORS, PROMOTERS TO BANKS FOR RELEASE OF ADVANCE TO COMPANIES – ON DEFAULTS GUARANTEES INVOKED – INSOLVENCY PROCEEDINGS OF COMPANIES IN PROGRESS – APPROVAL OF RESOLUTION PLAN AT DIFFERENT STAGES – NOTIFICATION CHALLENGED BY GUARANTORS – BEING IN EXCESS OF AUTHORITY CONFERRED UPON THE UNION OF INDIA – EXCESSIVE DELEGATION? – VIRES OF NOTIFICATION?

*In view of the discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/ guarantor of his or her liability, which arises out of an independent contract.*

*It is held that the impugned notification is legal and valid. It is also held that approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to corporate debtors). The writ petitions, transferred cases and transfer petitions are accordingly dismissed in the above terms, without order on costs.*

***A note from Editor-in-Chief:***

*The Supreme Court held that parliamentary intent was to treat personal guarantors differently from other categories of individuals.*

> *"The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the Adjudicating authority was common with the corporate debtor to whom they had stood guarantee," the judgment said.*

*The fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to corporate persons, does not lead to incongruity, the Court said.*

> *"On the other hand, there appear to be sound reasons why the forum for adjudicating insolvency processes – the provisions of which are disparate- is to be common, i.e. through the NCLT. The NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realizing some part of the creditors' dues from personal guarantors," the Court ruled.*

*In short, this Judgment has made it clear that Lenders can recover their dues from personal guarantors. This Judgment now allows banks to recover residual loans from promoters even after enforcing corporate resolution under IBC. This Judgment now paves way for bank to seize assets of defaulting companies' promoters - howsoever high these may be*

| | | |
|---|---|---|
| Present for Petitioner | : | Mr. Kumar Dushyant Singh, Advocate |
| Present for Respondents | : | Mr. Vikas Mehta, Mr. Ankit Anandraj Shah, Mr. Arvind Kumar Sharma, Advocates |

**J U D G M E N T**

**S. RAVINDRA BHAT, J.**

1. This judgment will dispose of common questions of law, which arise in various proceedings preferred under Article 32 of the Constitution of India, as well as transferred cases under Article 139A; those causes were transferred to the file of this court, from various High Courts[1], as they involved interpretation of common questions of law, in relation to provisions of the Insolvency and Bankruptcy Code, 2016 (hereafter "the Code").

**I The Petitions and Common Grievances**

2. The common question which arises in all these cases concerns the vires and validity of a notification dated 15.11.2019 issued by the Central

1 Madhya Pradesh, Telengana, Delhi, etc.

Government[2] (hereafter called "the impugned notification"). Other reliefs too have been claimed concerning the validity of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 issued on 15.11.2019. Likewise, the validity of regulations challenged by the Insolvency and Bankruptcy Board of India on 20.11.2019 are also the subject matter of challenge. However, during the course of submissions, learned counsel for the parties stated that the challenge would be confined to the impugned notification.

3. All writ petitioners before the High Courts, arrayed as respondents in the transferred cases before this Court, as well as the petitioners under Article 32 claim to be aggrieved by the impugned notification. At some stage or the other, these petitioners (compendiously termed as "the writ petitioners") had furnished personal guarantees to banks and financial institutions which led to release of advances to various companies which they (the petitioners) were associated with as directors, promoters or in some instances, as chairman or managing directors. In many cases, the personal guarantees furnished by the writ petitioners were invoked, and proceedings are pending against companies which they are or were associated with, and the advances for which they furnished bank guarantees. In several cases, recovery proceedings and later insolvency proceedings were initiated. The insolvency proceedings are at different stages and the resolution plans are at the stage of finalization. In a few cases, the resolution plans have not yet been approved by the adjudicating authority and in some cases, the approvals granted are subject to attack before the appellate tribunal.

4. All the writ petitioners challenged the impugned notification as having been issued in excess of the authority conferred upon the Union of India (through the Ministry of Corporate Affairs) which has been arrayed in all these proceedings as parties. The petitioners contend that the power conferred upon the Union under Section 1(3) of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as "the Code") could not have been resorted to in the manner as to extend the provisions of the Code only as far as they relate to personal guarantors of corporate debtors. The impugned notification brought into force Section 2(e), Section 78 (except with regard to fresh start process), Sections 79, 94-187 (both inclusive); Section 239(2)(g), (h) & (i); Section 239(2)(m) to (zc); Section 239 (2)(zn) to (zs) and Section 249.

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2 2S.O. 4126 (E) issued by the Ministry of Corporation Affairs, Central Government

5. After publication of the impugned notification, many petitioners were served with demand notices proposing to initiate insolvency proceedings under the Code. These demand notices were based on various counts, including that recovery proceedings were initiated after invocation of the guarantees. This led to initiation of insolvency resolution process under Part-III of the Code against some of the petitioners. The main argument advanced in all these proceedings on behalf of the writ petitioners is that the impugned notification is an exercise of excessive delegation. It is contended that the Central Government has no authority – legislative or statutory – to impose conditions on the enforcement of the Code. It is further contended as a corollary, that the enforcement of Sections 78, 79, 94-187 etc. in terms of the impugned notification of the Code only in relation to personal guarantors is ultra vires the powers granted to the Central Government.

6. It is argued that in terms of the proviso to Section 1(3) of the Code, Parliament delegated the power to enforce different provisions of the Code at different points in time to the Central Government. Section1(3) reads as under:

> "It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:
>
> Provided that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed a reference the commencement of that provision."

7. The petitioners argue that the power delegated under Section 1(3) is only as regards the point(s) in time when different provisions of the Code can be brought into effect and that it does not permit the Central Government to notify parts of provisions of the Code, or to limit the application of the provisions to certain categories of persons. The impugned notification, however, notified various provisions of the Code only in so far as they relate to personal guarantors to corporate debtors. It is therefore, ultra vires the proviso to Section 1(3) of the Code.

8. It is argued that the provisions of the Code brought into effect by the impugned notification are not in severable, as they do not specifically or separately deal with or govern insolvency proceedings against personal guarantors to corporate debtors. The provisions only deal with individuals and partnership firms. It is urged that from a plain reading of the provisions, it is not possible to carve out a limited application of the

provisions only in relation to personal guarantors to corporate debtors. The Central Government's move to enforce Sections 78, 79, 94 to 187, etc. only in relation to personal guarantors to corporate debtors is an exercise of legislative power wholly impermissible in law and amounts to an unconstitutional usurpation of legislative power by the executive. The petitioners argue that the impugned notification, to the extent it brings into force Section 2 (e) of the Code with effect from 01.12.2019 is hit by non-application of mind. It is argued that Section 2(e) of the Code, as amended by Act 8 of 2018, came into force with retrospective effect from 23.11.2017. This is duly noted by this court in the case of *State Bank of India v. V. Ramakrishnan*[3], which observed that:

> "Though the original Section 2(e) did not come into force at all, the substituted Section 2(e) has come into force w.e.f. 23.11.2017."

It is urged that this court should, therefore, set aside the impugned notification.

9. The petitioners also attack the impugned notification on the ground that it suffers from non-application of mind, because the Central Government failed to bring into effect Section 243 of the Code, which would have repealed the Presidency Towns Insolvency Act, 1909 ("PTI Act" hereafter) and the Provincial Insolvency Act, 1920 ("PIA" hereafter). Prior to issuance of the impugned notification, insolvency proceedings against an individual could be initiated only in terms of the said two Acts. After enactment of the Code, insolvency proceedings against personal guarantors to corporate debtors would lie before the Adjudicating Authority, in terms of Section 60 of the Code, although they would be governed by the said two Acts. With the enforcement of the impugned provisions, rules and regulations, insolvency proceedings can now be initiated against personal guarantors to corporate debtors under Part III of the Code, and also under the PTI Act and the PIA. Since Section 243 of the Code has not been brought into force, the petitioners contend that the impugned notification has the illogical effect of creating two self-contradictory legal regimes for in solvency proceedings against personal guarantors to corporate debtors.

10. It is urged that the impugned notification is ultra vires the provisions of the Code in so far as it notifies provisions of Part III of the Code only in respect of personal guarantors to corporate debtors. Part III of the Code governs "Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms". Also, Section 2(g) of the Code defines an individual to

3 (2018) 17 SCC 39

mean "individuals, other than persons referred to in clause (e)". Section 2 (e) relates to personal guarantors to corporate debtors. A joint reading of Section 2(e) with Section 2(g) and Part III of the Code shows that personal guarantors to corporate debtors are not covered by Part II, which only deals with individuals and partnership firms, and personal guarantors to corporate debtors stand specifically excluded from the definition of individuals. The petitioners also rely on Section 95 of the Code[4], which permits a creditor to invoke insolvency resolution process against an individual only in relation to a partnership debt.

11. Part III of the Code does not contain any provision permitting initiation of the insolvency resolution process (hereafter "IRP") against personal guarantors to corporate debtors. The impugned notification which provides to the contrary, is ultra vires. It is further contended that provisions of the Code brought into effect by the impugned notification [Clause (e) of Section 2, Section 78 (except with regard to fresh start process), Section 79, Section 94 to 187 (both inclusive), Clause (g) to Clause (l) of sub-section (2) of Section 239, Clause (m) to (zc) of sub-section (2) of Section 239, Clause (zn) to Clause (zs) of Sub-section (2) of Section 239 and

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4 *"**95. Application by creditor to initiate insolvency resolution process.***

*(1) A creditor may apply either by himself, or jointly with other creditors, or through resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.*

*(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against*

*(a) anyone or more partners of the firm; or*

*(b) the firm. (c)*

*(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.*

*(4) An application under sub-section (1)shall be accompanied with details and documents relating to:*

*(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;*

*(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and*

*(c) relevant evidence of such default or non-repayment of debt.*

*(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.*

*(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.*

*(7) The details and documents required to be submitted under Sub-section (4) shall be such as may be specified."*

Section 249] when enforced only in respect of personal guarantors to corporate debtors, are manifestly arbitrary; they are also discriminatory because:

(i) There is no intelligible differentia or rational basis on which personal guarantors to corporate debtors have been singled out for being covered by the impugned provisions, particularly when the provisions of the Code do not separately apply to one sub-category of individuals, i.e., personal guarantors to corporate debtors. Rather, Part III of the Code does not apply to personal guarantors to corporate debtors at all.

(ii) the provisions of Part III of the Code, which are partly brought into effect by the impugned notification, provide a single procedure for the insolvency resolution process of a personal guarantor, irrespective of whether the creditor is a financial creditor or an operational creditor. Treating financial creditors and operational creditors on an equal footing in Part III of the Code is in contrast to Part II of the Code, which provides different sets of procedures for different classes of creditors.

12. The petitioners rely on *Swiss Ribbons (P.) Ltd. v. Union of India*[5], where this court upheld the difference in procedure for operational creditors and financial creditors on the basis that there are fundamental differences in the nature of loan agreements with financial creditors, from contracts with operational creditors for supplying goods and services. Financial creditors generally lend finance on a term loan or for working capital that enables the corporate debtor to either set up and/or operate its business. On the other hand, contracts with operational creditors are relatable to supply of goods and services in the operation of business. Financial contracts generally involve large sums of money.

13. The petitioners argue that the act of clubbing financial creditors and operational creditors in relation to the procedure for insolvency resolution of personal guarantors to corporate debtors amounts to treating unequals equally and amounts to collapsing the classification that is carefully created by Parliament in Part II of the Code. They also argue that the application of Sections 96 and 101 of the Code by the impugned notification results in the illogical consequence of staying insolvency proceedings against the corporate debtor, when insolvency proceedings are initiated against the personal guarantor. It is pointed out that a combined reading of

5 (2019) 4 SCC 17.

Sections 99 and 100 of the Code shows that the resolution professional, while recommending the approval/rejection of the application, and the Adjudicating Authority while accepting it, do not have to consider whether the underlying debt owed by the corporate debtor to the creditor stands discharged or extinguished.

14. It is argued that the liability of a guarantor is co-extensive with that of the principal debtor (Section 128 of Indian Contract Act, 1872). Further, it is settled law that upon conclusion of insolvency proceedings against a principal debtor, the same amounts to extinction of all claims against the principal debtor, except to the extent admitted in the insolvency resolution process itself. This is clear from Section 31 of the Code, which makes the resolution plan approved by the Adjudicating Authority binding on the corporate debtor, its creditors and guarantors. The petitioners also contend that the impugned notification allows creditors to unjustly enrich themselves by claiming in the insolvency process of the guarantor without accounting for the amount realized by them in the corporate insolvency resolution process of the corporate debtor under Part II of the Code. It is therefore, untenable.

15. It is argued that the impugned notification has resulted in clothing authorities, the Committee of Creditors (CoC) and Resolution Professionals (RPs) with powers beyond the enacted statute. They have defined the term “guarantor” as a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part. The parent statute does not define “guarantor”. It is pointed out that though Section 239(1) of the Code empowers the Insolvency Board to make rules to carry out the provisions of the Code, those rules cannot define a term that is not defined in the Code, as it is likely to result in class legislation for one category of guarantors, i.e., personal guarantors to corporate debtors. The impugned notification is therefore ultra vires the Code.

## II Contentions of the Petitioners

16. Mr. Harish Salve, learned senior counsel appearing on behalf of the petitioners, urged that Section 1(3) of the Code authorizes or empowers the Central Government only to bring provisions of the Code into force on such date by a notification in the Official Gazette. The proviso to this Section categorically provides that different dates may be appointed for bringing different provisions into force. Section 1(3) is an instance of ‘conditional legislation’, where the legislature has enacted the law, and the

only function assigned to the executive is to bring the law into operation at such time as it may decide. Such legislation is termed as conditional, because the legislature has itself made the law in all its completeness as regards "place, person, laws, powers", leaving nothing for an outside authority to legislate on. Therefore, no element of legislation was left open to the government, and the only function assigned to it being to bring the law into operation at such time as it might decide. The central government has however, by the impugned notification exceeded the power conferred upon it, and has in effect modified the provisions of Part III of the Code, which it was not authorized to do by Parliament. Assuming that such powers were present under Section 1(3) of the Code, it would amount to an unconstitutional delegation of power. It is argued that this court has repeatedly held that in conditional legislation, the law is al- ready complete in all respects, and as such the outside agency i.e., the government, while exercising power under such a provision, cannot legislate or in any manner add or alter the effect of the law already laid down. Reliance is placed on *Delhi Laws Act, 1912, In re v. Part 'C' States (Laws) Act, 1950*[6]*, State of Tamil Nadu v. K. Sabanayagam*[7] and *Vasu Dev Singh & Ors. v. Union of India & Ors*[8]*.*The effect of the impugned notification translates into going beyond the power to notify a date when the Code or its provisions should come into force.

**17.** It is argued that Part III of the Code does not create any distinction between an individual and a personal guarantor to a corporate debtor. Part III provides for *"Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms"*, and there- after refers to these two categories of persons simply as debtors. The impugned notification in substance modifies the text of the actual sections of Part III, despite the absence of any element of legislation/legislative authority having been conferred upon the Central Government. The words *"only in so far as they relate to personal guarantors to corporate debtors"* forming a part of the impugned notification are attempted to be added like a rider to each of the sections mentioned in the impugned notification, clearly rendering such an exercise completely outside the scope and powers conferred under Section 1(3) of the Code.

18. It was argued further by Mr. Salve, that the impugned notification is ex facie in violation of the principles of delegation, inasmuch as the

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6 1951 SCR 747 at paras 39, 42 and 47.

7 (1998) 1 SCC 318 at para 14.

8 (2006) 12 SCC 753 at para 16.

Central Government has effected a classification of individuals- and sought to ensure that insolvency issues of one category of individuals, i.e. personal guarantors to corporate debtors, are considered along with insolvency proceedings of corporate debtors. The distinction between Part II and Part III, the forum and the remedies available to creditors of individuals is no longer available to this category, i.e. personal guarantors, whose insolvency issues are to be now considered along with insolvency process of corporate debtors. It is argued that the power of classification is legislative and that the impugned notification is an instance of the executive acting beyond its jurisdiction. Mr. Salve relied upon observations made by the Privy Council in R v Burah[9] that laws cannot be said to em- power general legislative authority, on the executive, or to exercise power not granted to it under the parent Act.

**19.** It was argued that the Central Government mistakenly assumed that inclusion of personal guarantors in the definition provisions by amending Section 2 and insert- ing section 2(e) automatically results in amendment of section 1(3) of the Code. Sec- tion 2 provides that the Code applies to the entities enumerated in the various sub- sections. The amendment of 2018 added that the Code would apply to personal guarantors to corporate debtors. Consequently, when provisions of the Code are brought into force, they would apply to personal guarantors to corporate debtors. The application of a provision depends upon its plain language, and not upon the enumeration of entities to whom the Code applies. The provisions which have been now brought into force by virtue of the impugned notification do not limit themselves to personal guarantors to corporate debtors, but apply generally to individuals and other entities. However, to the extent that it limits their application to personal guarantors alone, through the impugned notification, it is illegal and beyond the powers conferred by Parliament. It was urged that conditional legislation should not be confused with delegation, which is a broader concept allowing the executive to frame rules and flesh out gaps within the broad legislative policy. That exercise is *legislative.* However, conditional legislation only permits the executive government the power to designate the time when the law is to be brought into force, or place or places where it operates, but not which parts of an enactment can apply to which class of persons, without any substantive legislative provision or guidance. The impugned notification has the ef- fect of amending the statutory scheme in the manner it applies them to personal guarantors and is therefore, *ultra vires* the Code.

20. Mr. P.S. Narasimha, learned senior counsel, who argued next,

9 1878 (3) App. Cases 889.

contended fur- ther that in several judgments, this court has ruled that conditional legislation is one where a legislative exercise is complete in itself, and the only power and/or function to be delegated to the authority (in this case the Central Government), is to apply the law to a specific area or to determine the time and manner of carrying into effect such law. He cited the decision in *State of Bombay v. Narothamdas Jethabhai*[10] in which this court observed as follows:

> "……The section does not empower the Provincial Government to enact a law as regards the pecuniary jurisdiction of the new court and it can in no sense be held to be legislation conferring legislative power on the Provincial Government"

Mr. Narasimha also cited *Sardar Inder Singh v. State of Rajasthan*[11] and *Hamdard Dawakhana v. Union of India*[12] and urged that when legislation is complete, and the executive is left to *apply the law to an area* or determine the time and manner of car- rying it out, that is the only permissible task. However, the executive cannot perform its task outside the power granted to it, choosing the subjects to which the law is to apply.

21. Mr. Narasimha referred to the previous notifications, bringing into force provisions of the Code on different dates. He submitted that none of them brought into force some provisions for a limited sub-category, or a class of individuals or entities. He referred to one notification dated 30.11.2016 that brought into force certain provisions of Part II of the Code, within which section 2(a) to 2(d) were also notified. However, it was submitted that irrespective of the notification, Part II was brought into force and it applied to every entity contemplated to be in its coverage. Under the notification of 30.11.2016, the inclusion of the four sub categories described in section 2(a) to 2(d) became irrelevant, and Part II of the Code applied uniformly to all categories of persons intended to be covered by it by virtue of the definition of a corporate person under Section 3(7) of the Act. The impugned notification however applies to only a sub-category, namely, personal guarantors to corporate debtors, among a homogeneous class of individuals; therefore, it is an unprecedented exercise of conditional legislation power, clearly ultra vires the parent enactment.

22. It was urged that even if it were assumed that the Central Government had the power to issue the impugned notification and bring

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10 *State of Bombay v. Narothamdas Jethabai* 1951 2 SCR51, at para 37

11 1957 SCR 605 at para 10.

12 1960 (2) SCR 671 at para 28.

Part III in force only with respect to personal guarantors to corporate debtors, it is ultra vires the objects and purpose of the Code. Reliance was placed on the Statement of Objects and Reasons of the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 in this regard.[13]

23. Learned counsel emphasized that this court has repeatedly clarified that the object of the Code is to ensure a company's revival and continuation by protecting from its management and, as far as feasible, to save it from liquidation, thereby maximizing its value. The Code is a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. Observations in Swiss Ribbons Pvt. Ltd. and Anr. v. Union of India & Ors.14 and *Babulal Vardharji Gurjar v. Veer Gurjar Aluminum Industries Pvt. Ltd. & Anr.*[15] are relied upon for this purpose.

24. It was submitted that Parliament undoubtedly amended the Code in 2018, defining "personal guarantor" as a species of individuals to whom the law applied. However, the manner of its application continued to be the same, i.e. to all individuals. Therefore, the resort to conditional legislation power under Section 1(3) to bring into force certain provisions *selectively, in respect of some individuals, i.e. personal guarantors* and not all individuals, is *ultra vires,* and contrary to the power conferred on Parliament. Illustratively, it is pointed out that the application of the law itself is limited- for instance in the case of Section 78 which applies to fresh start of insolvency proceedings- the Code is limited then, in its application to one sub category of individuals (all of whom are covered by the chapter, which is opened by Section 78) i.e., personal guarantors. This selective application is naked classification exercised by the government conferred with conditional legislative powers.

25. It was next argued that Part III of the Code relating to individuals and partnership firms are outlined in various sections of the Act. Of these chapters, I, III to VII, all of which have been notified are operative

13 "The Code prescribes for the insolvency resolution and for individuals and partnership firms, which are proposed to be implemented in a phased manner on account of the wider impact of these provisions. In the first phase, the provisions would be extended to personal guarantors of corporate debtors to further strengthen the corporate insolvency resolution process and a clear enabling provision for the purpose has been provided in the Bill."

14 *Swiss Ribbons Pvt. Ltd. and Anr. vs. Union of India &Ors., (2019) 4 SCC 17*, at para 28; *Babulal Vardharji Gurjar v. Veer Gurjar Aluminum Industries Pvt. Ltd.* and Anr. (2020) 15 SCC 1, at paras 21, 21.1.

15 (2020) 15 SCC 1 at paras 21, 21.1.

components of the Code, relatable to individuals and partnership firms. They can certainly be brought into force independently, whenever the executive is of the opinion that it is appropriate to do so. However, Section 2 cannot be used for this purpose, certainly not for bifurcating individuals and partnership firms into subcategories and then to apply Part II provisions exclusively to personal guarantors. It is argued that Section 2 of the Code is not an operative component, but more merely a descriptive component. Counsel argued that the nature of Section 2 is similar to an amendable descriptive component. Elaborating, it was submitted that an amendable descriptive component of an enactment is one that describes the whole or some part of the Act, and was subject to amendment when the Bill was introduced in Parliament in 2017. Section 2, in other words, is descriptive and merely declares the subjects to which the code would apply. It certainly cannot clothe the executive with power to apply the code selectively at its discretion to different subjects.

26. Mr. Sudipto Sarkar, learned senior counsel, adopted the arguments of Mr. Salve. He also relied on the decision of the Federal Court in *Jatindra Nath Gupta v. Province of Bihar*[16], especially the following passage:

> "The proviso contains the power to extend the Act for a period of one year with modifications, if any. It is one power and not two severable powers. The fact that no modifications were made in the Act when the power was exercised cannot help in determining the true nature of the power. The power to extend the operation of the Act beyond the period mentioned in the Act prima facie is a legislative power. It is for the Legislature to state how long a particular legislation will be in operation. That cannot be left to the discretion of some other body. The power to modify an Act of a Legislature, without any limitation on the extent of the power of modification, is undoubtedly a legislative power. It is not a power confined to apply the Act subject to any restriction, limitation or proviso (which is the same as an exception) only."

27. The other counsel, viz. Mr. Rohit Sharma, Ms. Pruthi Gupta, Mr. Rishi Raj Sharma, and Mr. Manish Paliwal too, argued for other petitioners. Pointing to the distinction between provisions in Part II of the Code and those in Part III, it is argued that the procedure for initiation of insolvency resolution against personal guarantors to corporate debtors is the same as in relation to other individuals. The only difference is that the forum to decide this would be the National Company Law Tribunal (NCLT).

16 (1949-50) 11 FCR 595.

In all other respects, in terms of Part III, the recovery process for debt realization is identical for personal guarantors to corporate debtors, as in the case of individuals. By separating the process in an artificial manner, and subjecting the insolvency process of personal guarantors who are also individuals, to adjudication by the NCLT, and furthermore, virtually directing that the two proceedings, i.e. in relation to the corporate debtor on the one hand, and the personal guarantor, on the other hand, to be clubbed, is, in effect, a legislative exercise, unsupported by any express provision of the Code. It is also submitted that the object of the Code is to ensure a revival of corporate debtors. On the other hand, if an application against a personal guarantor is admitted, a moratorium under Section 101 of the Code automatically applies. This results in stay of all pending proceedings or legal claims in respect of all debts. Since the debt of the personal guarantor is the same as the debt of the corporate debtor, all pending proceedings, including the corporate insolvency resolution plan initiated against a corporate debtor would be stayed on admission of an application for initiation of the resolution plan against a personal guarantor. This would in fact, amount to treating unequals as equals by a sheer legislative fiat. In other words, argued counsel, the moratorium which would operate in respect of pending resolution plans of corporate debtors, upon the initiation of an application against personal guarantors puts them on the same level, which the statute itself does not permit.

28. It is submitted that by virtue of Section 140 of the Indian Contract Act, a guarantor upon payment or performance of all that he is liable for, is invested with all rights which the creditor had enjoyed against the principal debtor. This provision enables the guarantor to exercise all rights, which the creditor had against the principal debtor, which would include the right to file a resolution plan against the corporate debtor after conclusion of the latter's resolution process. However, by virtue of Section 29A of the Code, promoters of corporate debtors who in most cases are personal guarantors, are barred from filing a resolution plan in the corporate resolution process of the corporate debtor. This places them at a distinct disadvantage as compared with individuals who are not personal guarantors. In this regard, the inability of such personal guarantors to recover amounts from the corporate debtor in the insolvency process, as well as at a later stage, if necessary, to initiate insolvency process, has been affected by virtue of the impugned notification. It was submitted that this court, in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*[17] ruled that

"Section 31 (1) of the Code makes it clear that once a resolution

17 2019 SCC Online SC 1478.

> plan is approved by the Committee of Creditors it shall be binding on all stakeholders ... This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate ...
>
> *All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate".*

Counsel therefore argued that an approved resolution plan in respect of a corporate debtor amounts to extinction of all outstanding claims against that debtor; consequently, the liability of the guarantor, which is co-extensive with that of the corporate debtor, would also be extinguished.

29. It was further argued that the resolution plans, duly approved by the Committee of Creditors would propose to extinguish and discharge the liability of the principal borrower to the financial creditor. Therefore, the petitioners' liability as guarantors under the personal guarantee would stand completely discharged. Reliance is placed on the judgment of the Punjab and Haryana High Court in *Kundanlal Dabriwala v. Haryana Financial Corporation*[18], which ruled that:

> "on a fair reading of the provisions of the Contract Act, I am inclined to hold that as the liability of the surety is co-extensive with that of the principal debtor, if the latter's liability is scaled down in an amended decree, or otherwise extinguished in whole or in part by statute, the liability of the surety also is pro tanto reduced or extinguished."

30. Reliance was also placed on the judgment of the National Company Law Appellate Tribunal (NCLAT) in *Dr. Vishnu Kumar Agarwal v. Piramal Enterprises Ltd*[19], where it was held that *"for the same set of debts, claim cannot be filed by same financial creditor in two separate corporate insolvency resolution processes."*

## III Arguments of the Union and other Respondents

31. Arguing for the Union of India, the Attorney General Mr. K.K. Venugopal submitted that the Code was amended in 2018. It substituted the pre-amended definition in Section 2(e) by introducing three different

18 (2012) 171 Comp Cas 94.

19 2019 SCC Online NCLAT 542.

classes of debtors, which were personal guarantors to corporate debtors [Section 2(e)], partnership firms and proprietorship firms [Section 2 (f)] and individuals [Section 2(g)]. The purpose of splitting the provision and defining three separate categories of debtors was to cover three separate sets of entities. Parliament wanted to deal with personal guarantors [under Section 2(e)], differently from partnership firms and proprietorship firms [under section 2(f),] and individuals other than persons referred to in Section 2 (e) [under Section 2(g)]. The intention was to clearly distinguish personal guarantors to corporate debtors from other individuals. This was because Section 60 of the Code which deals with the adjudicating authority for corporate debtors too was partially amended in 2018. The amendment to Section 60(2) added that it applied to insolvency proceedings or liquidation/bankruptcy of a corporate guarantor or personal guarantor as the case may be, to a corporate debtor. The result of the amendment is that when a corporate debtor faces insolvency proceedings, insolvency of its corporate guarantor too can be triggered. Likewise, *a personal guarantor to a corporate debtor, facing insolvency,* can be subjected to insolvency proceedings. All this is to be resolved and decided by the NCLT. In other words, the amendment by Section 60(2) too achieved a unified adjudication through the same forum for resolution of issues and disputes concerning corporate resolution processes, as well as bankruptcy and insolvency processes in relation to personal guarantors to corporate debtors.

32. It was argued that Parliament felt compelled to separate personal guarantors from other individuals such as partnership firms, proprietorships and individuals. It was felt that if this separation, achieved through the amendment of 2018 were not realized, the insolvency resolution process of corporate debtors would have to be dealt with separately and independently of its promoters, managing directors, and directors who had furnished their personal guarantees to secure debts of corporate debtors. If insolvency resolution proceedings against corporate debtors were continued without this amendment, and without the unification, (of the adjudicatory body) on the default of the corporate debtor to a debt owed to a financial creditor, the entire machinery of the Code relating to the corporate debtor would work itself out, to the exclusion of personal guarantors. This presented a peculiar problem, in that the resolution applicant, wishing to bid for takeover of the corporate debtor and operate it as a running concern would be faced with a huge liability, and the personal guarantor in most cases would be one of the individuals primarily responsible for the insolvency of the company, but would be out of the resolution process and have to be separately proceeded with. What therefore, has been effectuated by creating an independent provision, by separating personal guarantors of corporate debtors and by the same amendment, placing the personal guarantor's debt before

one tribunal/forum namely the NCLT, is that such a forum would apply the procedure in Part III, in regard to personal guarantors for providing repayment of the entire debt for which the guarantee is furnished in the first place. If that debt is not repaid in the Part III, the personal guarantor would not stand discharged, but on the other hand, would himself be forced into bankruptcy proceedings.

33. It was submitted that though the procedure to be adopted by the NCLT and rules of insolvency (in relation to personal guarantors, under Part III of the Code) might be different from that relating to corporate debtors, unifying both processes under one forum enables the adjudicating body to have a clear vision of the extent of debt of the corporate debtor, its available assets and resources, as also the assets and resources of the personal guarantor. This would not have been viable, had the insolvency resolution process of the personal guarantor continued under Part III, before another body. The amendment, and the impugned notification would ensure a more optimal resolution process, as resolution applicants wishing to take over the management of corporate debtors, would ultimately find the process of taking over more attractive; besides, there will be more competition in regard to the bids proposed, and the total debt servicing of the corporate debtor might be lowered if the personal guarantor's assets are also taken into account to mitigate the corporate debtor's liabilities. The personal guarantor in such cases, who provides assets which have been charged against the amount advanced to his company would most probably not permit himself to be driven to bankruptcy, and would therefore, be more likely to arrange for payment of monies due from him to obtain a discharge by payment of the amount outstanding to the bank or other financial creditor. In some cases, the creditor bank may be even prepared to take a haircut or forego the interest amounts so as to enable an equitable settlement of the corporate debt, as well as that of the personal guarantor. This would result in maximizing the value of assets and promoting entrepreneurship, which is one of the main purposes of the Code.

34. The learned Attorney General submitted that the expression "provision" has been defined in Black's Law Dictionary (10th edition at page 1420) as, *"a clause in a statute, contract or other legal instrument"/* He also relied upon the judgment in *Chettian Veettil Amman v. Taluk Land Board*[20] to the effect that:

> "A provision is therefore a distinct rule or principle of law in a statute which governs the situation covered by it. So an incomplete idea, even though stated in the form of a section of a statute, cannot be

20 (1980) 1 SCC 499.

> said to be a provision for, by its incompleteness, it cannot really be said to provide a whole rule or principle for observance by those concerned. A provision of law cannot therefore be said to exist if it is incomplete, for then it provides nothing."

He therefore urged that Section 2(e) being complete and distinct is a provision within the meaning of Section 1(3), and the Central government acted *intra vires* to bring it into force, as well as certain provisions in Part III of the code.

**35.** It was argued that the executive has the power to bring into force any one provision of a statute at different times for different purposes, and that the government can exercise this power to commence a provision for one purpose on one day and for the remaining purposes on a later date. He relied upon the following extract from *Bennion on Statutory Interpretation: A Code* (6th Edition, at page 257):

> "Where power is given to bring an Act into force by order, it is usual to provide flexibility by enabling different provisions to be brought into force at different times. Furthermore any one provision may be brought into force at different times for different purposes. [..]
>
> Advantages. This method of commencement gives all the advantages of extreme flexibility. Before a new Act is brought into operation, any necessary regulations or other instruments which need to be made under it can be drafted. […]"

36. The learned Attorney General relied upon two Constitution bench decisions of this Court, which throw light on the power exercised by the Central Government under provisions, which permit notification of provisions bringing into force legislation in phases. The judgments cited were *Basant Kumar Sarkar v. Eagle Rolling Mills Ltd.*[21] and *Bishwambhar Singh v. State of Orissa*[22]. He emphasized that often, when new legislation is introduced, the impact it might have on the subject matter needs to be studied and it would be to the benefit of all that a stage by stage or region by region implementation is adopted. Furthermore the discretion exercised by the executive government is not unfettered.

37. The Attorney General urged that what follows from the above decisions is that Section 1(3) of the IBC has to be interpreted to give flexibility to the Central Government to implement provisions of the Code

21 (1964) 6 SCR 913.

22 1954 SCR 842.

to meet the objectives of the enactment. He highlighted that the Central Government has in fact been enforcing the provisions of the Code in a phased manner and brought to the Court's notice that the provisions were notified on 10 different dates. It was submitted that the Code brought about a radical change in the existing laws applicable to debtor companies in that a single default by the corporate debtor above a threshold limit prescribed in the Code triggers an insolvency resolution process enabling a creditor to demand repayment. Heavy emphasis is placed by the Code on attempting resolution of the corporate debtor to maximize the value of the company and ensure that it continues as the going concern in the interests of the economy. It was keeping in mind these objectives that the impugned notification was issued appointing 1st of December 2019 as the date on which certain provisions of the IBC were to come into force, only so far as they relate to personal guarantors to corporate debtors. The submission that the impugned notification creates a classification was refuted. He stated that it only brought into force sections in Part III of the Code and Section 2(e) of the Code, from 1st December 2019. From that date, proceedings could be filed against personal guarantors to corporate debtors under the Code. The proceedings would be initiated before the NCLT, which would also be seized of resolution proceedings against the corporate debtors.

38. The Attorney General submitted that the Amendment Act brought about a classification after detailed deliberations and in the light of the report of the Working Group on Individual Insolvency, Regarding Strategy and Approach for implementation of Provisions of the Code to Deal with Insolvency of Guarantors to Corporate debtors, and Individuals having business. In this report of 2017, the working group recognized the dynamics and the interwoven connection between the corporate debtor and guarantor, who has extended his personal guarantee.

39. The Attorney General also relied upon the report of the Bankruptcy Law Reforms Committee ("BLRC") tasked with introducing a comprehensive framework for insolvency in bankruptcy. That committee recognized that personal guarantors were a category of entities to whom individual insolvency proceedings applied, and acknowledged the link between them and corporate debtors and found that under a common Code, there could be synchronous resolution. In this regard, paras 3.4.3 and 6.1 of the report of the committee, dated November 2015, were relied upon.[23] He pointed out that the synchronous resolution envisaged by the BLRC is found in the IBC in Section 5(22)and Section 60 (which fall in

23 The said extracts are as follows:

Part II of the Code), and Section 179 (which falls in Part III of the Code) and submitted that- *firstly,* the term 'personal guarantors' is defined in Part II of the Code which provides for insolvency resolution and liquidation for corporate persons, Section 5(22) of the IBC defines "personal guarantor" to mean "an individual who is the surety in a contract of guarantee to a corporate debtor". *Secondly,* by reason of Section 60(1), the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons (including corporate debtors and their personal guarantors), shall be the NCLT. Section 60(2) mandates that where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before the NCLT, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before the NCLT. Section 60(4) vests the NCLT with all powers of the Debt Recovery Tribunal (DRT) as contemplated under Part III of the Code for the purpose of Section 60(2). Thirdly, under Section 179, the DRT is the Adjudicating Authority for insolvency resolution for all other categories of individuals and partnership firms. Section 179 itself is *"subject to Section 60"*. It was argued that common oversight of insolvency processes of the corporate debtor, its corporate guarantor, and personal guarantors, through one forum, under the Code, (which, by reason of Section 238,

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"3.4.3 Design of the proposed Code: A unified Code -

The Committee recommends that there be a single Code to resolve insolvency for all companies, limited liability partnerships, partnership firms and individuals.

In order to ensure legal clarity, the Committee recommends that provisions in all existing law that deals with insolvency of registered entities be removed and replaced by this Code.

This has two distinct advantages in improving the insolvency and bankruptcy framework in India. The first is that all the provisions in one Code will allow for higher legal clarity when there arises any question of insolvency or bankruptcy. The second is that a common insolvency and bankruptcy framework for individual and enterprise will enable more coherent policies when the two interact. For example, it is common practice that Indian bank stake a personal guarantee from the firm's promoter when they enter into a loan with the firm. At present, there are a separate set of provisions that guide recovery on the loan to the firm and on the personal guarantee to the promoter. Under a common Code, the resolution can be synchronous, less costly and help more efficient recovery."

"6.1 The applicability of the Code

The Committee considers the following categories of entities to whom the individual insolvency and bankruptcy provisions shall apply:

- Sole proprietorships where the legal personality of the proprietorship is not different from the individual who owns it.
- Personal guarantors
- Consumer finance borrowers …."

overrides all other laws), was the objective of the amendment of 2018 and the impugned notification. The learned Attorney General also pointed out to Section 30, which enacts that an Adjudicatory authority approved resolution plan binds all stakeholders. However, at the same time, in the event a resolution plan permits creditors to continue proceedings against the personal guarantor, then such personal guarantors would continue to be liable to discharge the debts owed to the creditor by the corporate debtor, which would be limited of course to the extent of debt that did not get repaid under the resolution plan. The Attorney General also relied on *Embassy Property Developments (P) Ltd. v. State of Karnataka*[24] where this court had examined and dealt with the interplay between Sections 5(22), 60 and 179 of the Code.

40. Mr. Tushar Mehta, Solicitor General of India, supported the submissions of the Attorney General. He too stressed that different provisions were brought into force on different dates. He highlighted that Section 1(3) of the Code confers wide powers enabling the Central Government to operationalize the Code in a subject-wise and (not necessarily in a contiguous manner) – particular sections, provisions or parts. He urged that the petitioner's interpretation of the statute is unduly narrow and would result in disrupting the Code. It was argued that Section 2 of the Code is not a definition clause – but rather acts as a lever to provide a mechanism for a phased and limited interpretation of the Code. He underlined, therefore, that Section 2 represents Parliamentary classification as regards classes of debtors who fall under the Code. The Solicitor General pointed out that before the 2018 amendment, Section 2(e) was generic and that the amendment classified three distinct types of entities. The personal guarantors to corporate debtors are no doubt individuals like others, but are in fact at the centre of insolvency of a corporate debtor. He submitted that a predominant reason for the insolvency of corporate debtors invariably is the role played by its directors, etc., who are personal guarantors and are or were, mostly at the helm of affairs of the corporate debtor itself.

41. The Solicitor General submitted that Part-II of the Code applied to all categories of corporate entities who are debtors. By virtue of Section 3(8), the corporate debtor is a corporate or juristic entity that owes a debt to any person. Likewise, the corporate guarantor under Section 3(7) is a corporate person who has stood guarantee to a corporate debtor. Before the impugned notification, proceedings in Part-II were confined to corporate debtors and only another class, i.e. corporate guarantors. Personal guarantors and

24 (2020)13 SCC 308.

corporate guarantors formed part of the same class inasmuch as they were guarantors since they had furnished guarantees to corporate debtors to secure their loans. Yet, personal guarantors being individuals were not included in Part-III, for functional and operational purposes. The Solicitor General submitted that Part-II outlines the mechanism involved in regard to insolvency resolution functionally and operationally designed for corporate bodies. This takes into its sweep a resolution professional, committee of creditors as third parties taking over the debtor and taking crucial decisions for insolvency resolution. This statutory mechanism could not be applied to individuals as there is no question of "take over" of individuals. Individuals, who stand guarantee to corporate debtors and whose liability is co-terminus with such corporate debtors were therefore, outside the field of the Code. This resulted in an anomaly inasmuch as one set of guarantors to corporate debtors, i.e. individuals or personal guarantors were outside the purview of the Code whereas other set of guarantors, i.e. corporate guarantors were subjected to the provisions of the Code and could also be proceeded against in Part-II. As a result, a conscious decision was taken to enforce Part-III and operationalize the mechanism suitably for a class of individuals, i.e. personal guarantors. This decision was implemented through the impugned notification.

42. Apart from reiterating the submission of the Attorney General with regard to the flexibility in respect of notifying parts of the Code on different dates, having regard to the difference in subject matter and those governed by it, the learned Solicitor General also relied upon the decision reported as *J. Mitra and Co. Pvt. Ltd. v. Assistant Controller of Patents*[25]. He relied upon the report of the Working Group of Individual Insolvency (Regarding Strategy and Approach for Implementation of the Provisions of the Insolvency and Bankruptcy Code, 2016) to deal with insolvency of guarantors to corporate debtors and individuals having business, which had highlighted that in the absence of notification of provisions of the Code dealing with insolvency and bankruptcy of personal guarantors to corporate debtors and creditors are unable to effectuate the provisions of the Code and access remedies available under the Code. He submitted that this court has repeatedly held in several decisions that there is no compulsion that all provisions of law or an Act of Parliament or any other legislation should be brought into force at the same time. The legislature in its wisdom may clothe the executive with discretion to bring into force different parts of a statute on different dates, or in respect of different subject matters, or in different areas. Reliance was placed upon *Lalit*

25 (2008) 10 SCC 368.

*Narayan Mishra Institute of Economic Development v. State Of Bihar & Ors. Etc*[26] and *Javed & Ors v. State of Haryana & Ors*[27]. It was submitted that the Central Government, therefore, acted within its rights to confine the enforcement of the provisions of the Code to a class of individuals, i.e., to personal guarantors, without altering the identity and structure of the Code. It was submitted that this is permissible as it is within the larger power of enforcement of the statute, which encompasses the discretion to enforce the law in respect of a definite category, provided that such an act of enforcement would not alter the character of the Code. It was therefore, submitted that the enforcement of parts through the impugned notification – only in respect of personal guarantors in no way alters the identity or character of the Code.

**43.** The Solicitor General further submitted that the liability of a guarantor is co- extensive, joint and several with that of the principal borrower unless the contrary is provided by the contract. A discharge which a principal borrower may secure by operation of law (for instance on account of winding up or the process under the Code) does not however absolve the surety from its liability. Section 128 of the Indian Contract Act, 1872 ("Contract Act") provides that the liability of a principal debtor and a surety is co-extensive, unless provided to the contrary in the contract. The word *"co-extensive"* is an objective for the word 'extent' and it can relate only to the quantum of the principal debt. The Solicitor General relied on certain decisions in this regard.[28] It is stated that the creditor also has the liberty to proceed against the principal borrower and all sureties simultaneously; in this regard, he cited *Bank of Bihar Ltd. v. Dr. Damodar Prasad & Anr*[29]. It is submitted that no court or co-surety can limit such a right. For this proposition, reliance was placed on *State Bank of India v. Index port Registered*[30] and *Industrial Investment Bank of India v. Biswanath Jhunjhunwala*[31]. Counsel also submitted that a surety cannot alter or defer such a right of the creditor. Hence, until the debt is paid off to the creditor in entirety, the guarantor is not absolved of its joint and several liability to make payment of the amounts outstanding in favour of the creditor.

44. The Solicitor General submitted that neither the guarantor's

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26 (1988) 2 SCC 433.

27 (2003) 8 SCC 369.

28 Gopilal J Nichani v. Trac Inds. and Components Ltd, AIR 1978 Mad. 134.

29 AIR 1969 (1) SCR 620.

30 AIR 1992 SC 1740.

31 (2009) 9 SCC 478.

obligations are absolved nor discharged in terms of Sections 133 to 136 of the Indian Contract Act, 1872, on account of release/discharge/composition or variance of contract which a principal borrower may secure by way of *operation of law* for instance as under the Code. The rights of a creditor against a guarantor continue even in the event of bankruptcy or liquidation, stressed the Solicitor General, and relied on *Maharashtra State Electricity Board Bombay v. Official Liquidator, High Court, Ernakulum & Anr.*[32], where this court considered the interplay of Sections 128 and 134 of the Contract Act in the facts of the case. In that case, a company whose advances were secured by a guarantee went into liquidation. The court held that the fact the principal debtor went into liquidation had no effect on the liability of the guarantor, because the discharge secured of the principal borrower was by "operation of law" and involuntary in nature. This was followed in *Punjab National Bank v. State of UP*[33]. This court held that:

> "In our opinion, the principle of the aforesaid decision of this court is equally applicable in the present case. The right of the appellant to recover money from respondents Nos. 1,2 and 3 who stood guarantors arises out of the terms of the deeds of guarantee which are not in any way superseded or brought to a naught merely because the appellant may not be able to recover money from the principal-borrower. It may here be added that even as a result of the Nationalization Act the liability of the principal-borrower does not come to an end. It is only the mode of recovery which is referred to in the said Act."

45. To a similar end, the judgment of the Calcutta High Court in *Gouri Shankar Jain v. Punjab National Bank & Anr.*[34] were relied on. It was held that none of the obligations of the surety under Section 133 to 139, 141 and 145 of the Contract Act are discharged on account of admission of a Section 7 application. As such, a discharge is on account of a statute and involuntary in nature. It was also argued that similarly, in terms of Section 31 of the Code, a resolution plan approved by the Adjudicating Authority is binding on all stakeholders including the guarantors, and hence, the release/ discharge/ composition or variance of contract with the principal borrower in terms of a resolution plan, is "statutorily" presumed to be consented by the guarantors in question. Therefore, by way of approval of a resolution plan, any release/discharge secured by the principal borrower or entering into a composition with the principal borrower (reference to Section 135 of the

32 1982 (3) SCC 358.

33 (2002) 5 SCC 80.

34 2019 SC Online Cal 7288 at para 34 and 35.

Contract Act) cannot discharge the guarantor in any manner what so ever. The judgment of this court in *State Bank of India v. V. Ramakrishnan &Ors.*[35] too was relied on, where the court recognized that a guarantor cannot seek a discharge of its liability on account of approval of a resolution plan, and the terms of such a plan can provide for the continuation of the debt of the guarantors. It was submitted that the continuation of a financial creditor's claim against a guarantor would not lead to double recovery of a claim as the financial creditor would be able to recover only the balance debt which remains outstanding and unrecovered from the principal borrower. There are enough safeguards against double recovery as provided under (a) the settled principle of contract law that simultaneous remedy against the co-obligors does not permit the creditor to recover more than the total debt owed to it, and (b) the provisions of the Code itself. The Solicitor General relied on the acknowledged practice, known as, the principle of "double dip" or the notion of dual nature of recovery by a creditor for the same debt from two entities - be it principal borrower and guarantor or co-guarantors or co-debtors. When a primary obligor and a guarantor are liable on account of a single claim, the creditor can assert a claim for the full amount owed against each debtor until the creditor is paid in full (that is it can double dip). This means that in case a portion of debt is recovered from one of the entities, either principal borrower or guarantor, the other would be liable for the unsatisfied amount of the claim, the principal borrower being joint and several with the surety. This principle is opposed to the principle prohibiting "double proof" in which the same debt is pursued against the same estate twice, leading to double payment. This right of double dip of a creditor was spoken of, in recent judgment *PAFCO 2916 INC. C/o Pegasus Aviation Finance Company vs. Kingfisher Airlines Limited*[36], where the decree holders initiated simultaneous execution proceedings against both the principal debtor and the guarantor on the basis of the same decree, and the Executing Court *suo moto* raised the issue of maintainability to hold that both the execution petitions are not simultaneously maintainable. The High Court of Karnataka disagreed and held that the decree holders cannot be directed to amend their claims in each of the execution petitions to only half the decretal amount. Reliance was also placed on the judgment of the UK Supreme Court in *In Re Kaupthing Singer and Friedlander Ltd. (in administration)*[37].

**46.** Mr. Rakesh Dwivedi, learned senior counsel, appearing for the

35 2018(17) SCC 394.

36 2016 SCC OnLine Kar 5991.

37 2012 (1) All ER 883 Paras 11, 12, 53-54.

State Bank of India, urged that the substance of the petitioners' argument is that Section 1(3) does not empower the Central Government to enforce the provisions of Part III of the Code selectively to personal guarantors of Corporate Debtors only. The petitioners highlight that Part III applies to individuals and partnership firms in a composite manner, and the impugned notification dated 15.11.2019 splits up that unity by enforcing the provisions of Part III only upon personal guarantors of corporate debtors. It is urged that the submission that Section 1(3) does not confer the power of modification on the Central Government is presented by characterizing Section 1(3) as conditional legislation. He submits that Section 1(3) has two distinct dimensions. Parliament firstly conferred on the Central Government not only the power to determine the date on which the Code will come into force, but also empowers it to appoint different dates for different provisions of the Code. It was intended that all the provisions of the Code may not be enforced at once. Given the width of impact and with an eye on the objectives set out in the statement of objects and reasons and preamble, a staggered enforcement was anticipated.

47. Mr. Dwivedi stated that nothing much depends on the characterization of Section 1(3) as conditional or delegated legislation. Even conditional legislation involves a delegation of legislative power to the authority concerned. Under Section 1(3), the Central Government is only a delegate of the Parliament. In some cases, such provisions or provisions of broadly similar nature have been described by this court as conditional legislation, but equally in some cases such a power has been described as delegated legislation by different judges. Reliance was placed on *Delhi Laws Act, 1912, In re v. Part 'C' States (Laws) Act, 1950* (*supra*) and *Lachmi Narain v. Union of India*[38].

48. It was urged that provisions of diverse nature have been characterized as conditional legislation by this court. The cases relied upon by the Petitioners related to a challenge to the validity of legislative provisions on the ground of excessive delegation of legislative power. In *In re Delhi Laws,* the Central Government was expressly empowered to enforce certain laws with *"modifications and restrictions"*. The power of modification was held to be limited to such modifications as did not affect the identity or structure or the essential purpose of the law. This was a departure from the judgment of the Federal Court in *Jatindra Nath*[39]. However, in the case of *Lachmi Narain,* the notification issued by the Government was challenged, and this court held that the real question was whether the delegate acts within the general scope of the affirmative

38 (1976) 2 SCC 953, para 49.

39 *Jatindra Nath Gupta v. State of Bihar* (1949-1950) 11 FCR 595.

words which give the power, and without violating any express conditions or restrictions by which that power is limited. While *Jatindra Nath* involved extension of the life of a temporary Act, in the *Delhi Laws* case, the power under consideration was to extend the laws of Part C States to Part A States. Later, in *Raghubar Swarup v. State of U.P*[40], the State Government was conferred power by Section 2 of U.P. Zamindari Abolition and Land Reforms Act, 1951, to extend the Act to other areas in the State. It involved selection of geographical area for applying the law. Similarly, in *Tulsipur Sugar Company*[41], the power was conferred to extend the U.P. Town Areas Act, 1914, to a notified area. Learned senior counsel argued that in *Sardar Inder Singh (supra)*, the power conferred on the executive to extend the life of a temporary Act, even when no outer limit is prescribed, was upheld. In *Bangalore Woollen, Cotton and Silk Mills v. Bangalore Corporation*[42] the power conferred on the Municipal Corporation to levy octroi on "other articles not specified in the Schedule" was upheld saying that it was more in the nature of conditional legislation. Reliance was also place on *ITC Bhadrachalam v. Mandal Revenue Officer*[43], where the power to exempt any class of non- agricultural land and was upheld saying:

> *"the power to bring an Act into force as well as the power to grant exemption are both treated, without a doubt, as belonging to the category of conditional legislation"*.

Learned counsel therefore urged that the line of demarcation between conditional and delegated legislation at times gets blurred.

49. While judging the validity of the legislations, this Court has examined the sufficiency of the guidance afforded by the legislative policy indicated in the relevant statute. For this, reliance was placed on *Edward Mills v. State of Ajmer*[44]. All these establish that diverse provisions apart from those which empower the executive to enforce the Act or provisions of the Act have been characterized as conditional legislation and their validity and scope has been determined in the light of the text, context and purpose of the Act.

**50.** Learned counsel stated that a schematic, structural and purposive construction of Section 1(3) of the Code needs to be adopted to determine the scope of the power conferred on the Central Government by Section

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40 AIR 1959 SC 909 at p. 913

41 (1980) 2 SCC 295.

42 (1961)3 SCR 698.

43 (1996) 6 SCC634.

44 (1955) I SCR 735.

1(3) of the Code. The Petitioners apply the rule of literal construction and seek to construe Section 1(3) in isolation, without reference to the context, scheme or purpose of the Code. It is submitted that the ambit of Section 1(3) should not be determined by merely applying the doctrine of literal construction. All provisions of the Code, including the enforcement provision should be construed in the context of the entire enactment and the approach should be schematic, structural and purposive. Furthermore, Section 1(3) should not be construed in isolation. It is well settled that a statute has to be read as a whole. The scope of the power under Section 1(3) of the Code cannot be expounded without taking note of the scheme of the Code and the other related provisions. Counsel relied on the following observations of this court in *State of West Bengal v. Union of India*[45]

> "*In considering the true meaning of words or expression used by the legislature the court must have regard to the aim, object and scope of the statute to be read in its entirety. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."*

51. Legislative intent, it is urged, cannot be gathered by a bare mechanical interpretation of words or mere literal reading. The words are to be read and understood in the context of the scheme of the Act and the purpose or object with which the power is conferred. As Iyer, J. observed in *Chairman Board of Mining Examination v. Ramji*[46] *"to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the deha and the dehi of the provision"*. This has been followed in *Directorate of Enforcement v. Dipak Mahajan*[47]. Recently too, this court has moved on to accept purposive interpretation of the statute as the correct approach to ascertain legislative intent. If the given words can reasonably bear a construction which effectuates the purpose or object then that construction is to be preferred. In this regard, the decision in *Arcelor Mittal v. Satish Kumar Gupta*[48] and *Swiss Ribbons (supra)* were relied on.

52. Mr. Dwivedi stated that the impugned notification does not modify any provisions of the Code. By enforcing certain provisions of the Code by its seven clauses*" only in so far as they relate to personal guarantors*

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45 (1964) ISCR 371, at para 69.

46 AIR 1977 SC 965 at p. 968.

47 (1994) 3 SCC 440.

48 (2019) 2 SCC 1, at para 27-29.

*to corporate debtors"*, the notification does not modify any legislative provision. It merely carries out the Parliamentary intention as expressed by the scheme, structure and purpose of the Code. Section 1(3), Section 2, Section 3(23), Section 5(5)(a) and (22), Section 14(3), Section 31(1)and in particular, Section 60 and Section 179 are indicative of the fact that the scheme and structure of the Code involves a parliamentary hybridization and legislative fusion of the provisions of Part III, in so far as personal guarantors of corporate debtors are concerned. The object of this hybridization is to empower the NCLT to deal with the insolvency resolution and bankruptcy process of the corporate debtor along with the corporate guarantor and personal guarantor of the corporate debtor. Parliament is conscious of the fact that personal guarantors to corporate debtors are generally promoters or close relatives of corporate debtors, and in many cases, the corporate's indebtedness was due to acts misfeasance and siphoning of funds done by personal guarantors. Apart from this, personal guarantors to corporate debtors have a contractually agreed debt alignment with such debtors. They are coextensively as well as jointly and severally responsible for the same debt. As Parliament created a legislative hybridization, Part III of the Code had to be enforced by the Central Government under Section 1(3) with Parliamentary categorization through Section 2. The unifying of the forum for insolvency resolution/bankruptcy of the corporate debtor along with its personal guarantor is a Parliamentary dispensation and determination. Therefore, Section 1(3) empowers the Central Government to appoint different dates for different provisions.

53. Learned senior counsel highlighted Section 60(1), (2), (3) and (4) and urged that Parliament had merged the provisions of Part III with the process undertaken against the corporate debtors under Part II. The process of Part II and the provisions of Part III were legislatively fused for the purpose of proceedings against personal guarantors along with the corporate debtors. He argued that Section 179, the corresponding provision in Part III, begins by deploying the phrase *"subject to the provisions of Section 60".* Section 60(4) incorporates the provisions of Part III, in relation to proceedings before the NCLT against personal guarantors. Counsel cited *Western Coalfield Ltd. v. Special Area Development Authority*[49]*; Baleshwar Dayal v. Bank of India*[50]*,* and *Nagpur Improvement Trust v. Vasantrao*[51]*.* It was submitted that other individuals and partnership firms do not figure in this Parliamentary hybridization/fusion. Sections 2(e) and 2(g) when read together, would indicate that personal guarantors are also individuals. Act 8 of 2018 has brought about a trifurcation of the categories which were

49 (1982) 1SCC 125, paras 3, 17, 18.

50 (2016) 1 SCC 444. paras 6-8.

51 (2002) 7SCC 657, para 31.

comprehended in Section 2(e) as it stood before the amendment. Section 179 also indicates that personal guarantors are individuals and Part III is applicable to them. In fact, it is by operation of the provisions in Chapter III of Part III that personal guarantors get the benefit of interim moratorium [Section 96] and moratorium [Section 101]. Personal guarantors do not get moratorium under Section 14. In this regard, reliance is placed on *V. Ramakrishnan* (*supra*). It is contended that the hybridization achieved by the impugned notification does not create any anomaly or problem in enforcement.

54. It was lastly contended that Section 78 is declaratory and states that Part III applies to individuals and partnership firms. It is made applicable to the various categories of individuals and partnership firms. Both Sections 2 and 78 carry the margin caption of "application". Section 2 commences with *"the provisions of this Code shall apply"* to the six categories and Section 78 also declares that *"Part III shall apply"* to the mentioned categories. Section 2 embraces the whole Code including Section 78 and other provisions enforced by the impugned notification, which clearly appoints the date of enforcement for Section 2(e) and other provisions, and Chapter III of Part III. There is no vivisection or dissection involved in the impugned notification.

55. Mr. K.V. Vishwanathan, learned senior counsel appearing for some respondents, argued that an overall reading of the provisions of the Code would show that personal guarantors to corporate debtors are a distinct class of individuals (by virtue of Section 2 (e) and Section 60); the classification is not achieved through the impugned notification, but by the amending Act of 2018, by Parliament. It is emphasized that the amendment ensured that the same forum (NCLT) deals with insolvency processes of corporate debtors, and also deals with similar issues relating to personal guarantors. The statute permits Part III application by NCLT *in relation to personal guarantors*. All that the impugned notification did was to operationalize these existing provisions of the Code. Learned senior counsel cited *Brij Sundar Kapoor v. First Additional Judge*[52] to refute the petitioners' argument that the power under Section 1(3) power is a one-time power. He also relied on Section 14 of the General Clauses Act, 1897, which states that any power conferred by any Act or Regulation can be exercised *from time to time.*[53]

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52 1989 (1) SCC 561.

53 "14. Powers conferred to be exercisable from time to time—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.

**56.** Mr. Vishwanathan cited *Raghubir Sarup v. State of UP*[54] and urged that the legislature acts within its rights in enacting a law and leaving it to the executive to apply it to different geographical areas at different times, depending upon various considerations. He also relied on *Khargram Panchayat Samiti v. State of West Bengal*[55] and argued that the power to bring into force different provisions, or different parts of a statute, on different dates, having regard to the subject matter, is part of the incidental power conferred by Parliament under Section 1 (3) of the Code.

**57.** Mr. Ritin Rai, learned senior counsel appearing for some respondents, urged that there is an inter connectedness between corporate debtors and personal guarantors, which was recognized by the 2018 amendment, evidenced by its Statement of Objects and Reasons. He stated that the power under Section 1(3) of the Code has been properly exercised. Mr. Rai submitted that like the impugned notification, another notification was issued on 01-05-2018[56] bringing into effect provisions of the Code in relation to a distinct class, i.e., financial service providers[57]. This was achieved by bringing into force Sections 227 to 229 of the Code. It was submitted that the discretion conferred on the executive, to experiment, and bring into force a legislation in phases, is part of the general pattern of legislative practice and it recognizes that it is not always wise or possible to enforce provisions of a new law, together, at all places, in respect of all that it seeks to cover.

## IV The Provisions of the Code and the Impugned Notification

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

58. On 28th May, 2016, the Code was published in the official gazette after its passage in Parliament. It has been hailed as a major economic measure, aimed at aligning insolvency laws with international standards. Parliament's previous attempts to ensure recovery of public debt, (through the Recovery of Debts due to Banks or Financial Institutions Act, 1993, hereafter "RDBFI Act") securitization (by the Securitization and Reconstruction and Enforcement of Security Interests Act, 2002 hereafter "SARFESI") deal with certain facets of corporate insolvency. These did not

54 AIR 1959 SC 909.

55 1987 (3) SCC 82.

56 SO 1817 (E).

57 Defined separately under Section 2 (17) of the Code.

result in the desired consequences. The aim of the Code is to a) promote entrepreneurship and availability of credit; b) ensure the balanced interests of all stakeholders and c) promote time-bound resolution of insolvency in case of corporate persons, partnership firms and individuals.

The relevant provisions of the code are extracted below:

"1. Short title, extent and commencement -

(1) *This Code may be called the Insolvency and Bankruptcy Code, 2016.*

(2) *It extends to the whole of India:*

Provided that Part III of this Code shall not extend to the State of Jammu and Kashmir.[58]

(3) *It shall come into force on such date1 as the Central Government may, by notification in the Official Gazette, appoint:*

Provided that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

***2. Application. -*** *The provisions of this Code shall apply to -*

*(a) any company incorporated under the Companies Act, 2013 (18 of 2013) or under any previous company law;*

*(b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;*

*(c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009);*

*(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf;*

*(e) personal guarantors to corporate debtors;*

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58 Proviso omitted by the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 vide S.O. 1123(E), dated 18th March 2020 (w.e.f. 18-3-2020).

*(f) partnership firms and proprietorship firms; and*

*(g) individuals, other than persons referred to in clause (e).*

***3. Definitions** – In this Code, unless the context otherwise requires, -*

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*(7) "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;*

*(8) "corporate debtor" means a corporate person who owes a debt to any person;*

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*(10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;*

*(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

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(23) "person" includes—

*(a) an individual;*

*(b) a Hindu Undivided Family;*

*(c) a company;*

*(d) a trust;*

*(e) a partnership;*

*(f) a limited liability partnership; and*

*(g) any other entity established under a statute, and includes a person resident outside India;*

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***4. Application. –***

(1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the de- fault is one crore rupees.[59]

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

***5. Definitions.*** *– In this part, unless the context otherwise requires –*

*(1) "Adjudicating Authority", for the purposes of this Part, means Na- tional Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013);*

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*(5) "corporate applicant" means--*

*(a) corporate debtor; or*

*(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or*

*(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or*

*(d) a person who has the control and supervision over the financial affairs of the corporate debtor;*

(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;

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(22) "personal guarantor" means an individual who is the surety in a contract of guarantee to a corporate debtor"

59 W.e.f. 01.12.2016 vide Notification No. SO3594(E) dated 30.11.2016.

59. Section 13 (Declaration of moratorium and public announcement) provides that the Adjudicating Authority shall (a) declare a moratorium for the purposes referred to under Section 14, (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15, and (c) appoint an interim resolution professional in the manner as laid down in Section 16. A public announcement is to be made immediately after the appointment of the interim resolution professional. Section 14 (Moratorium) provides that on the insolvency commencement date, the Adjudicating Authority shall declare a moratorium prohibiting (a) the institution or continuation of suits or proceedings against the corporate debtor including execution of a judgment, decree, order, etc; (b) transferring, encumbering alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest; (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; and (d) recovery of any property by an owner or lessor where such property is occupied by, or in the possession of the corporate debtor. Section 16 provides for the appointment and tenure of an interim resolution professional.

60. The highlight of the Code is the institutional framework it envisions. This framework consists of the regulator (Insolvency and Bankruptcy Board of India) insolvency professionals, information utilities and adjudicatory mechanisms (NCLT and National Company Law Appellate Tribunal-NCLAT). These institutions and structures are aimed at promoting corporate governance and also enable a time bound and formal resolution of insolvency. The major features of the Code include a two- step process -insolvency resolution for corporate debtors where the minimum amount of the default is ₹1,00,00,000/-. Two processes are proposed by the Code: a) Insolvency resolution process (Sections 6 to 32 of the Code) - In this, the creditors play a crucial role in evaluating and ultimately determining whether the debtor's business can be continued and if so, what are the choices for its revival; and b) Liquidation [Sections 33-54 Code] - If revival fails or is not a feasible option, then creditors can resolve to wind up the company. Upon winding up, assets of the debtor are to be distributed.

61. The insolvency resolution process under Section 6 can be initiated by the financial creditor [Section 7 of the Code] or operational creditor [subject to issuing a demand notice to the corporate debtor stating the amount involved in the default, under Section 8, of the Code] against the corporate debtor in the NCLT. Voluntary insolvency proceedings may also be initiated by the defaulting company, its employees or shareholders

[Section 10 of the Code]. Once the resolution process begins, for the entire period, a moratorium is ordered by the NCLT on the debtor's operations. During this period, no judicial proceedings can be initiated. There can also be no enforcement of securities, sale or transfer of assets or termination of essential contracts against the debtor. The next step is appointment of an Interim Resolution Professional under Section 16 of the Code. The resolution professional has to work under the broad guidelines of the committee of creditors (or "COC"- in terms of Section 21 of the Code). The CoC includes all the financial creditors of the corporate debtor, except all related parties and operational creditors. Further, Section 22 of the Code provides that the CoC has to appoint the resolution professional. This resolution professional can also be the interim resolution professional. A vote of 75% of the voting share shall determine the decisions of the committee to opt for either a revival or liquidation (Section 30). The decision of the CoC is binding not only on debtors, but also on all the other creditors. Different types of revival plans include fresh finance, sale of assets, haircuts (i.e. acceptance by creditors of amounts lower than what is due to them), change of management etc. The committee should approve the resolution plan forwarded by the creditor. Only upon approval does the resolution professional forward the plan to the adjudicating authority for final approval. The resolution plan has to be approved by the NCLT; while doing so, it can consider objections to the resolution plan by any party interested in voicing such objections (i.e. operational creditors, financial creditors, etc).

62. Section 78(3) of the Code states that the adjudicating authority, for the purpose of Part III (that deals with insolvency Resolution and bankruptcy of individuals and partnership firms) would be the Debt Recovery Tribunal(DRT) that was established under the RDBFI Act. The adjudicating authority for corporate insolvency (companies, LLPs and limited liability entities), on the other hand, is the NCLT. The appeal from the NCLT lies to the National Company Law Appellate Tribunal (NCLAT). The appeal from the DRT lies to the Debt Recovery Appellate Tribunal (DRAT). This court hears appeals from both the NCLAT and the DRAT.

63. The provisions of the Code were brought into force through different notifications issued on different dates. The impugned notification issued in the Gazette of India Extraordinary, by the Ministry of Corporate Affairs, reads as follows:

"NOTIFICATION

New Delhi. the 15th November, 2019

S.O. 4126(E).- In exercise of the powers conferred by sub-section (3) of section I of the Insolvency and Bankruptcy Code. 2016 (31 of 2016). the Central Government hereby appoints the 1st day of December,2019 as the date on which the following provisions of the said Code only in so far as they relate to personal guarantors to corporate debtors. shall come into force:

(1) clause (e) of section 2;

(2) section 78 (except with regard to fresh start process) and section 79;

(3) sections 94 to 187 (both inclusive);

(4) clause (g) to clause (i) of sub-section (2) of section 239;

(5) clause (m) to clause (zc) of sub-section (2) of section 239;

(6) clause (zn) to clause (zs) of' sub-section (2) of section 240; and

(7) Section 249.

[F. No. 30/21/2018-Insolvency Section]
Gyaneshwar Kumar Singh,
Jt. Secy."

## V Analysis and conclusions

64. The principal ground of attack in all these proceedings has been that the executive government could not have selectively brought into force the Code, and applied some of its provisions to one sub-category of individuals, i.e., personal guarantors to corporate creditors. All the petitioners in unison argued that the impugned notification, in seeking to achieve that end, is *ultra vires.* This argument is premised on the nature and content of Section 1(3), which the petitioners characterize to be *conditional legislation.* Unlike delegated legislation, they say, conditional legislation is a limited power which can be exercised once, in respect of the subject matter or class of subject matters. As long as different dates are designated for bringing into force the enactment, or in relation to different areas, the executive acts within its powers. However, when it selectively does so, and segregates the subject matter of coverage of the enactment, it indulges in impermissible legislation. Reliance has been placed on

several judgments of this court, with respect to the limits of such power- notably the decisions of the Privy Council in *Burah,* of the Federal Court in *Narothamdas Jethabai; In Re Delhi Laws Act, 1912, Jatindranath Gupta, Hamdard Dawakhana, Sabanayagam* and *Vasu Dev Singh.*

65. In *Burah,* the question arose in the context of a law made by the Indian Legislature removing the district of Garo Hills from the jurisdiction of the civil and criminal courts and the law applied to them, and to vest the administration of civil and criminal justice within the same district in such officers as the Lieutenant- Governor of Bengal might appoint for the purpose. By Section 9, the Lt. Governor was empowered from time to time, by notification in the Calcutta Gazette, to extend, *mutatis mutandis*, all or any of the provisions contained in the Act to the Jaintia, Naga and Khasi Hills and to fix the date of application thereof as well. By a notification, the Lt. Governor extended all the provisions, which was challenged by Burah, who was convicted of murder and sentenced to death. The High Court of Calcutta upheld his contention and held that Section 9 of the Act was *ultra vires* the powers of the Indian Legislature as it was a delegate of the Imperial Parliament and as such further delegation was not permissible. The Privy Council overturned that verdict, and held:

> "Legislation which does not directly fix the period for its own commencement, but leaves that to be done by an external authority, may with quite as much reason he called incomplete; as that which does not itself immediately determine the whole area to which it is to be applied, but leaves this to be done by the same external authority. If it is an act of legislation on the part of the external authority so trusted to enlarge the area within which a law actually in operation is to be applied, it would seem à fortiori to be an act of legislation to bring the law originally into operation by fixing the time for its commencement….."
>
> It was also observed that:
>
> "Their Lordships agree that the Governor-General in Council could not, by any form of enactment, create in India, and arm with general legislative authority, a new legislative Power, not created or authorized by the Councils Act. Nothing of that kind has, in their Lordships' opinion, been done or attempted in the present case."

66. The next case cited was *Jatindra Nath Gupta* where the validity of Section 1(3) of the Bihar Maintenance of Public Order Act, 1948 was challenged on the ground that it empowered the Provincial Government to extend the life of the Act for one year with such modification as it could deem

fit. The Federal Court held that the power of extension with modification is not a valid delegation of legislative power because it is an essential legislative function which cannot be delegated. The court observed, *inter alia,* that:

> "The proviso contains the power to extend the Act for a period of one year with modifications, if any. It is one power and not two severable powers. The fact that no modifications were made in the Act when the power was exercised cannot help in determining the true nature of the power. The power to extend the operation of the Act beyond the period mentioned in the Act prima facie is a legislative power. It is for the Legislature to state how long a particular legislation will be in operation. That cannot be left to the discretion of some other body. The power to modify an Act of a Legislature, without any limitation on the extent of the power of modification, is undoubtedly a legislative power. It is not a power confined to apply the Act subject to any restriction, limitation or proviso (which is the aim as an exception) only. It seems to me therefore that the power contained in the proviso is legislative."

67. In the case of *In re Delhi Laws Act, 1912,* a reference made under Article 143 of the Constitution, saw a polyvocal court and a plurality of judicial opinion by the seven judge bench of this court. Three provisions were referred for the opinion of this court. Having regard to the majority view, it was held that essential legislative functions could not be delegated, and that the power to repeal an enactment, extended by the Central Government, to a part C state, could not be delegated. The majority's conclusion was that the power of repeal is legislative. The observations in some of the judgments are telling, and are reproduced below. Kania, CJ observed as follows:

> "53. It is common ground that no law creating such bodies has been passed by the Parliament so far. Article 246 deals with the distribution of legislative powers between the Centre and the States but Part 'C' States are outside its operation. Therefore on any subject affecting Part 'C' States, Parliament is the sole and exclusive legislature until it passes an Act creating a legislature or a council in terms of Article 240. Proceeding on the footing that a power of legislation does not carry with it the power of delegation (as claimed by the Attorney-General), the question is whether Section 2 of the Part 'C' States (Laws) Act is valid or not. By that section the Parliament has given power to the Central Government by notification to extend to any part of such State (Part 'C' State), with

such restrictions and modifications as it thinks fit, any enactment which is in force in Part A State at the date of the notification. The section although framed on the lines of the Delhi Laws Act and the Ajmer-Merwara Act is restricted in its scope as the executive Government is empowered to extend only an Act which is in force in any of the Part A States. For the reasons I have considered certain parts of the two sections covered by Questions 1 and 2 ultra vires, that part of Section 2 of the Part 'C' States (Laws) Act, 1950, which empowers the Central Government to extend laws passed by any legislature of Part A State, will also be ultra vires. To the extent the Central Legislature or Parliament has passed Acts which are applicable to Part A States, there can be no objection to the Central Government extending, if necessary, the operation of those Acts to the Province of Delhi, because the Parliament is the competent legislature for that Province. To the extent however the section permits the Central Government to extend laws made by any legislature of Part A State to the Province of Delhi, the section is ultra vires."

Mahajan, J had this to say:

"The section does not declare any law but gives the Central Government power to declare what the law shall be. The choice to select any enactment in force in any province at the date of such notification clearly shows that the legislature declared no principles or policies as regards the law to be made on any subject. It may be pointed out that under the Act of 1935 different provinces had the exclusive power of laying down their policies in respect to subjects within their own legislative field. What policy was to be adopted for Delhi, whether that adopted in the province of Punjab or of Bombay, was left to the Central Government. Illustratively, the mischief of such law-making may be pointed out with reference to what happened in pursuance of this section in Ajmer-Merwara. The Bombay Agricultural Debtors' Relief Act, 1947, has been extended under cover of this section to Ajmer-Merwara and under the power of modification by amending the definition of the word 'debtor' the whole policy of the Bombay Act has been altered. Under the Bombay Act a person is a debtor who is indebted and whose annual income from sources other than agricultural and manly labour does not exceed 33 per cent of his total annual income or does not exceed Rs 500, whichever is greater. In the modified statutes "debtor" means an agriculturist who owes a debt,

and "agriculturist" means a person who earns his livelihood by agriculture and whose income from such source exceeds 66 per cent of his total income. The outside limit of Rs 500 is removed. The exercise of this power amounts to making a new law by a body which was not in the contemplation of the Constitution and was not authorized to enact any laws. Shortly stated, the question is, could the Indian Legislature under the Act of 1935 enact that the executive could extend to Delhi laws that may be made hereinafter by a legislature in Timbuctoo or Soviet Russia with modifications. The answer would be in the negative because the policy of those laws could never be determined by the law making body entrusted with making laws for Delhi. The Provincial Legislatures in India under the Constitution Act of 1935 qua Delhi constitutionally stood on no better footing than the legislatures of Timbuctoo and Soviet Russia though geographically and politically they were in a different situation.

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***271.*** *For reasons given for answering Questions 1 and 2 that the enactments mentioned therein are ultra vires the constitution in the particulars stated, this question is also answered similarly. It might, however, be observed that in this case express power to repeal or amend laws already applicable in Part-C States has been conferred on the Central Government. Power to repeal or amend laws is a power which can only be exercised by an authority that has the power to enact laws. It is a power coordinate and coextensive with the power of the legislature itself. In bestowing on the Central Government and clothing it with the same capacity as is possessed by the legislature itself the Parliament has acted unconstitutionally."*

B.K. Mukherjea, J, held as follows:

*"**342.** It will be noticed that the powers conferred by this section upon the Central Government are far in excess of those conferred by the other two legislative provisions, at least in accordance with the interpretation which I have attempted to put upon them. As has* been stated already, it is quite an intelligible policy that so long as a proper legislative machinery is not set up in a particular area, the Parliament might empower an executive authority to introduce laws validly passed by a competent legislature and actually in force

> in other parts of the country to such area, with each modifications and restrictions as the authority thinks proper, the modifications being limited to local adjustments or changes of a minor character. But this presupposes that there is no existing law on that particular subject actually in force in that territory. If any such law exists and power is given to repeal or abrogate such laws either in whole or in part and substitute in place of the same other laws which are in force in other areas, it would certainly amount to an unwarrantable delegation of legislative powers. To repeal or abrogate an existing law is the exercise of an essential legislative power, and the policy behind such acts must be the policy of the legislature itself. If the legislature invests the executive with the power to determine as to which of the laws in force in a particular territory are useful or proper and if it is given to that authority to replace any of them by laws brought from other provinces with such modifications as it thinks proper, that would be to invest the executive with the determination of the entire legislative policy and not merely of carrying out a policy which the legislature has already laid down. Thus the power of extension, which is contemplated by Section 2 of Part-C States (Laws) Act, includes the power of introducing laws which may be in actual conflict with the laws validly established and already in operation in that territory…."

68. It is apparent that the legislation which this court had to deal with had virtually granted what was described as a *carte blanche* in regard to whether to extend the provisions of any state Act, if so, which, the power of modification, as well as the power of repeal. The judges were agreed that within the broad remit of delegated legislative power, as long as essential legislative powers were not delegated, the provisions would not be *ultra vires.* However, the power to extend laws that Parliament had not enacted (as it was competent to enact, in respect of Part C states) as well as the power to repeal, was held to be legislative in content. Therefore, the court held such power to be *ultra vires.* This is evident from the following Opinion of the court, recorded as a result of the majority judgment:

> "OPINION OF THE COURT
>
> 357. The Court held by a majority that the provisions contained in Questions 1 and 2 are not ultra vires the legislatures which passed the Act containing those provisions. As regards the section mentioned on Question 3, the first part was held to be intra vires, but the second portion, which is in the following terms:

> "provision may be made in any enactment so extended, for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part-C State", is ultra vires the Indian Parliament which passed the Act."

69. In *Narottamdas Jethabhai* (*supra*) three issues were involved; one of them concerned the question of empowering the executive to designate a court to exercise jurisdiction upto ₹25,000/-, i.e. Section 4 of the Bombay City Civil Courts Act[60]. The contention successfully raised before the High Court was that once the legislature had conferred jurisdiction upto a pecuniary limit of ₹10,000/- to the City Civil Court, delegating the power to increase that jurisdiction was *ultra vires.* The argument was repelled by a majority of judges (Mahajan, Fazal Ali and B.K. Mukherjea, JJ). Fazal Ali, J stated that

> "22. It is contended that this section is invalid, because the Provincial Legislature has thereby delegated its legislative powers to the Provincial Government which it cannot do. This contention does not appear to me to be sound. The section itself shows that the Provincial Legislature having exercised its judgment and determined that the New Court should be invested with jurisdiction to try suits and proceedings of a civil nature of a value not exceeding Rs. 25,000, left it to the Provincial Government to determine when the Court should be invested with this larger jurisdiction, for which the limit had been fixed. It is clear that if and when the New Court has to be invested with the larger jurisdiction, that jurisdiction would be due to no other authority than the Provincial Legislature itself and the court would exercise that jurisdiction by virtue of the Act itself. As several of my learned colleagues have pointed out, the case of Queen v. Burah [3 A.C. 889.], the authority of which was not questioned before us, fully covers the contention raised, and the impugned provision is an instance of what the Privy Council has designated as conditional legislation, and does not really delegate any legislative power but merely prescribes as to how effect is to be given to what the Legislature has already decided. As the Privy Council has pointed out, legislation conditional on the

60 "Subject to the exceptions specified in Section 3, the Provincial Government, may by notification in the Official Gazette, invest the City Civil Court with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature, arising within the Greater Bombay and of such value not exceeding Rs. 25,000 as may be specified in the notification."

use of particular powers or on the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing, and in many instances it may be highly convenient and desirable."

Mahajan, J observed as follows:

"The fixation of the maximum limit of the court's pecuniary jurisdiction is the result of exercise of legislative will, as without arriving at this judgment it would not have been able to determine the outside limit of the pecuniary jurisdiction of the new court. The policy of the legislature in regard to the pecuniary jurisdiction of the court that was being set up was settled by Sections 3 and 4 of the Act and it was to the effect that initially its pecuniary jurisdiction will be limited to Rs. 10,000 and that in future if circumstances make it desirable - and this was left to the determination of the Provincial Government - it could be given jurisdiction to hear cases up to the value of Rs. 25,000. It was also determined that the extension of the pecuniary jurisdiction of the new court will be subject to the provisions contained in the exceptions to Section 3. I am therefore of the opinion that the learned Chief Justice was not right in saying that the legislative mind was never applied as to the conditions subject to which and as to the amount up to which the new court could have pecuniary jurisdiction. All that was left to the discretion of the Provincial Government was the determination of the circumstances under which the new court would be clothed with enhanced pecuniary jurisdiction. The vital matters of policy having been determined, the actual execution of that policy was left to the Provincial Government and to such conditional legislation no exception could be taken."

Again, the court upheld the exercise of executive discretion on the ground that there was proper legislative framework and guidance to the government, with respect to conferring jurisdiction upon the City Civil Court, beyond the limit enacted by Section 3, and Section 4 was enacted to achieve that objective.

70. In *Sardar Inder Singh,* the validity of an ordinance which was extended by two notifications was involved. Section 4 of the original ordinance enacted that as long as it (the ordinance) was in force:

"no tenant shall be liable to ejectment or dispossession from the whole or a part of his holding in such area on any ground whatsoever."

The validity of this ordinance, enacted originally in 1949 (and in force for two years), was extended twice, for two years each (by notifications dated June 14, 1951 and June 20, 1953). The Legislative Assembly of Rajasthan was constituted and came into being on March 29, 1952. Till then, the Rajpramukh was vested with legislative authority. On October 15, 1955, a new enactment, the Rajasthan Tenancy Act No. III of 1955 came into force, and the relationship between landlords and tenants was governed by it. Negativing the challenge to the extension of the ordinance, this court ruled, (after considering *Burah, In re Delhi Laws Act and Jatindra Nath Gupta*) that:

> "In the present case, the preamble to the Ordinance clearly recites the state of facts which necessitated the enactment of the law in question, and Section 3 fixed the duration of the Act as two years, on an understanding of the situation as it then existed. At the same time, it conferred a power on the Rajpramukh to extend the life of the Ordinance beyond that period, if the state of affairs then should require it. When such extension is decided by the Rajpramukh and notified, the law that will operate is the law which was enacted by the legislative authority in respect of " place, person, laws, powers ", and it is clearly conditional and not delegated legislation as laid down in The Queen v. Burah ([1878] 5 I.A. 178), and must, in consequence, be held to be valid. It follows that we are unable to agree with the statement of the law in Jatindra Nath Gupta v. The, State of Bihar([1949] F.C.R. 595) that a power to extend the life of an enactment cannot validly be conferred on an outside authority. In this view, the question as to the permissible limits of delegation of legislative authority on which the judgments in In re The Delhi Laws Act, 1912 ([1951] S.C.R. 747), reveal a sharp conflict of opinion does not arise for consideration, and we reserve our opinion thereon.

It is next contended that the notification dated June 20, 1953, is bad, because after the Constitution came into force, the Rajpramukh derived his authority to legislate from Article 385, and that under that Article his authority ceased when the Legislature of the State was constituted, which was in the present case, on March 29, 1952. This argument proceeds on a misconception as to the true character of a notification issued under Section 3 of the Ordinance. It was not an independent piece of legislation such as could be enacted only by the then competent legislative (1).authority of the State, but merely an exercise of a power conferred by a statute which had been previously enacted by the appropriate legislative authority. The

exercise of such a power is referable not to the legislative competence of the Rajpramukh but to Ordinance No- IX of 1949, and provided Section 3 is valid, the validity of the notification is co- extensive with that of the Ordinance. If the Ordinance did not come to an end by reason of the fact that the authority of the Rajpramukh to legislate came to an end-and that is not and cannot be disputed-neither did the power to issue a notification which is conferred therein. The true position is that it is in his character as the authority on whom power was conferred under Section 3 of the Ordinance that the Rajpramukh issued the impugned notification, and not as the legislative authority of the State. This objection should accordingly be overruled."

71. In *Hamdard Dawakhana (supra),* the validity of Section 3(d) of the Drug and Magic Remedies (Objectionable Advertisement) Act, 1954 was in issue. Section 16(1) of that Act conferred power on the government to frame rules, among others, by Section 16(2)(a) *"to specify any disease or condition to which the provisions of Section 3 shall apply"* and by Section 16(2)(b) *"prescribe the manner in which advertisement of articles or things referred to in cl. (c) of sub-s. (1) of Section 14 may be sent confidentially."* The Central Government argued that Section 3(d), which empowered it to notify *"any other disease or condition which maybe specified in the rules made under this Act"* was an instance of conditional legislation. The relevant discussion on conditional legislation, in the judgment, is extracted below:

> "The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective; Hampton & Co. v. U.S. (1) and the latter involves delegation of rule making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner -of carrying its legislation into effect as also the determination of the area to which it is to extend."

The court held that the impugned provision was impermissible delegation as it lacked legislative guidance as regards the exercise of executive power:

> "The question for decision then is, is the delegation constitutional in that the administrative authority has been supplied with proper guidance. In our view the words impugned are vague. Parliament has established no criteria, no standards and has not prescribed any principle on which a particular disease or condition is to be specified in the Schedule. It is not stated what facts or circumstances are to be taken into consideration to include a particular- condition or disease. The power of specifying diseases and conditions as given in s. 3(d) must therefore be held to be going beyond permissible boundaries of valid delegation. As a consequence the Schedule in the rules must be struck down."

**72.** In *Sabanayagam* (*supra*) the *vires* of a notification issued under Section 36 of the Payment of Bonus Act, exempting the concerned statutory board from its coverage, was in issue. This court interpreted the notification as one operating from the date of its issue, thus resulting in the application of the Payment of Bonus Act for previous accounting years. As to the nature of the power (to exempt), this court, after considering various previous decisions, held that there are three broad categories of conditional legislation, and elaborated as follows:

> "In the first category when the Legislature has completed its task of enacting a Statute, the entire superstructure of the legislation is ready but its future applicability to a given area is left to the subjective satisfaction of the delegate who being satisfied about the conditions indicating the ripe time for applying the machinery of the said Act to a given area exercises that power as a delegate of the parent legislative body. Tulsipur Sugar Co. 's case (supra) is an illustration on this point. When the Act itself is complete and is enacted to be uniformly applied in future to all those who are to be covered by the sweep of the Act, the Legislature can be said to have completed its task. All that it leaves to the delegate is to apply the same uniformly to a given area indicated by the parent Legislature itself but at an appropriate time. This would be an act of pure and simple conditional legislation depending upon the subjective satisfaction of the delegate as to when the said Act enacted and completed by the parent Legislature is to be made effective. As the parent Legislature itself has laid down a binding course of conduct to be followed by all and sundry to be covered by the sweep of the legislation and as it has to act as a binding rule of conduct within that sweep and on the basis of which all their future actions are to be controlled and guided, it can easily be visualised

that of the parent Legislature while it enacted such law was not required to hear the parties likely to be affected by the operation of the Act, is delegate exercising an extremely limited and almost ministerial function as an agent of the principal Legislature applying the Act to the area at an appropriate time is also not supposed and required to hear all those who are likely to be affected in future by the binding code of conduct uniformly laid down to be followed by all within the sweep of the Act as enacted by the parent Legislature.

However, there may be second category of conditional legislations wherein the delegate has to decide whether and under what circumstances a completed Act of the parent legislation which has already come into force is to be partially withdraw from operation in a given area or in given cases so as not to be applicable to a given class of persons who are otherwise admittedly governed by the Act. When such a power by way of conditional legislation is to be exercised by the delegate a question may arise as to how the said power can be exercised. In such an eventuality if the satisfaction regarding the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate and if such an exercise is not required to be based on the prima face proof of factual data for ad against such an exercise and if such an exercise to uniformly apply in future to a given common class of subjects to be governed by such an exercise and when such an exercise is not to be confined to individual cases only, then even in such category of cases while exercising conditional legislative powers the delegate may not be required to have an objective assessment after considering rival versions on the data placed before it for being taken into consideration by it in exercise of such power of conditional legislation. For example if a tariff is fixed under the Act and exemption power is conferred on the delegate whether to grant full exemption or partial exemption from the tariff rate it may involve such an exercise of conditional legislative function wherein the exercise has to be made by the delegate on its own subjective satisfaction and once that exercise is made whatever exemption is granted or partially granted or partially withdrawn from time to time would be binding on the entire class of persons similarly situated and who will be covered by the seep of such exemptions, partial or whole, and whether granted or withdrawn, wholly or partially, and in exercise of such a power there may be no occasion to hear the parties likely to be affected by such an exercise. For example from a settled tariff say if earlier

30% exemption is granted by the delegate and then reduced to 20% all those who are similarly situated and covered by the sweep of such exemption and its modification cannot be permitted to say in the absence of any statutory provision to that effect that they should be given a hearing before the granted exemption is wholly or partially withdrawn.

In the aforesaid first two categories of cases delegate who exercises conditional legislation acting on its pure subjective satisfaction regarding existence of conditions precedent for exercise of such power may not be required to hear parties likely to be affected by the exercise of such power. Where the delegate proceeds to fill p the details of the legislation for the future - which is part of the integrated action of policy-making for the future, it is part of the future policy and is legislative. But where he merely determines either subjectively or objectively - depending upon the "conditions" imposed in the statute permitting exercise of power by the delegate - there is no legislation involved in the real sense and therefore, in our opinion, applicability of principles of fair play, consultation or natural justice to the extent necessary cannot be said to be foreclosed. Of course, the fact that in such cases of `conditional legislation' these principles are not foreclosed does not necessarily mean that they are always mandated. In a case of purely ministerial function or in a case where no objective conditions are prescribed and the matter is left to the subjective satisfaction of the delegate (as in categories one and two explained above) no such principles of fair play, consultation or natural justice could be attracted. That is because the very nature of the administrative determination does not attract these formalities and not because the determination is legislative in character. There may also be situations where the persons affected are unidentifiable class of persons or where public interest or interests of State etc. preclude observations of such a procedure. (….)"

73. In another decision, *Vasu Dev Singh,* the court had to decide upon the validity of a notification issued by the Administrator of Chandigarh dated 7.11.2002, directing that the provision of the East Punjab Urban Rent Restriction Act, 1949, (which was extended by Parliament to Chandigarh by the East Punjab Urban Rent Restriction Act (Extension to Chandigarh) Act 1974) was not applicable to buildings and rented lands whose monthly rent exceeded ₹1500. The Administrator justified the notification as an instance of conditional legislation since the power under Section 3 enabled

him to exempt provisions of the Act to classes of buildings.[61] This court disagreed with the contention that the exemption was in the exercise of conditional legislative power:

> "16. We, at the outset, would like to express our disagreement with the contentions raised before us by the learned counsel appearing on behalf of the respondents that the impugned notification is in effect and substance a conditional legislation and not a delegated legislation. The distinction between conditional legislation and delegated legislation is clear and unambiguous. In a conditional legislation the delegatee has to apply the law to an area or to determine the time and manner of carrying it into effect or at such time, as it decides or to understand the rule of legislation, it would be a conditional legislation. The legislature in such a case makes the law, which is complete in all respects but the same is not brought into operation immediately. The enforcement of the law would depend upon the fulfilment of a condition and what is delegated to the executive is the authority to determine by exercising its own judgment as to whether such conditions have been fulfilled and/or the time has come when such legislation should be brought into force. The taking effect of a legislation, therefore, is made dependent upon the determination of such fact or condition by the executive organ of the Government. Delegated legislation, however, involves delegation of rule-making power of legislation and authorises an executive authority to bring in force such an area by reason thereof. The discretion conferred on the executive by way of delegated legislation is much wider. Such power to make rules or regulations, however, must be exercised within the four corners of the Act. Delegated legislation, thus, is a device which has been fashioned by the legislature to be exercised in the manner laid down in the legislation itself. By reason of Section 3 of the Act, the Administrator, however, has been empowered to issue a notification whereby and whereunder, an exemption is granted for application of the Act itself."

After considering a large number of decisions, including those where this court had upheld exemptions issued by different states based on rent, this court concluded that there was insufficient justification for the impugned exemption notification, and that it was *ultra vires* the power conferred upon the Administrator:

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61 "3. Exemptions.—The Central Government may direct that all or any of the provisions of this Act, shall not apply to any particular building or rented land or any class of buildings or rented lands."

> "150. Moreover, the notification has not been issued for a limited period. It will have, therefore, a permanent effect. Submission of Mr Nariman that having regard to the provisions of the General Clauses Act, the same can be modified, amended at any time and withdrawn, cannot be accepted for more than one reason. Firstly, the respondent proceeded on the basis that the said notification has been issued with a view to give effect to the National Policy i.e. amendments must be carried out until a new Rent Act is enacted. Whether the Act would be enacted or not is a matter of surmises and conjectures. It would be again a matter of legislative policy which was not within the domain of the Administrator. Secondly, the Administrator in following the National Policy proceeded on the basis that the provisions of the Act must ultimately be repealed. When steps are taken to repeal the Act either wholly or in part, the intention becomes clear i.e. the same is not meant to be given a temporary effect. When the repealed provisions are sought to be brought back to the statute-book, it has to be done by way of fresh legislation. (…) What can be done in future by another authority cannot be a ground for upholding an executive act."

74. A close reading of the decisions cited on behalf of the petitioners would reveal that the power to extend laws has been upheld. As B.K. Mukherjea observed, in *In re Delhi Laws Act, 1912 (supra):*

> "it is quite an intelligible policy that so long as a proper legislative machinery is not set up in a particular area, the Parliament might empower an executive authority to introduce laws validly passed by a competent legislature and actually in force in other parts of the country to such area, with each modifications and restrictions as the authority thinks proper, the modifications being limited to local adjustments or changes of a minor character."

Lord Selborne, in Burah (supra)held such power to be unexceptionable, saying that

> "Legislation, conditional on the use of particular powers, or on the executive of a limited discretion, entrusted by the Legislature to persons in whom it places confidence is no uncommon thing; and, in many circumstances, it may be highly convenient"

In *Jitendra Nath Gupta (supra),* what the Federal Court held objectionable was the conferment of *power to extend provisions of an enactment, beyond its expressed duration or time*:

> "It is for the Legislature to state how long a particular legislation will be in operation. That cannot be left to the discretion of some other body. The power to modify an Act of a Legislature, without any limitation on the extent of the power of modification, is undoubtedly a legislative power."

The plurality of judgments, as well as opinions rendered in *In Re Delhi Laws Act, 1912,* makes that decision a somewhat complex reading. Yet, the final *per curiam* opinion of the court was that the power to extend, modify or repeal enactments of Part C States, in respect of matters which the Parliament had *not directly enacted,* amounted to excessive legislation. Additionally, exception was taken to the power to repeal, being delegated, as it was an essential legislative power.

75. In *Sardar Inder Singh (supra),* the extension of rent restriction ordinances was in question; the court did not apply the rule in *Jatindra Nath Gupta (supra),* and ultimately held that the true position was that the Rajpramukh *"in his character as the authority on whom power was conferred under Section 3 of the Ordinance that the Rajpramukh issued the impugned notification, and not as the legislative authority of the State."* In *Hamdard Dawakhana (supra),* the argument that Section 3 was conditional legislation was *negatived* and it was held to be an instance of excessive delegation, where Parliament did not indicate any guidance for inclusion of particular instances in the schedule, leaving it to the executive government to decide the issue, in what could be an arbitrary manner. *Vasu Dev Singh (supra)*was a case where the court held that the power to exclude from application of the enactment, based on the quantum of rent, was premised on the Administrator's opinion that the legislation would be repealed, having regard to a National Policy. Moreover, the notification excluded the application of the Act in relation to premises based on rent and had a permanent character. This court held that the notification was an instance of impermissible legislation by the executive. It is evident that the court ruled in *Jitendra Nath Gupta, In re Delhi Laws Act* and *Vasu Dev Singh* that the exercise of extending an enactment beyond the time of its designated application by the legislature; the power of extension, modification and repeal of laws made by other legislative bodies; and the limiting the application of an enactment based on a quantification (an amount of rent) were legislative exercises, beyond the powers conferred. They *stricto sensu* fall in the category of *"general legislative authority, a new legislative Power, not created or authorized"* by the parent legislation, (*per Burah*, *supra*). In *Hamdard Dawakhana,* the power to *include* new drugs, was held to be *uncanalized,* i.e. without any legislative guidance.

The decision did not involve bringing into force provisions of an enactment, or exclusion, but inclusion within its fold, *without any statutory guidance* on new drugs. The case therefore involved delegated legislation.

76. It would now be useful to analyse some decisions cited by the respondents. In *Bishwambhar Singh (supra)* the power under Section 3(1) of the Orissa Estates Abolition (Amendment) Act, 1952 was involved. The provision enabled the state to declare that an estate had – in terms of notifications issued in that regard- vested in it, free from all encumbrances. This court negatived the challenge to that provision:

> "77. The long title of the Act and the two preambles which have been quoted above clearly indicate that the object and purpose of the Act is to abolish all the rights, title and interest in land of intermediaries by whatever name known. This is a clear enunciation of the policy which is sought to be implemented by the operative provisions of the Act. Whatever discretion has been vested in the State Government under Section 3 or Section 4 must be exercised in the light of this policy and, therefore, it cannot be said to be an absolute or unfettered discretion, for sooner or later all estates must perforce be abolished. From the very nature of things a certain amount of discretionary latitude had to be given to the State Government. It would have been a colossal task if the State Government had to take over all the estates at one and the same time. It would have broken down the entire administrative machinery. It could not be possible to collect sufficient staff to take over and discharge the responsibilities. It would be difficult to arrange for the requisite finance all at once. It was, therefore, imperative to confer some discretion on the State Government. It has not been suggested or shown that in practice any discrimination has been made."

In *Basant Kumar Sarkar (supra),* the power in question was Section 1(3) of the Employees State Insurance Act, which enabled the government to extend the enactment to establishments. This court negatived that the power was *ultra vires*:

> "4. The argument is that the power given to the Central Government to apply the provisions of the Act by notification, confers on the Central Government absolute discretion, the exercise of which is not guided by any legislative provision and is, therefore, invalid. The Act does not prescribe any considerations in the light of which the Central Government can proceed to act under Section 1(3) and

such un-canalised power conferred on the Central Government must be treated as invalid. We are not impressed by this argument. Section 1(3) is really not an illustration of delegated legislation at all; it is what can be properly described as conditional legislation. The Act has prescribed a self-contained Code in regard to the insurance of the employees covered by it; several remedial measures which the legislature thought it necessary to enforce in regard to such workmen have been specifically dealt with and appropriate provisions have been made to carry out the policy of the Act as laid down in its relevant sections. Section 3(1) of the Act purports to authorise the Central Government to establish a Corporation for the administration of the scheme of Employees' State Insurance by a notification. In other words, when the notification should be issued and in respect of what factories it should be issued, has been left to the discretion of the Central Government and that is precisely what is usually done by conditional legislation. [ ]

5. […] In the very nature of things, it would have been impossible for the legislature to decide in what areas and in respect of which factories the Employees' State Insurance Corporation should be established. It is obvious that a scheme of this kind, though very beneficent, could not be introduced in the whole of the country all at once. Such beneficial measures which need careful experimentation have some times to be adopted by stages and in different phases…"

77. The next decision cited was *Lachmi Narain (supra)*. Here, the Central Government was empowered by Section 2 of the Part C States (Laws) (Act), 1950 to extend through a notification any enactment in Part A States. The Central Government had issued a Notification in 1951 to extend the provisions of the Bengal Finance (Sales Tax) Act to the then Part C State of Delhi. In 1957, a notification in exercise of this power under Section 2 was issued modifying the earlier notification resulting in withdrawal of certain benefits. In the background of these facts, a three-judge bench of this Court dealing with an argument on whether the power to extend with or without modifications any enactment was conditional or delegated legislation, made the following observations:

"*49. Before proceeding further, it will be proper to say a few words in regard to the argument that the power conferred by Section 2 of the Laws Act is a power of conditional legislation and not a power of 'delegated' legislation. In our opinion, no useful purpose*

> *will be served to pursue this line of argument because the distinction propounded between the two categories of legislative powers makes no difference, in principle. In either case, the person to whom the power is entrusted can do nothing beyond the limits which circumscribe the power; he has to act – to use the words of Lord Selbourne – "within the general scope of the affirmative words which give the power" and without violating any "express conditions or restrictions by which that power is limited". There is no magic in a name. Whether you call it the power of "conditional legislation" as Privy Council called it in Burah's case (supra), or 'ancillary legislation' as the Federal Court termed it in Choitram* v. C. I. T., Bihar, or 'subsidiary legislation' as Kania, C. J. Styled it, or whether you camouflage it under the veiling name of 'administrative or quasi-legislative power' – as Professor Cushman and other authorities have done it – necessary for bringing into operation and effect an enactment, the fact remains that it has a content, howsoever small and restricted, of the law- making power itself. There is ample authority in support of the proposition that the power to extend and carry into operation an enactment with necessary modifications and adaptations is in truth and reality in the nature of a power of delegated legislation."

After these observations, this court held that the power of modification could not have been exercised by the Government in the manner that it did, and observed as follows:

> "60. The power given by Section 2 exhausts itself on extension of the enactment; it cannot be exercised repeatedly or subsequently to such extension. It can be exercised only one, simultaneously with the extension of the enactment. This is one dimension of the statutory limits which circumscribe the power. The second is that the power cannot be used for the purpose other than that of extension. In the exercise of this power, only such "restrictions and modifications can be validly engrafted in the enactment sought to be extended, which are necessary to bring it into operation and effect in the Union territory. "Modifications" which are not necessary for, or ancillary and subservient to the purpose of extension, are not permissible. And, only such "modifications" can be legitimately necessary for such purpose as are required to adjust, adapt and make the enactment suitable to the peculiar local conditions of the Union territory for carrying it into operation and effect. In the context of the section, the words "restrictions and modifications"

do not cover such alterations as involve a change in any essential feature, of the enactment or the legislative policy built into it. This is the third dimension of the limits that circumscribe the power.

61. It is true that the word "such restrictions and modifications as it thinks fit" if construed literally and in isolation, appear to give unfettered power of amending and modifying the enactment sought to be extended. Such a wide construction must be eschewed lest the very validity of the section becomes vulnerable on account of the vice of excessive delegation. Moreover, such a construction would be repugnant to the context and the content of the section, read as a whole, and the statutory limits and conditions attaching to the exercise of the power. We must, therefore, confine the scope of the words "restrictions and modifications" to alterations of such a character which keep the inbuilt policy, essence and substance of the enactment sought to be extended, intact, and introduce only such peripheral or insubstantial changes which are appropriate and necessary to adapt and adjust it to the local conditions of the Union territory."

78. It would be useful at this stage to set out in tabular form, the various dates on which the provisions of the Code were brought into force. The chart is set out below:

| Sl. No. | Date | S.O. | Provisions brought into force |
|---|---|---|---|
| 1. | 05.08.2016 | S.O. 2618(E) | Sections 188 to 194 |
| 2. | 19.08.2016 | S.O. 2746(E) | Clauses (1), (5), (22), (26), (28) and (37) of section 3, sections 221, 222, 225, 226, 230, 232 and 233, sub-section (1) and clause (zd) of sub-section (2) of section 239, sub-section (1) and clause (zt) of sub-section (2) of section 240, sections 241 and 242 |
| 3. | 01.11.2016 | S.O.3355(E) | Clause (2) to clause(4), clause (6) to clause (21), clause (23) to clause (25), clause (27)clause (29) to clause (36) of section 3, sections 196, 197 and 223, clause(ze) to clause (zh),clause (zl) to clause (zm) of sub-section (2) of section 239, clause (a) to clause (zm),clause (zu) to clause (zzzc) of sub-section (2) of section240, section 244, section 246 tosection 248 (both inclusive), sections 250 and 252 |
| 4. | 15.11.2016 | S.O. 3453(E) | Section 199 to section 207 (both inclusive), clause (c) and clause (e) of sub-section (1)of section 208, sub-section (2) of section 208, section 217 to section 220 (both inclusive)sections 251, 253, 254 and 255 |

| | | | |
|---|---|---|---|
| 5. | Came into force on 01.12.2016 vide S.O. dated 30.11.2016 | S.O. 3594(E) | Clause (a) to clause (d) of section 2 (except with regard to voluntary liquidation or Bankruptcy section 4 to section 32 (both inclusive), section 60 to section 77(both inclusive), section 198,section 231, section 236 to section 238 (both inclusive) and clause (a) to clause (f)of sub-section (2)of section 239 |
| 6. | S.O. dated 09.12.2016 Came into force on 15.12.2016 | S.O. 3687(E) | Section 33 to section 54 (both inclusive) |
| 7. | S.O. dated 30.03.2017; came into force on 01.04.2017 | S.O. 1005(E) | Section 59; section 209 to 215 (both inclusive); subsection (1) of section 216; and section 234 and section 235 |
| 8. | Came into force on 01.04.2017 vide S.O. dated 15.05.2017 | S.O. 1570(E) | Clause (a) to clause (d) of section 2 relating to voluntary liquidation or bankruptcy |
| 9. | 14.06.2017 | S.O. 1910(E) | Section 55 to section 58 (both inclusive) |
| 10. | 01.05.2018 | S.O. 1817(E) | Section 227 to section 229 (both inclusive) |
| 11. | S.O. dated 15.11.2019 (impugned notification) Came into force on 01.12.2019 | S.O. 4126(E) | Section 2 (e); section 78 (except with regard to fresh start process) and section 79; Sections 94 to 187 [both inclusive]; Section 239 (2) (g) to (i) ;239 (2) (m) to (zc);Section 240 (2) (zn) to (zs); and section 249 only in so far as they relate to personal guarantors to corporate debtors |

79. The above tabular chart reveals that the provisions relating to the Insolvency and Bankruptcy Board of India were brought into force at the earliest point of time, i.e., 05.08.2016. This was to enable the setting up of the regulatory body so that it could commence its task of examining the relevant issues and evolving standards to be embodied in rules and regulations. Thereafter, the notification dated 19.08.2016 brought into force Chapter VII) of Part-IV and some provisions of Part-V – relating to finance, acts, audit and miscellaneous provisions. These were the provisions ancillary to the working of the Board. The next to be brought into force were parts of Sections 196-197 and 223, again which dealt with the Board's functions, its funds etc. as well as Sections 244, 246-248 and 250-252. These were general provisions relating to the provisions that

amended various other enactments in terms of the Schedules set out to the Code. The fourth notification dated 15.11.2016 brought into force those provisions relating to insolvency professional agencies and some other provisions which amended other enactments.

80. The notification of 30.11.2016 brought into force certain provisions that had the effect of operationalizing the enactment in respect of four distinct categories, i.e. companies incorporated under the Companies Act, companies governed by special Act, LLPs and other bodies incorporated under any law which the Central Government could by notification specify. These provisions triggered the application of the Code to corporate debtors as well as LLPs and other companies and corporations. Significantly, provisions with regard to voluntary liquidation or bankruptcy were excluded from application by this notification. Those provisions were brought into force by the eighth notification dated 01.04.2017, with effect from 15.05.2017. In the meanwhile, the notification dated 09.12.2016 with effect from 15.12.2016, operationalized Sections 33 to 44 which deal with the liquidation process.

81. It is quite evident that the method adopted by the Central Government to bring into force different provisions of the Act had a specific design: to fulfill the objectives underlying the Code, having regard to its priorities. Plainly, the Central Government was concerned with triggering the insolvency mechanism processes in relation to corporate persons at the earliest. Therefore, by the first three notifications, the necessary mechanism such as setting up of the regulatory body, provisions relating to its functions, powers and the operationalization of provisions relating to insolvency professionals and agencies were brought into force. These started the mechanism through which insolvency processes were to be carried out and regulated by law. In the next phase, the part of the Code dealing with one of its subjects, i.e., corporate persons [covered by Section 2(a) to 2(d) of the Code] was brought into force. The entire process for conduct of insolvency proceedings and provisions relating to such corporate persons were brought into force. The other notifications brought into force certain consequential provisions, as well as provisions which give overriding effect to the Code (as also the provisions that amend or modify other laws). All these clearly show that the Central Government followed a stage-by-stage process of bringing into force the provisions of the Code, regard being had to the similarities or dissimilarities of the subject matter and those covered by the Code.

82. As discussed in a previous part of this judgment, insolvency proceedings relating to individuals is regulated by Part-III of the Code. Before the amendment of 2018, all individuals (personal guarantors to

corporate debtors, partners of firms, partnership firms and other partners as well as individuals who were either partners or personal guarantors to corporate debtors) fell under one descriptive description under the unamended Section 2(e). The unamended Section 60 contemplated that the adjudicating authority in respect of personal guarantors was to be the NCLT. Yet, having regard to the fact that Section 2 brought all three categories of individuals within one umbrella class as it were, it would have been difficult for the Central Government to selectively bring into force the provisions of part –III only in respect of personal guarantors. It was here that the Central Government heeded the reports of expert bodies which recommended that personal guarantors to corporate debtors facing insolvency process should also be involved in proceedings by the same adjudicator and for this, necessary amendments were required. Consequently, the 2018 Amendment Act altered Section 2(e) and subcategorized three categories of individuals, resulting in Sections 2(e), (f) and (g). Given that the earlier notification of 30.11.2016 had brought the Code into force in relation to entities covered under Section 2(a) to 2(d), the amendment Act of 2018 provided the necessary statutory backing for the Central Government to apply the Code, in such a manner as to achieve the objective of the amendment, i.e. to ensure that adjudicating body dealing with insolvency of corporate debtors also had before it the insolvency proceedings of personal guarantors to such corporate debtors.

83. The amendment of 2018 also altered Section 60 in that insolvency and bankruptcy processes relating to liquidation and bankruptcy in respect of three categories, i.e. corporate debtors, corporate guarantors of corporate debtors and personal guarantors to corporate debtors were to be considered by the same forum, i.e. NCLT.

84. Section 2, i.e., (application provision of the Code, in relation to different entities), as originally enacted, did not contain a separate category of personal guarantors to corporate debtors. Instead, personal guarantors were part of a category or group of individuals, to whom the Code applied (i.e. individuals, proprietorship and partnership firms, *per* Section 2(e) which stated *"partnership firms and individuals"*). The Code envisioned that the insolvency process outlined in provisions of Part III was to apply to them. The Statement of Objects and Reasons for the Amendment Bill of 2017, which eventually metamorphosized into the Amendment Act, stated that the Code provided for insolvency resolution for individuals and partnership firms "which are proposed to be implemented in a phased manner on account of the wider impact of these provisions. In the first phase, the provisions would be extended to personal guarantors of corporate debtors to further strengthen the corporate insolvency resolution process and a clear enabling provision for the purpose has been provided in the Bill."

85. The amendment introduced Section 2(e) i.e. personal guarantors to corporate debtors, *as a distinct category to whom the Code applied.* Now, the amendment was brought into force retrospectively, on 23 November, 2017. Section 1 of the Amendment Act states:

> "Section 1. (1) This Act may be called the Insolvency and Bankruptcy Code (Amendment) Act, 2018.
>
> (2) It shall be deemed to have come into force on the 23rd day of November, 2017."

86. In addition to amending Section 2, the same Amendment also amended Section 60(2). Interestingly, though "personal guarantor" was not defined, and fell within the larger rubric of "individual" under the Code, the adjudicating authority for insolvency process and liquidation of corporate persons including corporate debtors and personal guarantors was the NCLT- even under the unamended Code. The amendment of Section 60(2) added a few concepts. This is best understood on a juxtaposition of the unamended and the amended provisions: The unamended Section 60 (2) read as follows:

> "(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy proceeding of a personal guarantor of the corporate debtor shall be filed before the National Company Law Tribunal."

The amended Section 60 (2) reads as follows:

> "(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal"

87. The amendment inserted the expression *"or liquidation"* before the words *"or bankruptcy"* and also inserted the expression *"of a corporate guarantor… as the case may be, of"* such corporate debtor. The

interpretation of this expression has to be contextual. There is no question of *liquidation* of a personal guarantor, an individual. In such cases, this court has ruled that the principle behind the maxim "*reddendo singular singulis*" applies. This court had, in *Koteswar Vittal Kamath* v. *K. Rangappa Baliga& Co*[62] quoted *Black's Interpretation of Laws*, to explain the meaning of that maxim:

> "Where a sentence in a statute contains several antecedents and several consequences, they are to be read distributively, that is to say, each phrase or expression is to be referred to its appropriate object."

*Koteswar Vittal Kamath* was concerned with the interpretation of the proviso to Article 304(*b*) of the Constitution of India which provided that:

> "Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

The term "no Bill or amendment" was construed distributively. The Court held

> "In our opinion, the High Court did not correctly appreciate the position. The language of the proviso cannot be interpreted in the manner accepted by the High Court without doing violence to the rules of construction. If both the words "introduced" or "moved" are held to refer to the Bill, it must necessarily be held that both those words will also refer to the word "amendment". On the face of it, there can be no question of introducing an amendment. Amendments are moved and then, if accepted by the House, incorporated in the Bill before it is passed. There is further an indication in the Constitution itself that wherever a reference is made to a Bill, the only step envisaged is introduction of the Bill. There is no reference to such a step as a Bill being moved. The Articles, of which notice may be taken in this connection, are Articles 109, 114, 117, 198 and 207. In all these articles, whatever prohibition is laid down relates to the introduction of a Bill in the Legislature. There is no reference at any stage to a Bill being moved in a House. The language thus used in the Constitution clearly points to the interpretation that, even in the proviso to Article 304, the word "introduced" refers to the Bill, while the word "moved" refers to the amendment."

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62 (1969) 1 SCC 255.

88. Recently, in *Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority*[63], this principle and *Koteshwar Vittal Kamath* were cited and applied. Therefore, it is held that when Section 60(2) alludes to insolvency resolution or bankruptcy, or liquidation of three categories, i.e. corporate debtors, corporate guarantors (to corporate debtors) and personal guarantors (to corporate debtors) they apply distributively, i.e. that insolvency resolution, or liquidation processes apply to corporate debtors and their corporate guarantors, whereas insolvency resolution and bankruptcy processes apply to personal guarantors, (to corporate debtors) who cannot be subjected to liquidation.

89. The case law cited on behalf of the petitioners shows a certain pattern. In many cases (*In re Delhi Laws Act*, *Jitendra Kumar Gupta*) this court had held that the power to extend the law, existing or future, that had not been enacted by the competent legislature, and the power of repeal, as well as the power to extend the life of the law, were instances of *excessive* delegation of legislative power. In *Narottamdas Jethabhai* (*supra*), this court upheld the extension of pecuniary jurisdiction of city civil courts beyond the statutorily prescribed limit, *because* there was a provision enabling it, and the executive confined the exercise of its power to extend the jurisdiction, within the limits enacted. *Hamdard Dawakhana* was an instance of grant of un-canalized power (without legislative guidance) of inclusion in the schedule to the Act, acts falling within its application; it was clearly a case of excessive delegation. In *Lachmi Narain (supra),* this court held that the power of modification cannot be used at any time, but has to be resorted to initially by the executive, at the time a law is extended and applied. The observations in *Bishwambhar Singh* and *Basant Kumar Sarkar (supra)* reveal that the executive is tasked with implementing the Act in stages, as it *"would have been impossible for the legislature to decide in what areas"* and in respect of what subject matters (in that case, factories and establishments) the provisions can apply. Crucially, it was held that *"a scheme of this kind, though very beneficent, could not be introduced in the whole of the country all at once."* Further, held this court, such provisions may *"need careful experimentation have some times to be adopted by stages and in different phases."*

90. The theme of gradual implementation of law or legal principles, was also spoken about in *Javed v. State of Haryana*[64] by this court, which held that there is no constitutional imperative that a law or policy should be implemented all at once:

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63 (2020) 13 SCC 208.

64 (2003) 8 SCC 369.

> ***"16.*** *A uniform policy may be devised by the Centre or by a State. However, there is no constitutional requirement that any such policy must be implemented at one go. Policies are capable of being implemented in a phased manner. More so, when the policies have far-reaching implications and are dynamic in nature, their implementation in a phased manner is welcome for it receives gradual willing acceptance and invites lesser resistance."*

Similar observations were made in *Pannalal Bansilal Pitti* v. *State of A.P.*[65] where the court held that imposition of a uniform law, in some areas, or subjects may be counterproductive and contrary to public purpose. *Sabanayagam (supra)* too emphasized discretion to extend an enactment, having regard to the time, area of operation, and its applicability when it was emphasized that such power is *"limited and almost ministerial function as an agent of the principal Legislature applying the Act to the area at an appropriate time"*

**91.** The close proximity, or inter-relatedness of personal guarantors with corporate debtors, as opposed to individuals and partners in firms was noted by the report of the Working Group, which remarked that it:

> "*recognizes that dynamics, the interwoven connection between the corporate debtor and a guarantor (who has extended his personal guarantee for the corporate debtor) and the partnership firms engaged in business activities may be on distinct footing in reality, and would, therefore, require different treatment, because of economic considerations. Assets of the guarantor would be relevant for the resolution process of the corporate debtor. Between the financial creditor and the corporate debtor, mostly the guarantee would contain a covenant that as between the guarantor and the financial creditor, the guarantor is also a principal debtor, notwithstanding that he is guarantor to a corporate debtor."*
>
> (Emphasis supplied)

92. As noticed earlier, Section 60 had previously, under the original Code, designated the NCLT as the adjudicating authority in relation to two categories: corporate debtors and personal guarantors to corporate debtors. The 2018 amendment added another category: corporate guarantors to corporate debtors. The amendment seen in the background of the report, as indeed the scheme of the Code (i.e., Section 2 (e), Section 5 (22), Section 29A, and Section 60), clearly show that all matters that

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65 (1996) 2 SCC 498.

*were likely to impact, or have a bearing on a corporate debtor's insolvency process, were sought to be clubbed together and brought before the same forum.* Section 5

(22) which is found in Part II (insolvency process provisions in respect of corporate debtors) as it was originally, defined personal guarantor to say that it*"means an indi- vidual who is the surety in a contract of guarantee to a corporate debtor."* There are two more provisions relevant for the purpose of this judgment. They are Sections 234 and 235 of the Code; they read as follows:

"234. (1) The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Code.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of corporate debtor or debtor, including a personal guarantor of a corporate debtor, as the case may be, situated at any place in a country outside India with which reciprocal arrangements have been made, shall be subject to such conditions as may be specified.

235. (1) Notwithstanding anything contained in this Code or any law for the time being in force if, in the course of insolvency resolution process, or liquidation or bankruptcy proceedings, as the case may be, under this Code, the resolution professional, liquida- tor or bankruptcy trustee, as the case may be, is of the opinion that assets of the corporate debtor or debtor, including a personal guarantor of a corporate debtor, are situated in a country outside India with which reciprocal arrangements have been made under section 234, he may make an application to the Adjudicating Authority that evidence or action relating to such assets is required in connection with such process or proceeding.

(2) The Adjudicating Authority on receipt of an application under sub-section (1) and, on being satisfied that evidence or action relating to assets under sub-section (1) is required in connection with insolvency resolution process or liquidation or bankruptcy proceeding, may issue a letter of request to a court or an authority of such country competent to deal with such request."

93. These two provisions also reveal that the scheme of the Code always contemplated that overseas assets of a corporate debtor or its personal guarantor could be dealt with in an identical manner during

insolvency proceedings, including by issuing letters of request to courts or authorities in other countries for the purpose of dealing with such assets located within their jurisdiction.

94. The impugned notification operationalizes the Code so far as it relates to personal guarantors to corporate debtors:

(1) Section 79 pertains to the definitional section for the purposes of insolvency resolution and bankruptcy for individuals before the Adjudicating Authority.

(2) Section 94 to 187 outline the entire structure regarding initiation of the resolution process for individuals before the Adjudicating Authority.

95. The impugned notification authorises the Central Government and the Board to frame rules and regulations on how to allow the pending actions against a personal guarantor to a corporate debtor before the Adjudicating Authority. The intent of the notification, facially, is to allow for pending proceedings to be adjudicated in terms of the Code. Section 243, which provides for the repeal of the personal insolvency laws has not as yet been notified. Section 60(2) prescribes that in the event of an ongoing resolution process or liquidation process against a corporate debtor, an application for resolution process or bankruptcy of the personal guarantor to the corporate debtor shall be filed with the concerned NCLT seized of the resolution process or liquidation. Therefore, the Adjudicating Authority for personal guarantors will be the NCLT, if a parallel resolution process or liquidation process is pending in respect of a corporate debtor for whom the guarantee is given. The same logic prevails, under Section 60(3), when any insolvency or bankruptcy proceeding pending against the personal guarantor in a court or tribunal and a resolution process or liquidation is initiated against the corporate debtor. Thus if A, an individual is the subject of a resolution process before the DRT and he has furnished a personal guarantee for a debt owed by a company B, in the event a resolution process is initiated against B in an NCLT, the provision results in transferring the proceedings going on against A in the DRT to NCLT.

96. This court in *V. Ramakrishnan (supra),* noticed why an application under Section 60(2) could not be allowed. At that stage, neither Part III of the Code nor Section 243 had not been notified. This meant that proceedings against personal guarantors stood outside the NCLT and the Code. The *non-obstante* provision under Section 238 gives the Code overriding effect over other prevailing enactments. This is perhaps the *rationale* for not

notifying Section 243 as far as personal guarantors to corporate persons are concerned. Section 243(2) saves pending proceedings under the Acts repealed (PIA and PTI Act) to be undertaken in accordance with those enactments. As of now, Section 243 has not been notified. In the event Section 243 is notified and those two Acts repealed, then, the present notification would not have had the effect of covering pending proceedings against individuals, such as personal guarantors in other *forums,* and would bring them under the provisions of the Code pertaining to insolvency and bankruptcy of personal guarantors. The impugned notification, as a consequence of the *non obstante* clause in Section 238, has the result that if any proceeding were to be initiated against personal guarantors it would be under the Code.

**97.** In the opinion of this court, there was sufficient legislative guidance for the Central Government, before the amendment of 2018 was made effective, to distinguish and classify personal guarantors separately from other individuals. This is evident from Sections 5(22), 60, 234, 235 and unamended Section 60. In *V. Ramakrishnan* (*supra*) this court noted the effect of various provisions of the Code, and how they applied to personal guarantors:

*"**22.** We are afraid that such arguments have to be turned down on a careful reading of the sections relied upon. Section 60 of the Code, in sub-section (1) thereof, refers to insolvency resolution and liquidation for both corporate debtors and personal guarantors, the adjudicating authority for which shall be the National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate person is located. This sub-section is only important in that it locates the Tribunal which has territorial jurisdiction in insolvency resolution processes against corporate debtors. So far as personal guarantors are concerned, we have seen that Part III has not been brought into force, and neither has Section 243, which repeals the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. The net result of this is that so far as individual personal guarantors are concerned, they will continue to be proceeded against under the aforesaid two Insolvency Acts and not under the Code. Indeed, by a Press Release dated 28-8-2017, the Government of India, through the Ministry of Finance, cautioned that Section 243 of the Code, which provides for the repeal of the said enactments, has not been notified till date, and further, that the provisions relating to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part III of the Code are yet to be notified. Hence, it was advised that stakeholders who intend to pursue their insolvency cases may approach the appropriate authority/court under the existing enactments, instead of approaching the Debts Recovery Tribunals.*

***23.** It is for this reason that sub-section (2) of Section 60 speaks of an application relating to the "bankruptcy" of a personal guarantor of a corporate debtor and states that any such bankruptcy proceedings shall be filed only before the National Company Law Tribunal. The argument of the learned counsel on behalf of the respondents that "bankruptcy" would include SARFAESI proceedings must be turned down as "bankruptcy" has reference only to the two Insolvency Acts referred to above. Thus, SARFAESI proceedings against the guarantor can continue under the SARFAESI Act. Similarly, sub- section (3) speaks of a bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal, which shall stand transferred to the adjudicating authority dealing with the insolvency resolution process or liquidation proceedings of such corporate debtor. An "Adjudicating Authority", defined under Section 5(1) of the Code, means the National Company Law Tribunal constituted under the Companies Act, 2013.*

***24.*** *The scheme of Sections 60(2) and (3) is thus clear — the moment there is a proceeding against the corporate debtor pending under the 2016 Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the corporate debtor, be transferred to the National Company Law Tribunal or, if initiated after such proceedings had been commenced against the corporate debtor, be filed only in the National Company Law Tribunal. However, the Tribunal is to decide such proceedings only in accordance with the Presidency Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be. It is clear that sub- section (4), which states that the Tribunal shall be vested with all the powers of the Debts Recovery Tribunal, as contemplated under Part III of this Code, for the purposes of sub-section (2), would not take effect, as the Debts Recovery Tribunal has not yet been empowered to hear bankruptcy proceedings against individuals under Section 179 of the Code, as the said Section has not yet been brought into force. Also, we have seen that Section 249, dealing with the consequential amendment of the Recovery of Debts Act to empower Debts Recovery Tribunals to try such proceedings, has also not been brought into force. It is thus clear that Section 2(e), which was brought into force on 23-11-2017 would, when it refers to the application of the Code to a personal guarantor of a corporate debtor, apply only for the limited purpose contained in Sections 60(2) and (3), as stated hereinabove. This is what is meant by strengthening the Corporate Insolvency Resolution Process in the Statement of Objects of the Amendment Act, 2018."*

98. This court was clearly cognizant of the fact that the amendment, in so far as it inserted Section 2(e) and altered Section 60(2), was aimed at *strengthening* the corporate insolvency process. At the same time, since the Code was not made applicable to individuals (including personal guarantors), the court had no occasion to consider what would be the effect of exercise of power under Section 1(3) of the Code, bringing into force such provisions in relation to personal guarantors.

99. The argument that the insolvency processes, application of moratorium and other provisions are incongruous, and so on, in the opinion of this court, are insubstantial. The insolvency process in relation to *corporate persons* (a compendious term covering all juristic entities which have been described in Sections 2 [a] to [d] of the Code) is entirely different from those relating to individuals; the former is covered in the

provisions of Part II and the latter, by Part III. Section 179, which defines what the Adjudicating authority is for individuals[66] is *"subject to"* Section 60. Section 60(2) is without prejudice to Section 60(1) and *notwithstanding anything to the contrary contained in the Code*, thus giving overriding effect to Section 60(2) as far as it provides that the application relating to insolvency resolution, liquidation or bankruptcy of personal guarantors of such corporate debtors shall be filed before the NCLT where proceedings relating to corporate debtors are pending. Furthermore, Section 60(3) provides for transfer of proceedings relating to personal guarantors to that NCLT which is dealing with the proceedings against corporate debtors. *After* providing for a common adjudicating forum, Section 60(4) vests the NCLT *"with all the powers of the DRT as contemplated under Part III of this Code for the purpose of sub-section (2)"*. Section 60 (4) thus (a) vests all the powers of DRT with NCLT and (b) also vests NCLT with powers under Part III. Parliament therefore merged the provisions of Part III with the process undertaken against the corporate debtors under Part II, for the purpose of Section 60(2), i.e., proceedings against personal guarantors along with corporate debtors. Section 179 is the corresponding provision in Part III. It is *"subject to the provisions of Section 60"*. Section 60 (4) clearly incorporates the provisions of Part III in relation to proceedings before the NCLT against personal guarantors.

100. It is clear from the above analysis that Parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain

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66 "179. (1) Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person.

(2) The Debt Recovery Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of—

(a) any suit or proceeding by or against the individual debtor;

(b) any claim made by or against the individual debtor;

(c) any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.

(3) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded"

outcomes, led to carving out personal guarantors as a separate *species* of individuals, for whom the Adjudicating authority was common with the corporate debtor to whom they had stood guarantee. The fact that the *process of insolvency* in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to such corporate persons, does not lead to incongruity. On the other hand, there appear to be sound reasons why the *forum* for adjudicating insolvency processes – the provisions of which are disparate- is to be common, i.e through the NCLT. As was emphasized during the hearing, the NCLT would be able to consider the whole picture, as it were, about the nature of the assets available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realizing some part of the creditors' dues from personal guarantors.

101. In view of the above discussion, it is held that the impugned notification is not an instance of legislative exercise, or amounting to impermissible and selective application of provisions of the Code. There is no compulsion in the Code that it should, at the same time, be made applicable to *all individuals,* (including personal guarantors) or not at all. There is sufficient indication in the Code- by Section 2(e), Section 5(22), Section 60 and Section 179 indicating that personal guarantors, though forming part of the larger grouping of individuals, were to be, in view of their intrinsic connection with corporate debtors, dealt with differently, through the same adjudicatory process and by the same forum (though not insolvency provisions) as such corporate debtors. The notifications under Section 1(3), (issued before the impugned notification was issued) disclose that the Code was brought into force in stages, regard being had to the categories of persons to whom its provisions were to be applied. The impugned notification, similarly *inter alia* makes the provisions of the Code applicable in respect of personal guarantors to corporate debtors, as another such category of persons to whom the Code has been extended. It is held that the impugned notification was issued within the power granted by Parliament, and in valid exercise of it. The exercise of power in issuing the impugned notification under Section 1(3) is therefore, not *ultra vires;* the notification is valid.

102. The other question which parties had urged before this court was that the impugned notification, by applying the Code to personal guarantors only, takes away the protection afforded by law; reference was made to Sections 128, 133 and 140 of the Contract Act; the petitioners submitted that once a resolution plan is accepted, the corporate debtor is discharged of liability. As a consequence, the guarantor whose liability is co-extensive

with the principal debtor, i.e. the corporate debtor, too is discharged of all liabilities. It was urged therefore, that the impugned notification which has the effect of allowing proceedings before the NCLT by applying provisions of Part III of the Code, deprives the guarantors of their valuable substantive rights.

103. Section 31 of the Code, *inter alia,* provides that:

"31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section

*(4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan."*

The relevant provisions of the Indian Contract Act are extracted below:

*"**128. Surety's liability**.—The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.*

129. ***"Continuing guarantee"**.—A guarantee which extends to a series of transactions, is called a "continuing guarantee".*

130. ***Revocation of continuing guarantee**.—A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.*

131. ***Revocation of continuing guarantee by surety's death**.—The death of the surety operates, in the absence of any contract to the* contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

133. ***Discharge of surety by variance in terms of contract**.—Any variance, made without the surety's consent, in the terms of the contract between the principal 1 [debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.*

134. ***Discharge of surety by release or discharge of principal debtor****.—The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.*

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140. ***Rights of surety on payment or performance****.—Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.*

141. ***Surety's right to benefit of creditor's securities****.—A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."*

104. All creditors and other classes of claimants, including financial and operational creditors, those entitled to statutory dues, workers, etc., who participate in the resolution process, are heard and those in relation to whom the CoC accepts or rejects pleas, are entitled to vent their grievances before the NCLT. *After* considering their submissions and objections, the resolution plan is accepted and approved. This results in finality as to the claims of creditors, and others, *from the company* (i.e. the company which undergoes the insolvency process). The question which the petitioners urge is that in view of this *finality,* their liabilities would be extinguished; they rely on Sections 128, 133 and 140 of the Contract Act to urge that creditors cannot therefore, proceed against them separately.

105. In *Vijay Kumar Jain* v. *Standard Chartered Bank*[67], this court, while dealing with the right of erstwhile directors participating in meetings of Committee of Creditors observed that:

67 2019 SCC OnLine SC 103

> "we find that Section 31(1) of the Code would make it clear that such members of the erstwhile Board of Directors, who are often guarantors, are vitally interested in a resolution plan as such resolution plan then binds them. Such plan may scale down the debt of the principal debtor, resulting in scaling down the debt of the guarantor as well, or it may not. The resolution plan may also scale down certain debts and not others, leaving guarantors of the latter kind of debts exposed for the entire amount of the debt. The regulations also make it clear that these persons are vitally interested in resolution plans as they affect them"

106. The *rationale* for allowing directors to participate in meetings of the CoC is that the directors' liability as personal guarantors persists against the creditors and an approved resolution plan can only lead to a revision of amount or exposure for the entire amount. Any recourse under Section 133 of the Contract Act to discharge the liability of the surety on account of variance in terms of the contract, without her or his consent, stands negated by this court, in *V. Ramakrishnan* where it was observed that the language of Section 31 makes it clear that the approved plan is binding on the guarantor, to avoid any attempt to escape liability under the provisions of the Contract Act. It was observed that:

> "25. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor.…"

And further that:

> "26.1 Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and co- extensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such

persons, as such moratorium is in relation to the debt and not the debtor."

107. In *Committee of Creditors of Essar Steel (I) Ltd. v. Satish Kumar Gupta*[68] (the *"Essar Steel case"*) this court refused to interfere with proceedings initiated to enforce personal guarantees by financial creditors; it was observed as follows:

"106. Following this judgment in V. Ramakrishnan case [SBI v. V. Ramakrishnan, (2018) 17 SCC 394], it is difficult to accept Shri Rohatgi's argument that that part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile Directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, NCLAT judgment being contrary to Section 31(1) of the Code and this Court's judgment in V. Ramakrishnan case [SBI v. V. Ramakrishnan, (2018) 17 SCC 394], is set aside."

108. It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not *per se* operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability. In *Maharashtra State Electricity Board* (*supra*) the liability of the guarantor (in a case where liability of the principal debtor was discharged under the insolvency law or the company law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realize the same from the guarantor in view of the language of Section 128 of the Contract Act as there is no discharge under Section 134 of that Act. This court observed as follows:

"7. Under the bank guarantee in question the Bank has undertaken to pay the Electricity Board any sum up to Rs 50,000 and in order to realise it all that the Electricity Board has to do is to make a demand. Within forty-eight hours of such demand the Bank has

68 (2020) 8 SCC 531.

to pay the amount to the Electricity Board which is not under any obligation to prove any default on the part of the Company in liquidation before the amount demanded is paid. The Bank cannot raise the plea that it is liable only to the extent of any loss that may have been sustained by the Electricity Board owing to any default on the part of the supplier of goods i.e. the Company in liquidation. The liability is absolute and unconditional. The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the Indian Contract Act, the liability of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Indian Contract Act by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation pro ceedings in the case of a company) does not absolve the surety of his liability (see Jagannath Ganeshram Agarwala v. Shivnarayan Bhagirath [AIR 1940 Bom 247; see also In re Fitzgeorge Ex parte Robson [(1905) 1 KB 462] )."

109. This legal position was noticed and approved later in *Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. & Wvg. Mills Ltd.*[69] An earlier decision of three judges, *Punjab National Bank* v. *State of U.P.*[70] pertains to the issues regarding a guarantor and the principal debtor. The court observed as follows:

"The appellant had, after Respondent 4's management was taken over by U.P. State Textile Corporation Ltd. (Respondent 3) under the Industries (Development and Regulation) Act, advanced some money to the said Respondent 4. In respect of the advance so made, Respondents 1, 2 and 3 executed deeds of guarantee undertaking to pay the amount due to the bank as guarantors in the event of the principal borrower being unable to pay the same.

69 (2002) 5 SCC 54

70 (2002) 5 SCC 80

Subsequently, Respondent 3 which had taken over the management of Respondent 4 became sick and proceedings were initiated under the Sick Textile Undertakings (Nationalisation) Act, 1974 (for short 'the Act'). The appellant filed suit for recovery against the guarantors and the principal debtor of the amount claimed by it.

The following preliminary issue was, on the pleadings of the parties, framed:

> 'Whether the claim of the plaintiff is not maintainable in view of the provisions of Act 57 of 1974 as alleged in para 25 of the written statement of Defendant 2?'

The trial court as well as the High Court, both came to the conclusion that in view of the provisions of Section 29 of the Act, the suit of the appellant was not maintainable.

We have gone through the provisions of the said Act and in our opinion the decision of the courts below is not correct. Section 5 of the said Act provides for the owner to be liable for certain prior liabilities and Section 29 states that the said Act will have an overriding effect over all other enactments. This Act only deals with the liabilities of a company which is nationalized and there is no provision therein which in any way affects the liability of a guarantor who is bound by the deed of guarantee executed by it. The High Court has referred to a decision of this Court in Maharashtra SEB v. Official Liquidator, High Court, Ernakulam [(1982) 3 SCC 358 : AIR 1982 SC 1497] where the liability of the guarantor in a case where liability of the principal debtor was discharged under the insolvency law or the company law, was considered. It was held in this case that in view of the unequivocal guarantee such liability of the guarantor continues and the creditor can realize the same from the guarantor in view of the language of Section 128 of the Contract Act as there is no discharge under Section 134 of that Act.

In our opinion, the principle of the aforesaid decision of this Court is equally applicable in the present case. The right of the appellant to recover money from Respondents 1, 2 and 3 who stood guarantors arises out of the terms of the deed of guarantee which are not in any way superseded or brought to a naught merely because the appellant may not be able to recover money from the principal

borrower. It may here be added that even as a result of the Nationalisation Act the liability of the principal borrower does not come to an end. It is only the mode of recovery which is referred to in the said Act."

110. In *Kaupthing Singer and Friedlander Ltd. (supra)* the UK Supreme Court re- viewed a large number of previous authorities on the concept of double proof, i.e. re- covery from guarantors in the context of insolvency proceedings. The court held that:

"The function of the rule is not to prevent a double proof of the same debt against two separate estates (that is what insolvency practitioners call "double dip"). The rule prevents a double proof of what is in substance the same debt being made against the same estate, leading to the payment of a double dividend out of one estate. It is for that reason sometimes called the rule against double dividend. In the simplest case of suretyship (where the surety has neither given nor been provided with security, and has an unlimited liability) there is a triangle of rights and liabilities between the principal debtor (PD), the surety (S) and the creditor (C). PD has the primary obligation to C and a secondary obligation to indemnify S if and so far as S discharges PD's liability, but if PD is insolvent S may not enforce that right in competition with C. S has an obligation to C to answer for PD's liability, and the secondary right of obtaining an indemnity from PD. C can (after due notice) proceed against either or both of PD and S. If both PD and S are in insolvent liquidation, C can prove against each for 100p in the pound but may not recover more than 100p in the pound in all."

111. In view of the above discussion, it is held that approval of a resolution plan does not *ipso facto* discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.

112. For the foregoing reasons, it is held that the impugned notification is legal and valid. It is also held that approval of a resolution plan relating

to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to corporate debtors). The writ petitions, transferred cases and transfer petitions are accordingly dismissed in the above terms, without order on costs.

J [L. NAGESWARA RAO]
New Delhi, May 21, 2021.
J [S. RAVINDRA BHAT]

# IN THE HIGH COURT OF ORISSA AT CUTTACK

[Dr. S. Muralidhar, B.P. Routary, CJJ]

W.P.(C) No. 15190 of 2021

M/s Utkal Udyog ... Petitioner

Versus

Commissioner CT & GST & Ors. ... Respondents

**DATE OF ORDER: 30.04.2021**

APPEAL – SECTION AND RULE MANDATES DEPOSIT OF 10% OF DEMAND AS PREDEPOSITS FOR THE APPEAL TO BE CONSIDERED – PETITIONER PLEADS THAT HE HAS NO FINANCIAL MEANS – PRAYS THAT HIGH COURT SHOULD EXERCISE POWER UNDER ARTICLE 226 TO WAIVE OR REDUCE THE PERCENTAGE OF PREDEPOSIT – PRAYER REJECTED.

Section 107 of the CGST Act is a mandatory provision and there is no discretion with the appellate authority to waive the requirement of pre-deposit. Even this Court cannot direct the appellate forum to do so contrary to the Statute. As far as the judgment in Kelmar (India) Exports (supra) is concerned it was in the context of Punjab Value Added Tax Act. On the facts of that case the High Court thought it fit to reduce the pre-deposit from 25% to 10%. However, this Court is not persuaded to adopt that approach in view of the clear language of the Statute applicable here.

Present for Petitioner : Mr. T.K. Satapathy, Advocate

Present for Respondents : Mr. Sunil Mishra, ASC For Opposite parties

**JUDGMENT**

The matter is taken up by video conferencing mode.

The Petitioner is aggrieved by the requirement under Section 107 of the Orissa Goods and Service Tax Act (OGST Act), read with Rule 108 of Orissa Goods and Service Tax Rules (OGST Rules) that mandates deposit of 10% of the demand as a predeposit for the appeal to be considered.

Counsel for the Petitioner submits that since the Petitioner has no financial means at this stage, his is unable to be even upload the appeal

without pre-deposit. Relying upon the decision of Punjab and Haryana High Court in ***Kelmar (India) Exports v. State of Punjab*** (CWP No.17975 of 2020 decided on 2nd November, 2020), he urges that the Court should exercise its power under Article 226 of the Constitution either to waive orreduce the pre-deposit percentage to enable the Petitioner to file the appeal.

Section 107 of the OGST Act is a mandatory provision and there is no discretion with the appellate authority to waive the requirement of pre-deposit. Even this Court cannot direct the appellate forum to do so contrary to the statute. As far as the judgment in ***Kelmar (India) Exports*** (*supra*) is concerned it was in the context of Punjab Value Added Tax Act. On the facts of that case the High Court thought it fit to reduce the pre-deposit from 25% to 10%. However, this Court is not persuaded to adopt that approach in view of the clear language of the statute applicable here.

It is noticed that under Section 107 of the OGST Act upon making a pre-deposit of 10% there is an automatic stay of the balance 90% of demand, which cannot, in the circumstances, be said to be unfair or unreasonable.

In that view of the matter the Court is not inclined to entertain the present petition. The writ petition is accordingly dismissed.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587,dated 25th March, 2020 as modified by Court's Notice No. 4798,dated 15th April, 2021.

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
[Daya Chaudhary, Meenakshi I. Mehta, JJ]

CWP No. 17975 of 2020

M/s Kelmar (India) Exports ... Petitioner

Versus

State of Punjab & Ors. ... Respondents

**DATE OF ORDER: 02.11.2020**

APPEAL – FIRST APPEAL – PRIOR DEPOSIT OF 25% – APPELLATE AUTHORITY DIRECTS PREDEPOSIT OF 10% – APPELLANT FAILS TO DEPOSIT – APPEAL DISMISSED – SECOND APPEAL BEFORE TRIBUNAL – SECOND APPEAL DISMISSED ON GROUND OF NON DEPOSIT OF 25% OF TOTAL DEMAND – WRIT PETITION TO HIGH COURT – PLEADS FINANCIAL PROBLEMS!

*Undisputedly, no relaxation can be given in view of ratio of judgment rendered in M/s Tecnimont Pvt. Ltd. case (supra) but the petitioner has to make out a case for financial hardship. Accordingly, by considering the interest of justice and also the fact that the petitioner is ready to deposit 10% as pre-deposit instead of 25% of the total demand 4 of 5 before the Appellate Authority within some reasonable period for deciding his appeal on merits, hence and as such, by exercising the inherent powers as provided under Section 226 of the Constitution of India and keeping in view the peculiar facts and circumstances of the case and by considering the financial hardship of the petitioner, we dispose of the petition by directing the petitioner to file an appeal within a period of two weeks from the date of receipt of certified copy of the order and respondent No. 2 i.e. the Deputy Excise and Taxation Commissioner (Admin), Ludhiana Division, Ludhiana is directed to entertain the appeal and to decide the same in accordance with law within a period of four weeks thereafter on depositing of 10% of the total demand.*

Present for Petitioner : Mr. Amit Bansal, Advocate

Present for Respondents : Mr. Pankaj Guptal, Addl. A.G., Punjab

**JUDGMENT**

Petitioner firm i.e. M/s Kelmar (India) Exports is registered under Punjab Value Added Tax Act, 2005 (here-in-after called as `PVAT Act') and Central Sales Tax Act, 1956 (here-in-after called as `CST Act'). The firm deals in the trade of Iron and Steel goods. Notice for assessment under Section 29(2) of PVAT Act was issued by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II. The authorized representative of the petitioner firm appeared before the concerned authority and produced the invoices as well as other relevant documents. Respondent No.3 passed the impugned order dated 29.06.2016 (Annexure P-2) and created a demand of Rs.27,76,882/-, which is under challenge in the present petition.

Aggrieved by said order, the petitioner firm filed first appeal before the Deputy Excise and Taxation Commissioner (Admin), Ludhiana 1 of 5

Division, Ludhiana, Punjab (respondent No.2) along with an application for exemption of prior deposit of 25%. A direction was issued by respondent No.2 to the petitioner to deposit 10% of the total demand of Rs.27,76,882/-, which comes to Rs. 2,77,688/- by relaxing pre-condition of deposit of 25%. The said amount was to be deposited by 21.03.2017. However, in spite of directions issued by respondent No.2, the petitioner did not deposit the said amount and ultimately, the appeal was dismissed vide Order dated 21.03.2017. Being aggrieved by said order, the petitioner filed an appeal before the Punjab VAT Tribunal, which was also dismissed on 05.11.2019 on the ground of non-deposit of 25% of the total demand. Thereafter, the petitioner has approached this Court by way of filing the present petition for quashing of impugned order dated 05.11.2019 (Annexure P-4) passed by the Punjab VAT Tribunal as well as order dated 21.03.2017 (Annexure P-3) passed by respondent No.2. A prayer has also been made for issuance of a writ in the nature of mandamus directing respondent No.2 to adjudicate the appeal on merits without insisting upon prior deposit of 25% as the petitioner is having a good case on merits and the firm is suffering a huge loss in business and is not in a position to pay the said amount of 25%.

Learned counsel for the petitioner also submits that the submissions made by the petitioner firm were not considered as there was a financial problem in depositing 10%. Learned counsel also submits that there is no requirement of pre-deposit, in case, there is merit in the appeal. The amount of pre-deposit could have been reduced.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case Civil Appeal No.7358 of 2019 titled as M/s Tecnimont Pvt. Ltd. Vs State of Punjab and others decided on 2 of 5 18.09.2019 as well as judgment of this Court in case CWP No.33146 of 2019 titled as M/s Chadha Super Cars Pvt. Limited, Ludhiana vs State of Punjab and others decided on 28.11.2019 in support of his arguments.

Learned counsel for the respondents-State Mr. Pankaj Gupta, Additional Advocate General (Punjab) has opposed the submissions made by learned counsel for the petitioner by submitting that pre-deposit of 25% is a mandatory requirement as per provisions of Section 62(5) of the PVAT Act. He also submits that nothing is mentioned in the petition as well as in the appeals that it was a case of financial hardship. Mr. Gupta has also relied upon the judgment of Hon'ble the Apex Court in case Tecnimont Pvt. Ltd. Vs State of Punjab and others 2019 SCC OnLine SC 1228 as well as judgment of this Court in case CWP No.16751 of 2011 titled as Larsen & Toubro Limited vs The State of Haryana and others decided on

19.01.2012, wherein, it has been held that the appellate authority has no power to waive off the pre-deposit amount. Learned State counsel also submits that the condition of 25% pre-deposit for hearing of the appeal is not harsh, unreasonable and arbitrary.

Heard the arguments of learned counsel for the parties. We have also perused the impugned orders as well as other documents on the file.

Admittedly, the first appeal was filed by the petitioner along with an application for waiving off pre-deposit amount of 25%. The appeal was dismissed by the Deputy Excise and Taxation Commissioner (Admin), Ludhiana Division, Ludhiana on the ground that the petitioner was directed to deposit 10% of the total demand instead of 25% under Section 62(5) of the PVAT Act by 21.03.2017. However, the petitioner did not comply with 3 of 5 the directions. Thereafter, the VAT Appellate Tribunal also dismissed the appeal on the ground of non-depositing pre-deposit of 25% of the total demand. It was also directed to the petitioner to deposit 10% of the total demand within a period of two months but still that amount was not deposited. It was observed that the petitioner was having remedy under Article 226 of the Constitution of India for seeking any relaxation or waiving off the amount for hearing of the appeal. No doubt, any specific ground has not been takenfor showing the financial hardship but it has been mentioned in second prayer that due to financial loss in business, the petitioner could not deposit the amount of 25% as pre-deposit. During the course of arguments, it has been submitted by learned counsel for the petitioner that the petitioner would deposit 10% of the total demand as directed by the Appellate Authority, in case, his appeal is heard on merits. Although, as per provisions of Section 62(5) of the PVAT Act, no appeal can be entertained unless the same is accompanied by satisfactory proof of the prior minimum payment of twenty-five percent of the total amount of additional demand created, penalty and interest, if any. It is not disputed that the Appellate Authority directed the petitioner to deposit 10% instead of 25% as pre-deposit for hearing of the appeal but the petitioner could not deposit the said amount as well. Now the petitioner is ready to deposit 10% of the total demand so that his appeal can be heard on merit.

Undisputedly, no relaxation can be given in view of ratio of judgment rendered in M/s TecnimontPvt. Ltd. case (supra) but the petitioner has to make out a case for financial hardship. Accordingly, by considering the interest of justice and also the fact that the petitioner is ready to deposit 10% as pre-deposit instead of 25% of the total demand 4 of 5 before the Appellate Authority within some reasonable period for deciding his appeal

on merits, hence and as such, by exercising the inherent powers as provided under Section 226 of the Constitution of India and keeping in view the peculiar facts and circumstances of the case and by considering the financial hardship of the petitioner, we dispose of the petition by directing the petitioner to file an appeal within a period of two weeks from the date of receipt of certified copy of the order and respondent No.2 i.e the Deputy Excise and Taxation Commissioner (Admin), Ludhiana Division, Ludhiana is directed to entertain the appeal and to decide the same in accordance with law within a period of four weeks thereafter on depositing of 10% of the total demand.

## IN THE HIGH COURT OF KERALA AT ERNAKULAM

[A.K. Jayasankaran Nambiar, J]

W.P.(C) No. 23270 of 2020 (G)

M/S Metrolite Roofing Pvt. Ltd. ... Petitioner

Versus

The Dy. Commissioner Of Central Tax And
Central Excise Palakkad Gst Division & Ors. ... Respondents

**DATE OF ORDER: 21.12.2020**

APPEAL – HEARING THROUGH VIDEO CONFERENCING AT THE TIME OF DISPOSAL – HEARING DURING COVID-19 PANDEMIC PERIOD – APPELLATE AUTHORITY WAS OBLIGED TO MAINTAIN RECORD OF PERSONAL HEARING AND TO ISSUE A COPY TO PETITIONER – TO COMPLY WITH PRINCIPLES OF NATURAL JUSTICE – NO RECORDS MAINTAINED – COPY NOT ISSUED – EFFECT OF !

*I am of the view that inasmuch as the procedure for maintaining a record of personal hearing was a formal one that was devised to take care of the compliance with the rules of natural justice during the period when the personal hearing had to be undertaken through video conferencing, taking note of the covid pandemic situation, the respondent Appellate Authority ought to have complied with the said procedure strictly.*

*The Appellate Authority shall pass fresh orders as directed within two months from the date of receipt of a copy of this judgment.*

Present for Petitioner : Mr. Harisankar V. Menon Smt. Meera V. Menon

Present for Respondents : Mr. Sreelal N. Warrier, SC

**JUDGMENT**

In all these Writ Petitions, the issue that is raised while impugning the orders passed by the 2nd respondent, is that the 2nd respondent did not maintain a record of personal hearing at the time of disposal of the appeals preferred by the petitioners against orders of the original authority. In the Writ Petition, it is the case of the petitioners that in connection with the procedure stipulated for hearing appeals through video conferencing during the Covid-19 pandemic period, the respondent Appellate Authority was obliged to maintain a record of personal hearing and issue a copy of the same to the petitioners so as to comply with the requirements of natural justice. In the instant cases, it is the contention of the learned counsel for the petitioners that no such records of personal hearing was maintained, and at any rate no copies of the said record of personal hearing were sent to the petitioners.

Through a statement filed on behalf of the respondents, it is stated that the petitioners were given an opportunity of personal hearing and they were represented by a professional Chartered Accountant on the basis of the authorisation granted to the said person. It is further stated that inasmuch as there were a large number of cases attended toby the very same authorised representative, the Appellate Authority heard the said authorised person and accepted the common written submissions that were filed for the two separate category of appellants,namely, registered and unregistered persons. It is admitted that the record of personal hearing was inadvertently omitted to be sent to the petitioners although the argument notes already submitted by the authorised representative of the petitioners was available with the appellate authority.

I have heard the learned counsel for the petitioners and thelearned Standing counsel for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that inasmuch as the procedure for maintaining a record of personal hearing was a formal one that was devised to take care of the compliance with the rules of natural justice during the period when the personal hearing had to be undertaken through video conferencing, taking note of the covid pandemic situation,

the respondent Appellate Authority ought to have complied with the said procedure strictly. Inasmuch as in these cases,the said procedure was not complied, I deem it appropriate to quash the impugned orders and direct the appellate authority to pass fresh orders after complying with the said procedure and after hearing the petitioners. The Appellate Authority shall pass fresh orders as directed within two months from the date of receipt of a copy of this judgment.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Rajiv Shakdher, Talwant Singh, JJ]

W.P.(C) 2348/2021

Roshni Sana Jaiswal ... Petitioner

Versus

Commissioner of Central Taxes, GST Delhi (East) ... Respondents

**DATE OF ORDER: 12.05.2021**

PROVISIONAL ATTACHMENT – BANK ACCOUNTS OF MENTOR ADVISOR ATTACHED – ALLEGATIONS AGAINST THE COMPANY – AVAILING ITC AGAINST FAKE / INELIGIBLE INVOICES – INVESTIGATION U/S 67 OF THE ACT – WHETHER BANK ACCOUNTS OF THE PERSON WHO WAS DIRECTOR EARLIER AND MENTOR / ADVISOR DURING THE INVESTIGATION PERIOD, CAN BE ATTACHED?

ALTERNATIVE REMEDY – PETITIONER FILED OBJECTIONS DURING PENDENCY OF WRIT – OBJECTIONS REJECTED – MAINTAINABILITY OF WRIT PETITION?

PROVISIONAL ATTACHMENT – SECTION 83 OF THE ACT – NOTHING ON RECORD TO SHOW APPLICATION OF MIND – ATTACHMENT – WHETHER JUSTIFIED?

*According to us, the submission advanced by Mr. Singh, that the instant petition. under Article 226 of the Constitution, should not be entertained as recourse to an alternate remedy was taken by the petitioner, does not impress us, since the exercise of power under Section 83 of the Act, to begin with, was without jurisdiction. The fact that an alternate remedy is available to a litigant is a self-imposed limitation on the Court; something which did not deter the Court, when notice was issued in the matter, in the*

*first instance, perhaps, given the assertions made in the petition. The Court can, and should exercise its powers, under Article 226 of the Constitution, amongst others, in cases where the impugned action or order concerned is without jurisdiction. In this case, one of the jurisdictional ingredients, which is missing, is that the petitioner is not a taxable person.*

*Sub-section 1 of Section 83 of the Act in no uncertain terms states that provisional attachment can be ordered only qua property, including bank account, belonging to the taxable person. Furthermore, the definition of the „taxable person", as set out in Section 2(107) of the Act3 , provides that only that person can be a taxable person, who is registered or liable to be registered as per the Act. It is not even the case of the respondent that. the petitioner is either registered or was liable to be registered. in terms of the provisions of Section 2(107) of the Act. Therefore, according to us, the proceedings must fail on this score alone.*

*The respondent has not been able to place before us, any material, which would show that the concerned officer, before triggering the provisions of Section 83 of the Act, had applied his mind to the other important aspect, which is, that the provision had to be taken recourse to, to protect the interest of the revenue.*

*There is nothing in the statement of the petitioner, which would show, that she had anything to do with the purported illegal transaction said to have been carried out between Milkfood Ltd. [i.e., the taxable person], and its suppliers.*

*Therefore, even if we assume, for the moment, that, since investigations are on against the taxable person, and therefore, proceedings are pending under Section 67 of the Act, there is nothing placed on record to show that there was material available with the respondent, linking the petitioner to purported fake invoices. In other words, in the absence of such material, the impugned action concerning provisional attachment of the petitioner's bank accounts, which is otherwise a "draconian" step, was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.*

Present for Petitioner : Mr. Harsh Sethi, Advocate

Present for Respondents : Mr. Harpreet Singh, Sr. Standing Counsel

## JUDGMENT

**Preface: -**

1. This writ petition is directed against the orders of even date, i.e., 07.12.2020 passed by the respondent, whereby several bank accounts of the petitioner have been provisionally attached.

1.1 The details of these bank accounts, which have been provisionally attached by the respondent, are set forth hereafter

| S. No. | Name of the Bank | Account No. |
|---|---|---|
| 1. | HDFC Bank Ltd. | 50100122220961 |
| 2. | Standard Chartered Bank | 45610028287 |
| 3. | Union Bank of India | 344902010001127 |
| 4. | Standard Chartered Bank | 24110205602 |

**Background facts: -**

2. The challenge, to the aforementioned orders, arises in the background of the following undisputed facts and circumstances.

2.1. The petitioner was acting as a director on the Board of Directors of a company, going by the name of Milkfood Ltd., between 2006 and 2008. The petitioner is also a shareholder in the said company, and owns approximately 14.33 % equity shares. The petitioner drew a salary of Rs.1.50 crores per annum qua the financial year (in short "FY") 2019-2020.

2.2. The respondent, based on the information received, that Milkfood Ltd. was availing Input Tax Credit (in short "ITC") against fake/ ineligible invoices, commenced investigation, under Section 67 of the Central Goods and Services Tax Act, 2017 (in short "the Act"), against Milkfood Ltd.

2.3. The respondent claims that, the statement of the persons, who controlled entities, which enabled Milkfood Ltd. to claim ITC, were recorded in the course of the investigation. It is in this connection, the respondent claims, that "the voluntary statement" of the petitioner was recorded on 03.12.2020.

2.4. The petitioner, as per the respondent, in her statement made to the concerned officer, inter alia, admitted to the fact that she had acted as a director of the company, i.e., Milkfood Ltd., between 2006 and 2008, and since then, she has been working in the company in the capacity of a mentor/advisor.

2.5. Furthermore, the petitioner is also said to have stated that, it is in her capacity as the mentor/advisor to Milkfood Ltd., that she received Rs.1.50 crores in the concerned FY i.e. 2019-2020, from Milkfood Ltd. According to the petitioner, this money was given as she had been providing "strategic guidance" to Milkfood Ltd.

2.6. The petitioner, as noticed above, had accepted the fact that, she held an equity stake of 14.33% in Milkfood Ltd.

2.7. Since the petitioner was aggrieved qua the impugned action of the respondent, she approached this Court by way of the instant writ petition. Upon notice being issued, the respondent has filed its counter-affidavit. Submissions on behalf of the respondent: -

3. Mr. Harpreet Singh, who appears on behalf of the respondent, has made the following submissions:

(i) The petitioner has availed of the alternate remedy available to it under Rule 159(5) of the Central Goods and Services Tax Rules, 2017 (in short „the Rules"), by filing objections under the said Rule, albeit during the pendency of the writ petition. Mr. Singh says that since objections, were filed during the pendency of the writ petition and after the counter–affidavit was filed on behalf respondent, there is no reference to this aspect of the matter, in the counter-affidavit. Mr. Singh states that the objections were disposed of vide order dated 19.04.2021.

(ii) Investigations, commenced under Section 67 of the Act, against the Milkfood Ltd., were still on.

(iii) Milkfood Limited has availed ITC credit. to the extent of approximately Rs.85 crores, based on fake invoices. The respondent had arrested persons, who controlled the entities which furnished fake invoices to Milkfood Ltd. Coercive proceedings were also intended to be triggered against the directors/employees of Milkfood Ltd.

(iv) The persons, connected to the suppliers and the directors/ employees of Milkfood Ltd., had approached the concerned courts for grant of bail. In those proceedings, Rs.10 crores was deposited with the respondent, as the condition of bail. In addition, thereto, Rs.6 crores was voluntarily deposited by Milkfood Ltd. with the respondent. In all, out of an approximate amount of Rs.85 crores, Rs.16 crores stands deposited with the respondent.

(v) The judgment of the Supreme Court, relied upon by petitioner, rendered in M/s Radha Krishan Industries vs. State of Himachal Pradesh & Ors., 2021 SCC OnLine SC 334 [in short “Radha Krishan Industries Case”], has no applicability to the instant case, as, in that case, an adjudication order had already been passed. Submissions on behalf of the petitioner: -

4. On the other hand, Mr. Harsh Sethi, who appears on behalf of the petitioner, submitted that. the proceeding initiated against the petitioner. under Section 83 of the Act. is without jurisdiction, as the petitioner does not fall within the ambit of the definition of a „taxable person"; the taxable person being Milkfood Ltd and not the petitioner. Therefore, the impugned orders cannot be sustained, as this crucial jurisdictional ingredient is missing.

4.1. Mr. Sethi says that the other ingredients, provided in Section 83 of the Act, are also missing. The respondent, before triggering the provisions of Section 83 of the Act, had to satisfy itself that there was a “pending” proceeding under the provisions of Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74 of the Act. Furthermore, Mr. Sethi says that, the respondent was also required to form an opinion, before taking recourse to Section 83 of the Act, that attachment of the petitioner"s bank account was necessary for the purpose of protecting the interest of the revenue.

4.2. Mr. Sethi says that the principles enunciated in Radha Krishan Industries Case, squarely apply to the instant case. In this context, Mr. Sethi relies, in particular, on paragraphs 41 and 72(iv) & (v) of the judgement rendered in Radha Krishan Industries Case.

**Analysis and Reasons: -**

We have heard the learned counsel for the parties and perused the record.

5.1. According to us, the submission advanced by Mr. Singh, that the instant petition under Article 226 of the Constitution, should not be entertained as recourse to an alternate remedy was taken by the petitioner, does not impress us, since the exercise of power under Section 83 of the Act, to begin with, was without jurisdiction. The fact that an alternate remedy is available to a litigant is a self-imposed limitation on the Court; something which did not deter the Court, when notice was issued in the matter, in the first instance, perhaps, given the assertions made in the petition. The Court can, and should exercise its powers, under Article 226 of the Constitution, amongst others, in cases where the impugned action or order concerned is without jurisdiction[1]. In this case, one of the jurisdictional ingredients", which is missing, is that the petitioner is

> "It is to inform that M/s Milkfood Limited, having principal place of business at Bhandari House, 5th Floor, 91, Nehru Place, Delhi-110019 bearing registration number as GSTIN 07AAACM5913B1ZY and PAN AAACM5913B, is a registered taxable person under the CGST Act, 2017....."

not a taxable person. This aspect is borne out upon perusal

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1 See: Calcutta Discount Co. Ltd. vs. ITO, AIR 1961 SC 372: (1961) 41 ITR 191. "28. In the present case the Company contends that the conditions precedent for the assumption of jurisdiction under Section 34 were not satisfied and come to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused."

of the impugned orders, which are identical. In the impugned orders, dated 07.12.2020, the respondent adverts to the fact that, Milkfood Ltd. is the taxable person. For the sake of convenience, the relevant portion of one of the impugned orders, appended on page 32 (which concerns the provisional attachment of bank account of the petitioner maintained with HDFC bank), is extracted hereunder:

5.2. As indicated above, we are told that the order rejecting the petitioner's objections under Rule 159(5) was passed on 19.04.2021. This order has not been placed on record. We are also not told of the date on which the objections were filed. On being queried, Mr. Singh concedes that the order, passed under the aforestated Rule, on 19.04.2021, is not appealable.

5.3. Subsection 1 of Section 83 of the Act[2] in no uncertain terms states that provisional attachment can be ordered only qua property, including bank account, belonging to the taxable person. Furthermore, the definition of the 'taxable person', as set out in Section 2(107) of the Act[3], provides that only that person can be a taxable person, who is registered or liable to be registered as per the Act. It is not even the case of the respondent that. the petitioner is either registered or was liable to be registered. in terms of the provisions of Section 2(107) of the Act. Therefore, according to us, the proceedings must fail on this score alone.

5.4. As far as the other submissions are concerned, as to whether or not it could be said that the proceedings under Section 67 of the Act are pending, the same, in our view, need not detain us, for the reasons stated above.

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2 83. Provisional attachment to protect revenue in certain cases (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

3 2. In this Act, unless the context otherwise requires,— (107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

5.5. We must, however, indicate that this aspect apart, the respondent has not been able to place before us, any material, which would show that the concerned officer, before triggering the provisions of Section 83 of the Act, had applied his mind to the other important aspect, which is, that the provision had to be taken recourse to, to protect the interest of the revenue.

5.6. In the counter-affidavit, the only aspect that the respondent has pointed out qua the petitioner is the “voluntary” statement made by her on 03.12.2020. We have alluded to what the petitioner has said in her statement, which is, in turn, gleaned from the counter-affidavit filed by the respondent. In our opinion, there is nothing in the statement of the petitioner, which would show, that she had anything to do with the purported illegal transaction said to have been carried out between Milkfood Ltd. [i.e., the taxable person], and its suppliers.

5.7. The petitioner claimed, in her voluntary statement, that she was paid Rs.1.50 crores in the FY 2019-2020 for rendering services in her capacity as a mentor/advisor to Milkfood Ltd. Therefore, even if we assume, for the moment, that, since investigations are on against the taxable person, and therefore, proceedings are pending under Section 67 of the Act, there is nothing placed on record to show that there was material available with the respondent, linking the petitioner to purported fake invoices. In other words, in the absence of such material, the impugned action concerning provisional attachment of the petitioner"s bank accounts, which is otherwise a “draconian” step, was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.

**Conclusion: -**

6. Accordingly, for the forgoing reasons, we are inclined to allow the writ petition. It is ordered accordingly. The impugned provisional attachment orders dated 07.12.2020. are quashed. The respondent will communicate the order passed today to the concerned Banks.

6.1. Consequently, the order dated 19.04.2021, disposing of the objections filed by the petitioner, would also collapse, in its

entirety, as the proceedings carried out against the petitioner were without jurisdiction.

7. All concerned shall act on a digitally signed copy of the judgement passed today.

8. Pending application shall stand closed.

# Job Work under GST – Detailed Analysis

*Parveen Kumar Mahajan, Advocate*

**The term "Job Work" is very important subject under the GST. Though there is no tax under GST upon goods supplied for the purpose of job work to the Job Worker and returned back from the Job Worker after completion of job work to the Principal even then the Legislature has framed fullfledged provisions under the GST Law in regard of transactions happened between the Principal and Job Worker.**

Section 2 (68) of the CGST Act defines Job Work as **""job work"** means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly."

Section 143 read with rule 45 of the CGST Act explain to follow the procedures for the purpose of job work transactions.

The Procedures are explained as under:

## A. Applicability of the Provisions Relating to Job Work

1. **Section 143 is applicable only to the Registered Person.** It means liability to follow the procedures as envisaged under Section 143 is upon the Registered Person. The person other than registered person shall have no concern about this section.
2. **Section 143 is applicable only to Taxable Goods.** It is not applicable to the goods exempted from GST Tax or the Taxable Goods are sent to the Job Worker with payment of tax.
3. Inputs, semi-finished goods or capital goods may be sent to the Job Worker.

## B. Legal Documents for goods sent to the Job Worker, goods sent to another Job Worker and goods returned to the Principal

1. Goods shall be sent to the Job Worker through a challan.
2. Challan shall also be issued by the Principal on such goods which shall be sent directly to the Job Worker.

3. Where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker.

4. While returning the goods to the Principal by the Job Worker or goods sent to another Job Worker by the Job Worker, the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods.

5. In case the goods after carrying out the job work are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.

6. Challan shall be issued according to the provisions of rule 55 of the CGST Act. Rule 55 (2) requires to prepare the challan in triplicate. The copies of challan shall be marked as:

   (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;

   (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and

   (c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

**C. E-Way Bill requirements**

1. E-Way Bill is required to be generated before movement of goods by the Principal to the Job Worker or by the registered Job Worker to the Principal or to the another Job Worker.

2. There is no limit in regard of value of consignment of such goods for generating e-way bill for goods sent for job work. For example if the consignment of such goods is Rs.1000 or less, e-way bill shall be generated.

**D. GST Return for goods supplied for Job Work**

1. Section 143 requires from the Principal to intimate each supply made to Job Worker, supply made to another Job Worker and goods returned by Job Worker to the Principal. **The responsibility for keeping proper accounts for the inputs or capital goods**

**sent to the Job Worker and the same returned back from the Job Worker or supplied made from the place of Job Worker shall be lie with the principal.**

2. Such intimation is to be furnished in **GST Return Form ITC-04**.

3. Rule 45(3) of the CGST Rules provides that the principal is required to furnish the details of challans in respect of goods sent to a job worker or received from a job worker or sent from one job worker to another job worker during a quarter in FORM GST ITC-04 by the 25th day of the month succeeding the quarter or within such period as may be extended by the Commissioner. It is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom.

## E. Time Period for Inputs or Capital Goods to be brought back from the Job Worker

The Principal shall bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, **within one year and three years, respectively**, of their being sent out, to any of his place of business, without payment of tax;

OR

The Principal shall supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, **within one year and three years, respectively**, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be.

### Conditions for Supply from the Place of Job Worker

The Principal shall declare the place of business of the job worker as his additional place of business if the Job Worker is unregistered. Such declaration is not required if the Job Worker is registered under section 25 or where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

Such declaration for additional place of business may be given if the Job Worker is in the same state. But if the Job Worker is in other state then such declaration shall not be allowed.

**Time Period may be extended by the Commissioner**

The period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

**F. Implications for not received back from the place of Job Worker of Inputs or Capital Goods – Section 143 (3) and Section 143 (4)**

1. Where the inputs and capital goods sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker within a period of one year or within a period of three years as the case may be of their being sent out, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out.

**For example** – The Principal sent inputs to the job worker on 14-04-2018. If the inputs are not received back by 13-04-2019 then it shall be deemed that such inputs had been supplied by the principal to the Job Worker on 14-04-2018 when the inputs were sent out. Such supply shall be taken by the principal in the GST Return of April 2019. The Principal shall make payment of output tax with interest from the due date of payment of tax for return to be filed for the month of April 2018 till date of payment of output tax.

2. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act.

**G. Waste and Scrap generated during the Job Work**

**Section 143 (5) -** Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered. But if the job worker is not registered then such waste and scrap shall be supplied by the Principal.

**H. GST Rate on Job Work Services**

**Rate Chart according to Notification No. 11/2017 – Central Tax (Rate)** at serial no. 26 Heading 9988 (Manufacturing services on physical inputs (goods) owned by others) is reproduced as under:

| Description of Service | Rate (per cent) |
|---|---|
| (i) Services by way of job work in relation to—<br>(a) printing of **newspapers**;<br>(b) **textiles and textile products** falling under Chapters 50 to 63 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);<br>(c) **all products other than diamonds** falling under Chapter 71 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);<br>(d) **printing of books (including Braille books), journals and periodicals**;<br>(da) printing of all goods falling under Chapter 48 or 49, which attract CGST @ 2.5 per cent or Nil;<br>(e) **processing of hides, skins and leather** falling under Chapter 41 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).<br>(ea) **manufacture of leather goods or foot wear** falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) respectively;<br>(f) **all food and food products** falling under Chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);<br>(g) all products falling under Chapter 23 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), except dog and cat food put up for retail sale falling under tariff item 2309 10 00 of the said Chapter;<br>(h) **manufacture of clay bricks** falling under tariff item 6901 00 10 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);<br>(i) **manufacture of handicraft goods**. Explanation.—The expression "handicraft goods" shall have the same meaning as assigned to it in the notification No. 32/2017 -Central Tax, dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 1158(E), dated the 15th September, 2017 as amended from time to time. | 2.5 |
| (ia) Services by way of job work in relation to—<br>(a) manufacture of **umbrella**;<br>(b) printing of all goods falling under Chapter 48 or 49,which attract CGST @ 6 per cent | 6 |
| (ib) Services by way of job work in relation to **diamonds** falling under Chapter 71 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); | 0.75 |

| | |
|---|---|
| (ic) Services by way of job work in relation to **bus bodybuilding**;<br><br>Explanation - For the purposes of this entry, the term "bus body building" shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975. | 9 |
| (id) Services by way of job work other than (i), (ia), (ib) and (ic) above; | 6 |
| (ii) Services by way of any treatment or process on goods belonging to another person, in relation to—<br><br>(a) **printing of newspapers;**<br><br>(b) **printing of books (including Braille books), journals and periodicals**.<br><br>(c) printing of all goods falling under Chapter 48 or 49, which attract CGST @ 2.5 per cent or Nil. | 2.5 |
| (iia) Services by way of any treatment or process on goods belonging to another person, in relation to printing of all goods falling under Chapter 48 or 49, which attract CGST @ 6 per cent. | 6 |
| (iii) Tailoring services | 2.5 |
| (iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), 2[(ib), (ic), (id),] (ii), (iia) and (iii) above. | 9 |

To reach to me for any suggestions, rectifications, amendments and/or further clarifications in regard of this article my email address is **pkmgstupdate@gmail.com**.

# Valuation Concepts under GST – Detailed Analysis

*Parveen Kumar Mahajan, Advocate*

The Valuation for supply of goods or services or both is a very vital chapter under the GST. It is an important part for the Government because the Government would like that no any supply would have been made under value. It is an important for a Registered Person because valuation in regard of supply of goods or services or both should be correctly made according to provisions of the Act and Rules otherwise penal action may be initiated on account of incorrect valuation.

There is only one section i.e. section 15 under the CGST Act for the purpose of valuation. But there is a separate chapter i.e. chapter IV in name of "Determination of Value of Supply" containing rules 27 to 35 under the CGST Rules for the purpose of valuation.

On perusal of the Section and Rules we can understand following concepts of valuations in regard of supply of goods or services or both:-

1. Which value in normal course of supply is acceptable by the legislature without any interfere;
2. Which transactions shall become part of the value of supply;
3. Which circumstances allow discount not to be included to the value of supply;
4. Which persons shall be deemed to be related persons;
5. Which supplies whose value shall be determined according to prescribed rules;
6. Valuation concepts in regard of Pure Agent;
7. Explanation of Open Market Value and Supply of like kind and quality:
8. What is the formula to determine value of a supply of goods or services or both where value of such supply is not determinable by any rule;

**Q1. Which value in normal course of supply is acceptable by the legislature without any interfere?**

According to section 15 (1) of the CGST Act, the value of a supply of goods or services or both shall be **the transaction value**. It (transaction value) is the price which is actually paid or payable. Such value is acceptable under the law subject to the Supplier and the Recipient are not related persons.

Meaning of transaction value is not provided anywhere under the GST Law but FAQ, issued by the GST Department, answer to question (What is Transaction Value?) as "Transaction value refers to the price actually paid or payable for the supply of goods and or services where the supplier and the recipient are not related and price is the sole consideration for the supply. It includes any amount which the supplier is liable to pay but which has been incurred by the recipient of the supply."

Thus transaction value is a price which is actually paid or payable. This value has no concern with market value as well as no concern if different values paid for a particular goods. The only conditions are that it is paid or payable by the Recipient and transaction is not done between related persons. Examples to understand the transaction value are given below:-

1. A retail shop keeper supplier of readymade garments sells one type of trouser, bearing MRP tag of Rs.3000, sells to three different customers with different prices say Rs.2000.00, Rs.2800.00 and Rs.3000.00. All three customers are not related persons with the shop keeper. Total transaction value of the said three transactions shall be Rs.7800.00 according to section 15 (1) of the CGST Act. Transaction value shall have no concern with MRP value as well as no concern with differently paid prices for a one type of goods.

2. Some times the shop keeper sells goods on SALE i.e., sells goods at discounted price. The price charged during SALE period shall also be treated as transaction value. The GST Law does not deny to sell goods on loss. The price of a goods may be less than from the cost value. For example cost price of the trouser is Rs.3000.00 but the shop keeper sold that trouser at Rs.1800.00 to the customer who was not his related person. The price Rs.1800.00 paid by the customer shall also be treated as transaction value on which the shop keeper is liable to pay tax.

**Q2. Which transactions shall become part of the value?**

According to section 15 (2) of the CGST Act –

The value of supply shall include –

| Value referred in Section 15 (2) | Example |
|---|---|
| (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier; | 1. The Delhi Govt. notifies to charge covid-19 fee @ 1% on every supply. The shopkeeper sells goods of Rs.10000.00 and thereon charged covid-19 fee Rs.100.00. Taxable value shall be Rs. 10100.00 on which GST shall be charged.<br>2. Other part of this sub-clause (a) of section 15 (2) says GST tax be charged separately by the supplier. If it (GST tax) is not charged separately then it shall become part of the taxable value. For example the shop keeper issues invoice Rs.1050.00 without mentioning GST tax Rs.50.00 (including in value of Rs.1050.00) separately on the invoice. In this case the GST department shall assess taxable value as Rs.1050.00 in place of Rs.1000.00 because GST tax Rs.50.00 has not been mentioned separately on the invoice.<br>***Rule 32A of the CGST Rules grants The Kerala Flood Cess from inclusion in the value of supply of goods or services or both.***<br>**Circular 76/2018 dated 31-12-2018 clarifies that for the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.** |
| (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both; | For example a person manufacture of hardware goods received order for manufacturing of screws worth Rs.100000 (one lakh) from a whole sale dealer in Delhi.The manufacturer sent the screws to the job worker for |

| | |
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| | greasing. Cost of the greasing say Rs.10000.00 was paid by the whole sale dealer to the job worker. Since liability to pay Rs.10000 was of the manufacturer therefore the amount Rs.10000.00 be included to the value of supply of screws. Greasing process was one of the manufacturing process and liability to pay cost of such processing was of the manufacturer. Therefore, such cost would include to the value of supply even though payment on this account had already been made by the recipient. |
| (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services; | For example the supplier Reymond Shop charges additionally for providing packing material to the customer. Such packing material supplied in respect of the supply of goods, therefore, cost of packing material will be included to value of supply of goods. |
| (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and | For example the supplier charges late fee if payment is not received timely. Such amount of late fee if received by the Supplier shall be treated as part of the value of goods or services supplied. Tax shall be charged when it (late fee) is received by the Supplier. |
| (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.<br><br>Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy. | Under this clause subsidy received from anyone **except subsidy received from Central Government and State Government** by the Supplier shall be included in the value of supply. For example Tata Group Charitable Trust (Non-Government Company) asks a distributor to supply taxable goods at subsidized price Rs.500.00 in Aadiwasi Area which market value is Rs.1000.00. Subsidy Rs.500 received by the Distributor from the Tata Group Charitable Trust shall be included in the value of supply. If the said subsidy Rs.500.00 received from the Government then such subsidy shall not be included in the value of supply. |

**Q3. Which circumstances allow discount not to be included to the value of supply?**

Section 15 (3) of the CGST Act provides two type of conditions to be applied on discount. If the said conditions are fulfilled, the value of the supply shall not include any discount.

(a) Discount is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

**Circular 92/11/2019-GST** is clarifying on the provisions of discount. This circular is clarifying on offers "Buy more, save move" and clarifying on "secondary discounts". The crux of the clarification is that discounts given in the form schemes or offers shall be excluded to determine the value of supply provided they satisfy the parameters laid in section 15 (3) of the Act. Further clarification is that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

**Q4. Which persons shall be deemed to be related persons?**

Explanation to the Section 15 of the CGST Act provides list of Related Persons. Such list is reproduced as under:-

*(a) persons shall be deemed to be "related persons" if—*

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

**Q5. Which supplies whose value shall be determined according to prescribed rules?**

| Rule/ Examples | Supply | Value of Supply Shall be |
|---|---|---|
| Rule 27 | Value of supply of goods or services where the consideration is not wholly in money | **(a)** be the open market value of such supply;<br>**(b)** If open market value not available then – Money + Money as is equivalent to the consideration not in money:<br>**(c)** if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;<br>**(d)** if the value is not determinable under clause (a) or clause (b) or clause (c), then value be determined by application of rule 30 or rule 31. |
| Examples for Rule 27 | (1) Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.<br>(2) Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty four thousand rupees. | |

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| Rule 28 | Value of supply of goods or services or both between distinct or related persons, other than through an agent. | **(a)** be the open market value of such supply;<br>**(b)** if the open market value is not available, be the value of supply of goods or services or both of like kind and quality;<br>**(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.<br>**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:<br>**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. |
| Rule 29 | Value of supply of goods made or received through an agent. | **(a)** be the open market value of the goods being supplied, or at the option of the supplier, be 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, where the goods are intended for further supply by the said recipient.<br>**(b)** if the value is not determinable under clause (a), be the value as determined by the application of rule 30 or rule 31, in that order |
| Example for Rule 29 | *A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.* | |

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| Rule 31A | Value of supply in case of lottery, betting, gambling and horse racing | **Sub clause (2)** - The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.<br><br>Explanation:- For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.<br><br>**Sub clause (3) -** The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator. |
| Rule 32 (2) | Value of supply of services in relation to the purchase or sale of foreign currency, including money changing | **(a)** for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the RBI reference rate for that currency at that time, multiplied by the total units of currency:<br><br>**Provided** that in case where the RBI reference rate for a currency is not available, the value shall be one per cent of the gross amount of Indian Rupees provided or received by the person changing the money:<br><br>**Provided further** that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the RBI:<br><br>**Provided also** that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year. |

| | | |
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| | | **(b)** at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be—<br>(i) one per cent of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;<br>(ii) one thousand rupees and half of a per cent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and<br>(iii) five thousand and five hundred rupees and one tenth of a per cent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees. |
| Rule 32 (3) | Value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent | Value shall be deemed to be an amount calculated at the rate of five per cent of the basic fare in the case of domestic bookings, and at the rate of ten per cent of the basic fare in the case of international bookings of passage for travel by air.<br><br>Explanation.—For the purposes of this sub-rule, the expression “basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airlines. |
| Rule 32 (4) | Value of supply of services in relation to life insurance business | Value shall be -<br>**(a)** the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service; |

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| | | **(b)** in case of single premium annuity policies other than (a), ten per cent of single premium charged from the policy holder; or<br>**(c)** in all other cases, twenty five per cent of the premium charged from the policy holder in the first year and twelve and a half per cent of the premium charged from the policy holder in subsequent years:<br>**Provided** that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance. |
| Rule 32 (5) | Value when taxable supply provided by a person dealing in second hand goods | Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored. |
| Example for Rule 32 (5) | A person dealing in second hand airconditioner purchases a used airconditioner for Rs.8000.00. After doing service to this airconditioner he sells it for Rs.9000.00. Value of supply shall be Rs.1000.00 being difference between the selling price and the purchase price. Suppose this airconditioner has been sold out at Rs.7500.00 then value of supply is minus 500.00 and the same shall be ignored being the negative value. | |
| Proviso to Rule 32 (5) | **Purchase Value** of goods repossessed from a defaulting borrower, who is not registered | The purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession. |
| Example for Proviso to Rule 32 (5) | A Bajaj Finance Company repossessed a refrigerator from a defaulting borrower for the purpose of recovery of loan. The refrigerator was purchased for Rs.50000.00 on 01-10-2018. The Bajaj Company disposed of the refrigerator on 15-05-2020. **Purchase value as on 15-05-2020** was Rs.32500.00 by reducing five percent for seven quarters from the original value Rs.50000.00 of the refrigerator. | |

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| Rule 32 (6) | Value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) | The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp. |
| Rule 34 (1) | Rate of exchange for determination of value of taxable goods | Applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act. |
| Rule 34 (2) | Rate of exchange for determination of value of taxable services | Applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act. |

**Q6. Valuation concepts in regard of Pure Agent –**

**Rule 33 - Pure Agent means a person who** –

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,—

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

**Example given in the rule –**

*Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B,registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.*

**Q7. Explanation of Open Market Value and Supply of like kind and quality:-**

a) ***"open market value"*** *of a supply of goods or services or both means the full value in money, excluding the Integrated tax, Central tax, State tax, Union Territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;*

(b) ***"supply of goods or services or both of like kind and quality"*** *means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.*

Q8. What is the formula to determine value of a supply of goods or services or both where value of such supply is not determinable by any rule;

Rule 30 says such supplies shall be valued on the basis of cost. The rule is reproduced as under:-

*Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten per cent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.*

# Deemed Exports under GST Regime

*Parveen Kumar Mahajan, Advocate*

Deemed Exports in GST is not like an export made out of India. According to the section 147 of CGST Act, goods supplied under deemed export shall not leave India and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India. In GST Deemed Exports shall be applicable only on supply of goods and not on supply of services. It shall be applicable on such supply of goods which have been notified under section 147 of the CGST Act.

The following points shall be discussed under this article:-

A. Notification issued for Supply of Goods to be treated as Deemed Exports

B. Procedure regarding procurement of Supplies of Goods for Deemed Exports Benefits

C. Taxability of Deemed Exports

D. Reporting tables in GSTR-1 and GSTR-3B for Deemed Export

E. Refund Procedure

**A. Notification No. 48/2017-Central Tax dated 18-10-2017** was issued to notify the following supplies of goods to be treated as deemed exports:

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

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

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

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

Notification also explained following terms:-

1. "Advance Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.
2. Export Promotion Capital Goods Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.
3. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

**B. Procedure regarding procurement of Supplies of Goods for Deemed Exports Benefits**

According to the Circular No. 14/14 /2017 – GST dated 06-11-2017:

(i) Form-A shall be made before Deemed Export Supplies. The Form, bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier, shall be issued to the:
   (a) the registered supplier;
   (b) the jurisdictional GST officer in charge of such registered supplier; and
   (c) its jurisdictional GST officer.

(ii) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP / BTP unit.

(iii) On receipt of such supplies, the EOU / EHTP / STP / BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to –
   (a) the registered supplier;
   (b) the jurisdictional GST officer in charge of such registered supplier;and
   (c) its jurisdictional GST officer.

(iv) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU / EHTP / STP / BTP unit.

(v) The recipient EOU / EHTP / STP / BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B". The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required. A digital copy of Form – B containing transactions for the month,shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.

(vi) Both Forms "A" and Form "B" are available in Circular No. 14/14 /2017 – GST dated 06-11-2017.

**C. Taxability of Deemed Exports**

The supply of goods under deemed exports cannot be made without payment of tax and cannot be supplied under a Bond/LUT. Rate of Tax on such supply of goods shall be the same rate of tax as applicable to regular supply of goods. Tax shall be paid on each and every supply under deemed exports and thereafter refund may be claimed.

**D. Reporting tables in GSTR-1 and GSTR-3B for Deemed Export**

Supply Detail in regard of Deemed Export shall be disclosed in following tables:

(i) Table 3.1 (b) of GSTR-3B and

(ii) Table 6C of GSTR-1

**E. Refund Procedure**

- Applicants - According to the 3rd proviso to rule 89 of the CGST Rules Applicants shall be -

  (a) the recipient of deemed export supplies; or

  (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and

furnishes an undertaking to the effect that the supplier may claim the refund.

- GST Refund Form - GST-RFD-01

- Statements/Documents to be required with Refund Application –

(a) Statement 5(B) under rule 89(2)(g) (statement proforma given below)

(b) According to notification 49/2017 – Central Tax following documents are required:

1. Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.

2. An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.

3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

(c) Undertakings -If the Recipient claims refund then undertaking by the Recipient shall be – "I hereby declare that the refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period. I also declare that the supplier has not claimed refund with respect to the said supplies.

If the Supplier claims refund then undertaking by the Supplier shall be – "I hereby declare that the refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed. I also declare that

the recipient shall not claim any refund with respect of the said supplies and also, the recipient has not availed any input tax credit on such supplies.

(d) It has been understood that according to rule 96 (10) of the CGST Rules refund towards general export and refund towards deemed export shall be treated separately. And refund pertaining to both type of exports are separately claimed according to their respective provisions under the GST.

- **Time Limit for Refund Claim –**

  The refund claim can be filed within two years from the date on which return relating to such deemed export supplies is furnished electronically.

- **Proforma Statement 5B –**

[Statement 5B [rule 89(2)(g)]

Refund Type: On account of Deemed Exports Amount in ( Rs.)

| **Sl No.** | **Details of invoices/credit notes/debit notes of outward supplies in case refund is claimed by supplier/Details of invoices of inward supplies in case refund is claimed by recipient.** | | | | | **Tax Paid** | | | |
|---|---|---|---|---|---|---|---|---|---|
| | GSTIN of the supplier | No. | Date | Taxable Value | Type (Invoice/ Credit Note/ Debit Note) | Integrated Tax | Central Tax | State Tax / Union territory Tax | Cess |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| | | | | | | | | | |

# Real Estate Joint Development Agreement under GST

*Parveen Kumar Mahajan, Advocate*

**Joint Development Agreement (JDA)** means an agreement between the Land Owner and the person ( may be in differ names i.e. Builder, Developer, construction company etc.. ) wherein the Land Owner provides land to the builder for the construction of a real estate project. In return for the land provided by the Land Owner, the Builder provides as per agreement that may be:

- Lump sum consideration or
- Percentage of sale revenue or
- Provide share in newly constructed property.

I shall discuss about Area Sharing JDA through this article. To understand the article an example relating to the subject of the article is given as under:

**Example -** The JDA has been executed between the parties on 02-04-2019. A Land Owner provides the land measuring about 1800 sq.mtr to the Builder to construct Non-Affordable 12 residential flats and 2 commercial shops. The Carpet Area of the commercial shops is less than 15 per cent of the total carpet area of the project, therefore, the project shall fall under Residential Real Estate Project (RREP) according to the Notification – 06/2019 – Central Tax (Rate) dated 29-03-2019. According to sharing areas settlement clause, the Land Owner shall get 6 built-up residential flats and 1 shop in lieu of consideration towards Transfer of Development Rights and balance 6 residential flats and 1 shop shall be kept by the Builder.

On the basis of the above example following points are to be discussed:

**A. What are the Supplies under the project?**

**B. Considerations for the Supplies specified in clause A**

**C. Rate of Tax against Supplies with effect from 01-04-2019**

**D. Valuation of Services Supplied under the project**

**E. Time of Supply**

**F. Reverse Charge Mechanism for any Supply under the project**

**G. Input Tax Credit**

**H. Calculation of Output Tax Liability and comparison between output taxliability against project sold before completion certificate and output tax liability against project not sold before completion certificate.**

## A. What are the Supplies under the project?

1. Supply of Development Rights by the Land Owner to the Builder;

2. Supply of Construction Services by the Builder to the Land Owner;

3. Supply of Construction Services towards own share of Proposed Residential Flats and One Shop by the Land Owner and

4. Supply of Construction Services towards own share of Proposed Residential Flats and One Shop by the Builder.

## B. Considerations for the Supplies specified in clause A

| S.No. | Supply | Consideration |
|---|---|---|
| 1 | Supply of Development Rights by the Land Owner to the Builder | Constructions services for six residential flats and one commercial shop exchanged by the Builder |
| 2 | Supply of Construction Services by the Builder to the Land Owner | Supply of Development Rights exchanged by the Land Owner |
| 3 | Supply of Construction Services towards own share of Proposed Residential Flats and One Shop by the Land Owner | Transaction value as settled with the consumer |
| 4 | Supply of Construction Services towards own share of Proposed Residential Flats and One Shop by the Builder | Transaction value as settled with the consumer |

## C. Rate of Tax against Supplies with effect from 01-04-2019

1. **Rate for Transfer of Development Rights** –

Rate for TDR services is 18% except rate on such service is NIL with condition as notified vide Notification No. 04/2019 - Central Tax (Rate). The Notification is reproduced as under:

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| 41A | Heading 9972 | Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.<br>The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:<br>[GST payable on TDR or FSI (including additional FSI) or both for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project ) | NIL | Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain unbooked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner –<br>[GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained<br>herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of<br>completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project)<br><br>Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per<br>cent. of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date |

| | | | | |
|---|---|---|---|---|
| | | | | of issuance of completion certificate or first occupation The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier. |

2. **Rate for Construction Services for Non Affordable Residential Projects and construction services for shops fall under RREP Project**–

2.1 **2.5 percent each under CGST and SGST Act on total value** i.e. value including share of land. Otherwise rate specified in Notification 11/2017-CT (Rate) is 3.75 percent each under the Act. For example total cost of the apartment is Rs.60 lakh, tax @ 5% is Rs.3 lakh. If deduct the 1/3rd value of land from the total value Rs.60 lakh i.e. Rs.40 lakh and then calculate tax @ 7.5% on 40 lakh which is also be Rs.3 lakh.

**D. Valuation of Services Supplied under the project**

1. **Valuation of TDR services -**

According to para 1A of the NOTIFICATION NO. 12/2017-CENTRAL TAX (RATE) inserted vide notification no. 4/2019 – CT (Rate) "*Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.*"

**2. Valuation of Unbooked flats -**

According to para 1A of the NOTIFICATION NO. 12/2017-CENTRAL TAX (RATE) inserted vide notification no. 4/2019 – CT (Rate) "*Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be."*

3. **Valuation of construction services, supplied by the builder or by the land-owner, of their respective shares -**

Value of such services shall be transaction value or determined according to section 15 of the CGST Act.

4. Valuation of construction services supplied by the Builder to the land-owner in lieu of consideration towards Transfer of Development Rights –

According to question no.26 the FAQ dated 14-05-2019 - *Value of construction services provided by the promoter to land owner in such cases shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the. promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No.11/2017-CT(R) dated 28.06.2017*

**E. Time of Supply**

1. **Time of supply of TDR services –**

According Notification No. 06/2019-Central Tax (Rate) dated 29-03-2019, the time of supply for TDR services shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

2. **Time of supply of construction services supplied by the Builder to the Land-Owner –**

In such case the time of supply shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

3. **Time of supply for construction services, supplied by the builder or by the land-owner, of their respective shares –**

Provisions of section 13 shall prevail on these transactions. The main gist of this section is that time of supply of service shall be the earliest date between date of receipt of the payment or date of issue of invoice if the same is issued within the period prescribed under section 31.

## F. Reverse Charge Mechanism for any Supply under the project

TDR (Transfer of Development Rights) services fall under the Reverse Charge Mechanism. According to Notification No. 07/2019- Central Tax (Rate) dated 29-03-2019. Tax shall be paid by the builder being a recipient on TDR services supplied by any person.

## G. Input Tax Credit

The detailed analysis in respect to the Input Tax Credit shall be available in article "**Real Estate & Joint Development Agreement under GST**" published in Taxguru.in. The link of this article is https://taxguru.in/goods-and-service-tax/real-estate-joint-development-agreement-gst.html.

## H. Calculation of Output Tax Liability and comparison between output tax liability against project sold before completion certificate and output tax liability against project not sold before completion certificate.

| **Tax Payable Liability upon the Builder** | | |
|---|---|---|
| **Liability for payment of Tax shall be the equal to the tax calculated on total selling value of the project even if all project had not been sold out before completion certificate** | | |
| **Case Number 1** | | |
| 1 | Date of JDA | 01/04/2019 |
| 2 | Date of Completion Certificate | 30/08/2020 |
| 3 | No.of Flats | 20 |
| 4 | Land Owner Share | 10 |
| 5 | Builder Share | 10 |
| 6 | Cost of Flat per flat | 5000000 |
| 7 | Rate of GST | 5% |
| 8 | Total Value of Flats = (S.No.3 * S.No.6) | 100000000 |
| 9 | Output Tax Liability = (S.No.8* S.No.7) if all flats sold before completion certificate | 5000000 |
| 10 | Flat Sold before Completion Certificate | |
| 11 | By the Builder | 6 |

| | | |
|---|---|---|
| 12 | By the Land Owner | 0 |
| 13 | Unsold Flats till Completion Certificate | |
| 14 | By the Builder | 4 |
| 15 | By the Land Owner | 10 |
| 16 | TDA value (S.No.6 * S.No.4) | 50000000 |
| 17 | Tax Payable on TDA Value @18% | 9000000 |
| 18 | Tax Payable of TDA on unbooked area (2 lakh * 18%) | 3600000 |
| 19 | Tax Payable on unbooked flats @5% | 1000000 |
| 20 | Maximum Payable amount on unbooked Flats (maximum payable amount shall not exceed 5%) | 1000000 |
| 21 | Tax Payable on construction services supplied by the builder to the Land-Owner @ 5% | 2500000 |
| 22 | Tax Paid before completion certificate on sold flats | 1500000 |
| 23 | Total Paid (20+21+22) | 5000000 |
| 24 | Difference between (23 – 9) | 0 |
| **Tax Payable Liability on Builder** | | |
| **Calculation with Commercial Property** | | |
| **Case Number 2** | | |
| 1 | Date of JDA | 01/04/2019 |
| 2 | Date of Completion Certificate | 30/08/2020 |
| 3 | No.of Flats | |
| 3.1 | Residential | 12 |
| 3.2 | Commercial | 2 |
| 4 | Land Owner Share | |
| 4.1 | Residential | 6 |
| 4.2 | Commercial | 1 |
| 5 | Builder Share | |
| 5.1 | Residential | 6 |
| 5.2 | Commercial | 1 |
| 6 | Cost of Flat | |

| | | |
|---|---|---|
| 6.1 | Residential per flat | 5000000 |
| 6.2 | Commercial per shop | 10000000 |
| 7 | Rate of GST | 5% |
| 8 | Total Value of Flats = (S.No.3.1 * S.No.6.1+3.2*6.2) | 80000000 |
| 9 | Output Tax Liability = (S.No.8* S.No.7) if all flats sold before completion certificate | 4000000 |
| 10 | Flat Sold before Completion Certificate | |
| 10.1 | By the Builder - Residential only | 4 |
| 10.2 | By the Land Owner | 0 |
| 11 | Unsold Flats till Completion Certificate | 10 |
| 11.1 | By the Builder (2 residential + 1 commercial) | 3 |
| 11.2 | By the Land Owner (6 residential + 1 commercial) | 7 |
| 12 | TDA value {( S.No.4.1*6.1)+(4.2 * 6.2)} | 40000000 |
| 13 | Tax Payable on TDA Value @18% (12*18%) | 7200000 |
| 14 | Tax Payable of TDA on unbooked residential flats (10000000*18%) | 1800000 |
| 15 | Tax Payable on unbooked residential flats @ 5% | 500000 |
| 16 | Tax Payable on unbooked commercial flat @ 18% | 1800000 |
| 17 | Tax Payable on construction services supplied by the builder to the Land-Owner @ 5% on 40000000 | 2000000 |
| 18 | Tax Paid before completion certificate on sold flats by the Builder (20000000 *5%) | 1000000 |
| 19 | Total Paid at the time of completion (15+16+17+18) | 5300000 |
| 20 | Difference between (19 - 9) | 1300000 |
| 21 | **Difference due to TDA paid on commercial @ 18% as it is 5% on residential property** | |

# Real Estate & Joint Development Agreement under GST

*Parveen Kumar Mahajan, Advocate*

This Article contains provisions in regard of Real Estate and Joint Development Agreement which are applicable from 01-04-2019. It is presumed that all constructions and agreements are effected after 01-04-2019 and **there is no case of ongoing project**.

**Index for this Article:**



## A. Definitions

To understand this article we should have knowledge about following terms being used in GST.

**Affordable Residential Apartment –** According to Notification 11/2017 Central (Rate)

"a residential apartment in a project which commences on or after 1st April, 2019, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than

metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

For the purpose of this clause,—

(i) Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;

(ii) Gross amount shall be the sum total of:—

A. Consideration charged for the services specified at items (i) and (ic) in column (3) against Sl. No. 3 in the Table;

B. Amount charged for the transfer of land or undivided share of land, as the case may be, including by way of lease or sub- lease; and

C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges, etc.

**Floor Space Index (FSI) -** According to Notification 06/2019 Central (Rate) the term "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

**Promoter:** According to Notification 06/2019 Central (Rate) the term "promoter" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016). In nut-shell Promoter is a person who constructs the building or apartment for sale in general public.

**Real Estate:** There is no any definition of "Real Estate" available in GST as well as in RERA. But in common parlance and dictionary meaning Real Estate means the business of selling houses or land for building.

**Real Estate Project (REP):** According to Notification 06/2019 Central (Rate) REP shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

Section 2 (zn) - "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

**Residential Real Estate Project (RREP):**According to Notification 06/2019 Central (Rate) RREP shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

**B. Supply under Real Estate Business**

Supply under Real Estate Business is construction services. The CGST Act ( as per para 5 (b) of Schedule II ) the following activities in regard of construction shall be treated as services:

"construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, *except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier*.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) ; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure"

## C. Valuation of Supply under Real Estate

According to paragraph 2 of Notification 11/2017 Central (Rate)

"In case of supply of service involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation.—For the purposes of this paragraph and paragraph 2A below, "total amount" means the sum total of,—

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sub-lease.

**Paragraph 2A of the Notification** says about transfer of development right or FSI to a promoter against consideration.

## D. Rate of Tax under Real Estate and payment of GST

| Sl. No. | Description of Service | Rate (percent) | Condition |
|---|---|---|---|
| 1 | Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein- after referred to as RREP) which commences on or after 1st April, 2019 | 0.75 | ITC not available |
| 2 | Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 | 3.75 | ITC not available |
| 3 | Construction of commercial apartments (shops, offices, godowns, etc.) by a promoter in an RREP which commences on or after 1st April, 2019 | 3.75 | ITC not available |

| | | | |
|---|---|---|---|
| 4 | Construction of affordable residential apartments by a promoter in a Real Estate Project (hereinafter referred to as REP) other than RREP, which commences on or after 1st April, 2019 | 0.75 | ITC not available |
| 5 | Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 | 3.75 | ITC not available |
| 6 | Commercial apartments (shops, offices, godowns, etc.) by a promoter in a REP other than RREP; | 9 | ITC available |
| **Valuation in respect to the aforesaid services shall be determined as per paragraph 2 of Notification 11/2017.** *The same is stated in para C as above.* | | | |

**New Rate in Real Estate in common parlance is generally said as under**:

1. Affordable Project - 1%
2. Non-Affordable Project - 5%

But in the table of Notification 11/2017 the rate is 1.5% for Affordable Project and Non-Affordable Project it is 3.5%.

**To arrive at rate 1% and rate 5% the following example will be helpful**:

| | |
|---|---|
| Total Consideration Charged for Affordable House | – 24 lakh |
| Net Value after deducting value of Land by 1/3rd of total value | – 16 lakh |
| Tax on Rs.16 lakh @ 1.5% | – 24000.00 |
| Tax rate stand on total value Rs.24 lakh | – 1% (24000/2400000*100) |
| Total Consideration Charged for Affordable House | – 72 lakh |
| Net Value after deducting value of Land by 1/3rd of total value | – 48 lakh |
| Tax on Rs.48 lakh @ 7.5% | – 360000.00 |
| Tax rate stand on total value Rs.72 lakh | – 5% (360000/7200000*100) |

**Thus GST rate in common parlance is spoken on GST charged on total value which includes land value also.**

**Payment of GST –**

Tax shall be paid in cash only on such supply on which applicable new rates are 1% or 5%.

## E. Input Tax Credit on Real Estate

Input Tax Credit is not allowed on which new rates are applicable:

1. Affordable REP residential projects on which rate is 1%
2. Affordable RREP residential projects on which rate is 1%
3. Non-Affordable REP residential projects on which rate is 5%
4. Non-Affordable RREP residential projects on which rate is 5%
5. RREP commercial projects on which rate is 5%

**Other Conditions in regard of Input Tax Credit**

1. **Eighty percent of value of input and input services**, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges, etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service **shall be received from registered supplier only.**
2. **The amount in account of Reverse Charge** shall be deemed to have purchase from registered person.
3. **Inward supplies of exempted goods/services** shall be included in value of unregistered persons while calculating 80% threshold.
4. **Tax on short-fall in account of 80% shall be paid** by the Promoter @ 18% on such short value.
5. **Such short value does not include value of cement** if the same had been purchased from unregistered person. The promoter shall pay @ 28% on cement as reverse charge. Thereafter such cement value shall be added to value to be determined for the purpose of 80% threshold.

6. **The promoter shall maintain project-wise account of inward supplies from registered and unregistered supplier** and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.

7. Notwithstanding anything contained in Explanation 5 above, **tax on cement received from unregistered person shall be paid in the month in which cement is received. The rate of tax on cement is 28%.**

8. **Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)]**.

Illustrations as notified in Annexure III to Notification 11/2017 are as under:

**Illustration 1:**

A promoter has procured following goods and services [other than capital goods and services by way of grant of development rights, long term lease of land or FSI] for construction of a residential real estate project during a financial year.

| Sl. No. | Name of input goods and services | Percentage of input goods and services received during the financial year | Whether inputs received from registered supplier? (Y/N) |
|---|---|---|---|
| *1* | *Sand* | *10* | *Y* |
| *2* | Cement | 15 | N |
| *3* | *Steel* | *20* | *Y* |
| *4* | *Bricks* | *15* | *Y* |
| *5* | *Flooring tiles* | *10* | *Y* |
| *6* | *Paints* | *5* | *Y* |
| *7* | *Architect/designing/ CAD drawing, etc.* | *10* | *Y* |
| *8* | *Aluminium windows, Ply, commercial wood* | *15* | *Y* |

In this example, the promoter has procured 80 per cent of goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], from a GST registered person. However, he has procured cement from an unregistered supplier. Hence at the end of financial year, the promoter has to pay GST on cement at the applicable rates on reverse charge basis.

**Illustration 2:**

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

| Sl. No. | Name of input goods and services | Percentage of input goods and services received during the financial year | Whether inputs received from registered supplier? (Y/N) |
|---|---|---|---|
| *1* | *Sand* | *10* | *Y* |
| *2* | *Cement* | *15* | *Y* |
| *3* | *Steel* | *20* | *Y* |
| *4* | *Bricks* | *15* | *Y* |
| *5* | *Flooring tiles* | *10* | *Y* |
| *6* | Paints | 5 | N |
| *7* | *Architect/designing/CAD drawing etc.* | *10* | *Y* |
| *8* | Aluminium windows, Ply, commercial wood | 15 | N |

In this example, the promoter has procured 80 per cent of goods and services including cement from a GST registered person. However, he has procured paints, aluminium windows, ply and commercial wood, etc., from an unregistered supplier. Hence at the end of financial year, the promoter is not required to pay GST on inputs on reverse charge basis.

**Illustration 3:**

*A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges, etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.*

| Sl. No. | Name of input goods and services | Percentage of input goods and services received during the financial year | Whether inputs procured from registered supplier? (Y/N) |
|---|---|---|---|
| *1* | Sand | 10 | N |
| *2* | Cement | 15 | N |
| *3* | *Steel* | *15* | *Y* |
| *4* | *Bricks* | *10* | *Y* |
| *5* | *Flooring tiles* | *10* | *Y* |
| *6* | *Paints* | *5* | *Y* |
| *7* | *Architect/designing/CAD drawing etc.* | *10* | *Y* |
| *8* | Aluminium windows | 15 | N |
| *9* | Ply, commercial wood | 10 | N |

*In this example, the promoter has procured 50 per cent of goods and services from a GST registered person. However, he has procured sand, cement and aluminium windows, ply and commercial wood, etc., from an unregistered supplier. Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent. To fulfil his tax liability on the shortfall of 30 per cent from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis. After payment of GST on cement, on the remaining shortfall of 15 per cent, the promoter shall pay tax @* **[** *18 (9 + 9)* **]** *per cent under RCM.*

## F. RCM under section 9 (4) and under section 9 (3) of CGST Act wherein the Recipient is Promoter – Notification 07/2019 and Notification 05/2019

| S. No. | Category of Supply of goods and services | Applicable Section |
|---|---|---|
| 1 | Short Fall of goods and services in account of 80% as to be procured from registered suppliers in a financial year or part of financial year till the date of issuance of completion certificate or first occupation whichever is earlier.* For example the value of 80% stand at Rs.50000.00 but the promoter has only procured such supply of Rs.40000.00. On balance of Rs.10000.00 tax shall be paid @ rate of 18% i.e. 1800.00. | Section 9 (4) |
| 2 | Cement falling in chapter heading 2523 in the first schedule to Custom Tarrif Act, 1975.* | Section 9 (4) |
| 3 | Capital Goods* | Section 9 (4) |
| * | *Please note above supply of goods and services should be in relation to construction services on which rates has been reduced w.e.f.01-04-2019 as stated in items ( i ), ( ia ), ( ib ), ( ic ) and ( id ) against serial number 3 in the table of Notification 11/2017.* | |
| 4 | Services supplied by any person by way of Transfer of Development Rights or Floor Space Index (FSI) (including additional FSI) for construction of a project. | Section 9 (3) |
| 5 | Long Term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost price, development charges or by any other name) and/or periodic rent for construction of a project | Section 9 (3) |

## G. Joint Development Agreement

**There is mainly two persons involved**:

(1) Land Owner

(2) Promoter or Builder

**Following Supplies involved**:

(1) Transfer of Development Rights (TDR) or FSI etc. from Land Owner to the Promoter.

(2) Construction Services by the Promoter for:

(i) Land Owner

(ii) End Consumer

(3) Construction Services by the Land Owner for End Consumer

**GST Tax Liability for following Supply**

(1) On Development Rights of the Promoter under RCM

(2) For construction services by the Promoter and Land Owner towards their respective supplies.

**NIL rate of tax on Development Rightsif** construction services is for Residential Apartments.

**Tax Payable on Development Rights -** If constructions services is for commercial apartments.

**And Tax payable on such proportion of value of Development Rights** as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be.

**The tax payable on such un-booked apartments** shall be calculated on proportionate basis. Such payable tax should not be exceed to tax @ 1% for affordable apartments or tax @ 5% for non-affordable apartments.

**Time of Supply for the above transactions shall be** on the date of issue of completion certificate or first occupation of the project, as the case may be.

**For Example –**

There is an agreement dated 01-06-2019 between the Land Owner and the Promoter for constructing non-affordable 10 residence flats. Out of ten Flats the Land Owner share is for 5 flats and the Promoter Share is for 5 flats.

The Promoter books the first flat on 01-07-2019 for Rs. 2 crore.

Now Development Rights value will be Rs.10 crore ( 5 × 2 crore )

Since the Agreement is for construction of residence flats, the Promoter is not required to pay GST on RCM basis on value of Development Rights.

But on the date of issuance of completion certificate there is two un-booked flat out of share of the Promoter

Now the liability to pay GST upon the Promoter arise for Development Rights for un-booked flat.

Value for Development Rights for un-booked flat shall be 4 crore. It is supposed that value of booked flat near to date of completion certificate was still Rs.2 crore.

Total Tax payable @ rate 18% on total value Rs.10 crore of Development Rights shall be Rs.1,80,00,000.00.

Tax Payable on un-booked flats in account of Development Rights shall be Rs.72,00,000.00.

Tax Payable on un-booked flats @ 5% shall be Rs.20,00,000.00.

Tax Payable amount does not exceed from rate of GST on affordable flat therefore the Promoter shall pay Rs.20,00,000.00 in account of un-booked flats.

**Input Tax Credit is available to the Land Owner**. The Land Owner is entitled to ITC in respect of tax charged to him by the Promoter on construction of apartments. However, the Land Owner shall not be entitled to avail ITC on any other services or goods used by him.

**Valuation of Development Rights** – Notification 04/2019 - Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.

**Value of portion of residential or commercial apartments remaining un-booked** on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be

## H. Important Notifications effected from 01-04-2019

1. Notification 3/2019 Central (Rate) –GST New Rates and other terms including input tax credit

2. Notification 4/2019 Central (Rate) - Rate of Tax for TDR etc.Nil with conditions

3. Notification 5/2019 Central (Rate) - RCM under section 9(3)

4. Notification 6/2019 Central (Rate) - Time of Supply for TDR etc.

5. Notification 7/2019 Central (Rate) -RCM under section 9(4)

6. Notification 8/2019 Central (Rate) - GST Rate

7. FAQ dated 07-05-2019

8. FAQ dated 14-05-2019

9. RDO order No.04/2019-Central Tax dated 29-03-2019

# Refund under GST Regime Up To Date 31-03-2021 – Detailed Analysis

*Parveen Kumar Mahajan, Advocate*

**Refund is very importaEnt term under the GST for the person who is eligible to claim the refund and for the GST Authority who issues the refund order. Both persons i.e. who claim the refund and who issues refund should have fully conversant with the provisions and law in regard of Refund under the GST. Following discussions have been made under this article.**

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## A. Allowable Refunds

1. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;

2. Refund of tax paid on export of services with payment of tax;

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

**B. Exceptions, Withholding and Non-Payment of Refund**

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

- No refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

- No refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

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

- Defaulted in furnishing any return;

- Defaulted in payment of any tax, interest or penalty and

- The Proper Officer is authorised to deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is

liable to pay but which remains unpaid under this Act or under the existing law.

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

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

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

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

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

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

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

➢ **GST Form** – GST Form **GST RFD-01**

➢ **Time Period** – Before the expiry of Two Years from the **Relevant Date**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**E. Procedure, Processing and Sanction of Refund – Application FiledOnline**

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

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

- **Form GST RFD-01and Documents-**

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

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

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

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

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

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

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

  a) The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the

refund application in FORM GST RFD-01, and has completed uploading of all the supporting documents/ undertaking.

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

c) The time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the date of ARN.

d) The acknowledgement **(FORM GST RFD-02)** for the complete application or deficiency memo **(FORM GST RFD-03)**, as the case may be, would be issued electronically.

➢ **Refund Application for a tax period or by clubbing successive tax periods-**

Refund application may be filed for a tax period either monthly or quarterly. Quarterly return filers can only file refund application quarterly. The applicant may club successive tax periods with the refund application but he cannot club tax period of different financial years. For example refund application pertaining to 2018-19 cannot be clubbed with refund pertaining to 2019-20.

**But vide Circular No.135/05/2020 dated 31-03-2020 the restriction on bunching of refund claims across financial years shall not apply. For example Refund Application can be filed by clubbing of months of March 2019 and April 2019 and for two quarters 4th quarter of 2018-19 and 1st quarter 2019-20.**

➢ **Deficiency Memos**

a) A Deficiency Memo shall be issued within 15 days from the date of generation of ARN.

b) Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any ground, may be subsequently issued for the said application.

**c) A fresh application would be filed** after correction/rectification of deficiencies as pointed out.

d) Once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same

period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

e) A rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

- **Provisional Refund**

a) Ninety percent of provisional refund may be granted against claim for refund **on account of zero rated supply of goods or services or both.**

b) The provisional refund shall be issued within seven days from the date of acknowledgement through GST form GST RFD-04.

c) The proper officer may issue final order for total refund in place of provisional refund within seven days from the date of acknowledgement through GST form GST RFD-06 if the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies, and is of the opinion that no further scrutiny is required.

- **Provisional Refund amount is higher than the Final Refund Amount**

a) For example, consider a situation where an applicant files a refund claim of Rs.100/- on account of zero-rated supplies. The proper officer, after prima-facie examination of the application, sanctions Rs. 90 as provisional refund through FORM GST RFD-04 and the same is electronically credited to his bank account. However, on detailed examination, it appears to the proper officer that only an amount of Rs. 70 is admissible as refund to the applicant. In such cases, the proper officer shall have to issue a show cause notice to the applicant, in FORM GST RFD-08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

(a) the amount claimed of Rs. 30/- should not be rejected as per the relevant provisions of the law; and

(b) the amount of Rs. 20/- erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

b) If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then an amount of Rs. 70/- will have to be sanctioned in FORM GST RFD-06, and an amount of Rs. 20/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of FORM GST DRC-07. Further, if the application pertains to refund of unutilized/accumulated ITC, then Rs. 30/-, i.e. the amount rejected, shall have to be re-credited to the electronic credit ledger of the applicant through FORM GST PMT-03 subject to undertaking received from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same has been finally decided against the applicant. In such cases, it may be noted that FORM GST RFD08 and FORM GST RFD-06, are to be considered as show cause notice and adjudication order respectively, under both section 54 (for rejection of refund) and section 73/74 of the CGST Act as the case may be (for recovery of erroneous refund).

➢ **No adjustment or withholding of refund**

No adjustment or withholding of refund, as provided under subsections (10) and (11) of section 54 of the CGST Act, shall be allowed in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

➢ **Disbursal of Refunds by the same Jurisdiction who sanctions the Refund and interest on Refund amount**

a) The Government has now decided that that for a refund application assigned to a Central tax officer, both the sanction order (FORM GST RFD-04/06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT

tax officer, both the sanction order (FORM GST RFD-04/06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

b) If the refund amount would have not been credited to the bank account of the Applicant within sixty days from date of receipt of application (ARN), interest @ 6% shall have to pay on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax.

**F. Guidelines for Refunds**

- **For refunds of unutilized Input Tax Credit pertaining to exports without payment of tax, supplies made to SEZ Unit/ SEZ Developer without payment of tax and accumulation due to inverted tax structure.**

a) Form GSTR-2A shall have to be uploaded with refund application for the period for which the refund is claimed.

b) The Applicant shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B ( *given below at para L )*.

c) Self-certified copies of invoices which are declared as eligible for ITC in Annexure – B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the refund application. ***I feel this requirement to upload invoices which are not found in 2A, has become infructuous because refund shall be granted only against those invoices which had been available in 2A as per clarification in circular 135/5/2020 but till date this requirement has not been modified/deleted.***

**d) Valuation of Turnover of Zero Rated Supply of Goods** has been restricted to maximum up to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier. Vide Notification No.16/2020 clause (C) of rule 89 (4) has been replaced with followings:

"(C) *"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the*

*relevant period without payment of tax under bond or letter of undertaking orthe value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both*;".

**Circular 147/2020** clarifies that "Turnover of zero-rated supply of goods" determined according to Notification No.16/2020 shall be same for the purpose of "Adjusted Total Turnover" Example as given in the circular is reproduced as under:

Net admissible ITC = Rs. 270

| Outward Supply | Value per unit | No of Units Supplied | Turnover | Turnover as per amended Definition |
|---|---|---|---|---|
| Local (Quantity 5) | 200 | 5 | 1000 | 1000 |
| Export (Quantity 5) | 350 | 5 | 1750 | 1500 = (200*1.5*5) |
| **Total** | | | **2750** | **2500** |

The formula for calculation of refund as per Rule 89(4) is:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500

Adjusted Total Turnover= Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750]

Net ITC = Rs. 270

**Refund Amount = Rs. 1500/2500*270 = Rs. 162**

e) The proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A.

➢ **For refund of tax paid on deemed exports**

a) The third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies.

Notification 49/2017 requires following evidences in the case of refund pertaining to Deemed Exports

b) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.

c) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him and he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

d) In case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B of GST RFD-01 for the tax period for which refund is being claimed and the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies.

- **Refund of TDS/TCS deposited in excess**

a) Where tax so deducted or collected is deposited under the wrong head (e.g. an amount deducted as Central tax is deposited as Integrated tax/State tax), thereby creating excess balance in the cash ledger of the deductor or the collector as the case may be. It is clarified that such excess balance may be claimed by the tax deductor or the collector as the excess balance in electronic cash ledger.

b) In case where tax deducted or collected in excess is also paid while discharging the liability in FORM GSTR 7 or FORM GSTR 8, as the case may be, and the said amount has been credited to the electronic cash ledger of the deductee, the deductee can adjust the same while discharging his output liability or he can

claim refund of the same under the category "refund of excess balance in the electronic cash ledger.

- **Refund of Integrated Tax paid on Exports**

The refund of Integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules. The shipping bill filed by an exporter is deemed to be an application for refund in such cases, but the same is deemed to have been filed only when the export manifest or export report is filed and the applicant has filed the return in FORM GSTR-3B for the relevant period duly indicating the integrated tax paid on goods exported in Table 3.1(b) of FORM-GSTR-3B . In addition, the exporter is expected to furnish the details of the exported goods in Table 6A of FORM GSTR-1 of the relevant period. Only where the common portal is able to validate the consistency of the details so entered by the applicant, the relevant information regarding the refund claim is forwarded to Customs Systems. Upon receipt of the information from the common portal regarding furnishing of these details, the Customs Systems processes the claim for refund and an amount equal to the Integrated tax paid in respect of such export is electronically credited to the bank account of the applicant.

**Clarifications in case of Mismatch that zero rated supplies inadvertently declared in table 3.1(a) of GSTR-3B in place of table 3.1(b) of GSTR-3B.**

The clarification has been provided in circular 147/2021 read with circular 125/2019 that for the tax periods commencing from **01.07.2017 to 31.03.2021**, such registered persons shall be allowed to file the refund application in FORM GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period."

**G. Clarifications on issues related to making zero-rated supplies**

a) Export of goods have been made before furnishing of LUT Bond.

In this regard, it is emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. In such cases the delay in furnishing of LUT may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into

account the facts and circumstances of each case.

b) The Exporter would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

It is emphasized that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, **payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon**. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case.

c) Where the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, the lower of the two values should be taken into account while calculating the eligible amount of refund.

d) It is clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

e) It is clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of Integrated tax; **LUT/bond is not required.**

f) Rule 96B of CGST Rules has been inserted vide notification no.16/2020 –GST dated 23-03-2020 to recover the refund where export proceeds not realised within stipulated time.

## H. Clarification on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure

It is clarified that while processing the refund of unutilized ITC on account of inverted tax structure the Tax Authorities cannot deny refund

of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply. For example multiple inputs such as inputs @ 5% and inputs @ 18% are used for outward supply which gst rate is 12%. While computing the refund both inputs i.e. rate of 5% and rate of 18% will be considered.

Vide Circular 135/05/2020 dated 31-03-2020 has been clarified that refund shall not be allowed where supplies of inward and outward are same. This is the case where rate of GST for item X was 18% but the rate on such item has been reduced to 12%. On such case refund cannot be claimed.

**I. Clarifications in regard of Input Tax Credit**

a) Supplies for export at concessional rate 0.5% and 0.1% respectively. It is clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure.

b) It is clarified that the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

c) It is clarified that the ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

**J. Clarifications vide Circular 135/05/2020 dated 31-03-2020**

1. **Refund pertaining to period of different financial years -** Restriction on bunching of refund claims across financial years shall not apply. For example Refund Application can be filed by clubbing of months of March 2019 and April 2019 and for two difference quarters of different years say 4$^{th}$ quarter of 2018-19 and 1$^{st}$ quarter 2019-20.

2. **Refund of accumulated input tax credit (ITC) on account of reduction inGST Rate** - It is clarified that refund of accumulated ITC under clause (ii)of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same. For example An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say12%. Accumulation of ITC on such case shall not be applicable for the purpose of refund because of the input and output supplies are same.

3. **Change in manner of refund of tax paid on supplies other than zero rated supplies** - Mode of refund in following cases shall be the same in which the same had been paid. If payment of tax had been made through after adjustment of input tax credit then refund if granted, shall be paid by re-credited to the electronic credit ledger. If the amount to be refunded had been paid in cash then same shall be refunded in cash form. If the amount to be refunded partly in cash and partly by adjusted input tax credit then the same shall be refunded proportionately in cash and re-credited to the credit ledger. Such types of refunds are as under:

   3.1 Refund of excess payment of tax

   3.2 Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;

   3.3 Refund on account of assessment/provisional assessment/ appeal/any other order;

   3.4 Refund on account of "any other" ground or reason.

4. **Guidelines for refunds of Input Tax Credit under Section 54(3) -** While consider rule 36(4) inserted vide notification 49/2019-GST dated 09-10-2019, the refund of accumulated ITC shall be restricted to the ITC asper those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

5. **New Requirement to mention HSN/SAC in Annexure 'B' –** The Refund Applicant shall be required to mention HSN/SAC

code which ismentioned on the inward invoices. **In cases where supplier is notmandated to mention HSN/SAC code on invoice, the applicant need notmention HSN/SAC code in respect of such an inward supply.**

Modified format of Annexure "B" has been provided as below.

**K. The Government has issued Advisory: Tracking GST Refund Application Status on the GST Portal and PFMS portal. To read this advisory you may click on following link.**

https://taxguru.in/goods-and-service-tax/tracking-gst-refund-application-status-gst-portal-pfms-portal.html

**L. Annexures "A" and "B" appended to Circular 125/44/2019**

**Annexure-A**

List of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application

| S. No. | Type of Refund | Declaration/Statement/Undertaking/Certificates to be filled online | Supporting documents to be additionally uploaded |
|---|---|---|---|
| 1 | Refund of unutilized ITC on account of exports without payment of tax | Declaration under second and third proviso to section 54(3) | Copy of GSTR-2A of the relevant period |
| | | Undertaking in relation to sections 16(2)(c) and section 42(2) | Statement of invoices (Annexure-B) |
| | | Statement 3 under rule 89(2)(b) and rule 89(2)(c) | Self-certified copies of invoices entered in<br>Annexure-B whose details are not found in GSTR-2A of the relevant period.<br>***I feel this requirement to upload invoices which are not found in 2A, has become infructuous because refund shall be granted only against those invoices which had been available in 2A as per clarification in circular 135/5/2020 but till date this requirement has not been modified/ deleted.*** |

| | | | |
|---|---|---|---|
| | | Statement 3A under rule 89(4) | BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods |
| 2 | Refund of tax paid on export of Services made with payment of tax | Declaration under second and third proviso to section 54(3) | BRC/FIRC /any other document indicating the receipt of sale proceeds of services |
| | | Undertaking in relation to sections16(2)(c) and section 42(2) | Copy of GSTR-2A of the relevant period |
| | | Statement 2 under rule 89(2)(c) | Statement of invoices (Annexure-B) |
| | | | Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period |
| | | | Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund |
| 3 | Refund of Unutilized ITC on account of Supplies made to SEZ units/ developer without payment of tax | Declaration under third proviso to section 54(3) | Copy of GSTR-2A of the relevant period |
| | | Statement 5 under rule 89(2)(d) and rule 89(2)(e) | Statement of invoices (Annexure-B) |
| | | Statement 5A under rule 89(4) | Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period |
| | | Declaration under rule 89(2)(f) | Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/ services for authorized operations under second proviso to ule 89(1) |
| | | Undertaking in relation to sections 16(2)(c) and section 42(2) | |
| | | Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise | |

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| 4 | Refund of tax paid on supplies made to SEZ units/ developer with payment of tax | Declaration under second and thirdproviso to section 54(3) | Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/ services for uthorized operations under second proviso to rule 89(1) |
| | | Declaration under rule 89(2)(f) | Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period |
| | | Statement 4 under rule 89(2)(d) and rule 89(2)(e) | Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund |
| | | Undertaking in relation to sections 16(2)(c) and section 42(2) | |
| | | Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise | |
| 5 | Refund of ITC unutilized on account of accumulation due to inverted tax structure | Declaration under second and third proviso to section 54(3) | Copy of GSTR-2A of the relevant period |
| | | Declaration under section 54(3)(ii) | Statement of invoices (Annexure-B) |
| | | Undertaking in relation to sections 16(2)(c) and section 42(2) | Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period |
| | | Statement 1 under rule 89(5) | |
| | | Statement 1A under rule 89(2)(h) | |
| | | Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise | |

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| 6 | Refund tosupplier of tax paid on deemed exportsupplies | Statement 5(B) under rule 89(2)(g) | Documents required under Notification No.49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017 |
| | | Declaration under rule 89(2)(g) | |
| | | Undertaking in relation to sections 16(2)(c) and section 42(2) | |
| | | Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise | |
| 7 | Refund to recipient of tax paid on deemed export supplies | Statement 5(B) under rule 89(2)(g) | Documents required under Circular No.14/14/2017-GST dated 06.11.2017 |
| | | Declaration under rule 89(2)(g) | |
| | | Undertaking in relation to sections 16(2)(c) and section 42(2) | |
| | | Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise | |
| 8 | Refund of Excess payment of tax | Statement 7 under rule 89(2)(k) | |
| | | Undertaking in relation to sections 16(2)(c) and section 42(2) | |
| | | Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise | |
| 9 | Refund oftax paid onintra-state supply whichis subsequentlyheld to be aninter-statesupply andvice versa | Statement 6 under rule 89(2)(j) | |
| | | Undertaking in relation to sections16(2)(c) and section 42(2) | |

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| 10 | Refund on account of assessment / provisional assessment / appeal / any other order | Undertaking in relation to sections 16(2)(c) and section 42(2) | Reference number of the order and a copyof the Assessment / Provisional assessment/ Appeal / Any other Order |
| | | Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise | Reference number/ proof of payment of pre deposit made earlier for which refund is being claimed |
| 11 | Refund on account of any other ground or reason | Undertaking in relation to sections 16(2)(c) and section 42(2) | Documents in support of the claim |
| | | Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise | |

## Annexure-B

### Statement of invoices to be submitted with application for refund of unutilized ITC

| Sr. No. | GSTIN of the Supplier | Name of the Supplier | Invoice Details | | | Category of input supplies | | Central Tax | State Tax/ Union Territory Tax | Integrated Tax | Cess | Eligible for ITC | Amount of Eligible ITC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Invoice No. | Date | Value | Inputs/ Input Services/ Capital Goods | HSN/ SAC | | | | | Yes/ N0/ Partially | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |

## M. Relevant Sections and Rules in regard of Refund

| S. No. | Sections/ Rules | Sub-Sections/ Sub-Rules | Particulars |
|---|---|---|---|
| 1 | 54 | (1) | Refund Procedure and limitation period to apply for refund |
| | | (2) | Refund in regard of UNO etc.. persons notified under section 55 |
| | | (3) | Mention type of persons who can claim refund of any unutilised input tax credit |

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| | | (4) | Documents prescribed to be accompanied with Refund Application |
| | | (5) | Order for Refund and credited to the Fund referred to in section 57 |
| | | (6) | Provisional Refund on refund application on account of zero-rated supply of goods or services or both |
| | | (7) | Limitation period of sixty days to make an order for refund |
| | | (8) | List of refund which shall be paid to the Applicant instead of being credited to the Fund |
| | | (8A) | Disburse the refund of the State Tax |
| | | (9) | Refund shall be made only in accordance of the provisions of the sub-section 8. No other matter whatsoever shall be considered. |
| | | (10) | Withhold payment of Refund |
| | | (11) | Withhold the Refund |
| | | (12) | Entitlement of interest on payment of Refund |
| | | (13) | Withholding of Refund in regard of Casual Taxable Person or Non-Resident Taxable Person |
| | | (14) | Non-Payment of Refund if amount of refund less than Rs.1000/= |
| | | Explanation | Of Refund and of Relevant Date |
| 2 | 55 | | Notify persons such as UNO etc.. for entitlement for claim of refund subject to conditions prescribed |
| 3 | 56 | | Interest on Delayed Refunds |
| **Rules** | | | |
| **S. No.** | **Sections/ Rules** | **Sub-Sections/ Sub-Rules** | **Particulars** |
| 1 | 89 Application for Refund | (1) | Procedure to file refund application and mention form nos. |
| | | (2) | Prescribed documents to be accompanied with refund application |
| | | (3) | Refund amount debit to the Electronic Credit Ledger |
| | | (4) | Formula for grant of refund of input tax credit in the case of zero-rated supply without payment of tax |
| | | (4A) | Allow Refund on supplies received on which the supplier has availed the benefit of the Government of India |
| | | (4B) | Allow Refund on supplies received on which the supplier has availed the benefit of the Government of India |
| | | (5) | Formula for grant of refund on account of inverted duty structure |

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| 2 | 90 Acknowl-edgement | (1) | Acknowledgement in form GST RFD-02 made available for application relates to claim for refund from the electronic cash ledger |
| | | (2) | Acknowledgement in form GST RFD-02 made available for application for refund other than claim for refund from the electronic cash ledger |
| | | (3) | Deficiency Memo in Form GST RFD-03 |
| | | (4) | Deficiency communicated under one Act shall be deemed to be communicated in other Act |
| 3 | 91 Provisional Refund | (1) | Conditions before granting Provisional Refund |
| | | (2) | Seven days period to make an order for Provisional Refund in form GST RFD-04 |
| | | (3) | Payment order in Form GST RFD-05 |
| | | (4) | Central Govt.shall disburse the refund |
| 4 | 92 Order Sanctioning Refund | (1) | Order for sanctioning the amount of Refund in form GST RFD-06 |
| | | (1A) | About adjustment of outstanding liabilities against refund granted and balance re-crediting to the electronic ledger |
| | | (2) | Order for withholding the refund in GST RFD-07 |
| | | (3) | Issue a notice in form GST RFD-08 in regard of refund is not admissible or not payable.<br>Requiring reply in form GST RFD-09 within 15 days of the receipt of such notice |
| | | (4) | Payment Order in form GST RFD-05 |
| | | (4A) | Central Govt.shall disburse the refund |
| | | (5) | Amount Refundable not payable to the Applicant, credited to the Consumer Welfare Fund |
| 5 | 93 Credit of the amount of rejected Refund claim | (1) | Re-credited in case of deficiency communicated under rule 90 (3) or amount debited under rule 89 (3) |
| | | (2) | Re-credited refund is rejected under rule 92 |
| | | Explanation | About Refund deemed to be rejected |
| 6 | 94 Order sanctioning interest | | Order for sanctioning the interest |
| 7 | 95 Refund of tax to certain persons | (1) | Refund Application in Form GST RFD-10 and detail of inward supplies in Form GST RFD-11 by the person (UNO etc.) notified under section 55 |
| | | ( 2 ) | Acknowledgement towards refund application in GST RFD-02 |
| | | ( 3 ) | Restrictions and conditions to be fulfilled before made available of refund |

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| | | ( 4 ) | Provisions of rule 92 shall ,mutatis mutandis, apply for sanctioning the refund |
| | | ( 5 ) | About Treaty or International Agreement |
| 8 | 96 Refund of IGST paid on goods or services exported out of India | ( 1 ) | Conditions for Application deemed to be filed |
| | | ( 2 ) | Transmission of Export Invoices to the system designated by the custom for confirmation that goods covered by the invoices have been exported out of India. |
| | | ( 3 ) | Process the refund application and refund amount credited to the bank account of the Applicant |
| | | ( 4 ) | Withholding of the Refund |
| | | ( 5 ) | Intimation of withholding of the Refund |
| | | ( 6 ) | Order passed by the Proper Officer in form GST RFD-07 in regard of withholding of the refund |
| | | ( 7 ) | Proceed to the withholding refund after entitlement |
| | | ( 8 ) | Refund of IGST to the Bhutan Government. Such refund shall not be paid to the Exporter |
| | | ( 9 ) | Refund Application for IGST paid on services exported out of India be filed in form GST RFD-01 |
| | | ( 10 ) | Restricted exporters from availing the facility of claiming refund of Integrated tax paid on exports in certain scenarios |
| 9 | 96A Export of Goods or services under Bond or Letter of Undertaking | ( 1 ) | Export of Goods or Services without payment of IGST subject to furnish of Bond or LUT in form GST RFD-11 with condition to pay the tax with interest if goods or services are not exported out of India within stipulated time. |
| | | ( 2 ) | Details of Export Invoices contained in GSTR-1 electronically transmitted to the system designated by the custom to verify goods covered under invoices have been exported out of India. |
| | | ( 3 ) | Withdrawn of Bond or LUT in case of non-payment of tax with interest if export had not been done within stipulated time. |
| | | ( 4 ) | Restoration of Bond or LUT immediate after payment of tax with interest |
| | | ( 5 ) | Conditions and safeguards may be notified for furnish of Bond or LUT |
| | | ( 6 ) | Provisions of Bond or LUT shall be mutatis mutandis apply in respect of supply to SEZ or SEZU. |

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| 10 | 96B Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised | ( 1 ) | Refund has been paid s in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange<br><br>Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act,as the case may be, as is applicable for recovery of erroneous refund, along with interest. |
| | | Proviso to sub rule ( 1) | Where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered. |
| | | ( 2 ) | Where the sale proceeds are realised by the applicant, in full or part, after the amountof refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have beenrealised within such extended period as permitted by the Reserve Bank of India |

## N. List of Circulars issued till date in regard of Refund Issues

| S. No. | Date of Circular | Circular No. | Subject | Particulars |
|---|---|---|---|---|
| 1 | 15/03/2018 | 37/2018 | Rescinded by circular 125/2019 | Export related refund issues |
| 2 | 03/05/2018 | 45/2018 | Rescinded by circular 125/2019 | Refund related issues |
| 3 | 04/09/2018 | 59/2018 | Rescinded by circular 125/2019 | Refund related issues |
| 4 | 14/09/2018 | 63/2018 | Refund | Processing of refund claims filed by UIN entities |
| 5 | 05/10/2018 | 68/2018 | Refund | Refund of compensation cess to UN |
| 6 | 26/10/2018 | 70/2018 | Rescinded by circular 125/2019 | Refund related issues |

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| 7 | 27/12/2018 | 75/2018 | Refund | Financial assistance by Refund of GST to Gurdwara, Temples etc. providing free food to devotees |
| 8 | 31/12/2018 | 79/2018 | Rescinded by circular 125/2019 | Refund related issues |
| 9 | 28/03/2019 | 94/2019 | Rescinded by circular 125/2019 | Refund related issues |
| 10 | 03/10/2019 | 110/2019 | Refund | Eligibility to file a refund application in FORM GST RFD-01 for a period and category under which a NIL refund application has already been filed |
| 11 | 16/11/2017 | 18/2017 | Refund | Exporters of Fabrics |
| 12 | 14/06/2018 | 48/2018 | Refund | Independent fabric processors (job workers) in the textile sector supplying job work services |
| 13 | 24/08/2018 | 56/2018 | Refund | Clarification on removal of restriction on refund of accumulated Input Tax Credit on fabrics |
| 14 | 29/06/2019 | 106/2019 | Refund | Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange. |
| 15 | 03/10/2019 | 111/2019 | Refund | Procedure to claim refund in FORM GST RFD-01 subsequent to favourable order in appeal or any other forum |
| 16 | 31/03/2020 | 135/2020 | Refund | Clarification on various issues. |
| 17 | 10/06/2020 | 139/2020 | Refund | Clarification in regard to refund of ITC to be availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc. |
| 18 | 12/03/2021 | 147/2021 | Refund | Clarification on Deemed Exports and Turnover calculation on the basis of Notification No.16/2020 dated 13-03-2020 |
| 19 | 15/11/2017 | 17/2017 | Rescinded by circular 125/2019 | Manual Filing and processing in respect of Zero Rated Supplies |
| 20 | 21/12/2017 | 24/2017 | Rescinded by circular 125/2019 | Manual filing and processing on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger |
| 21 | 13/03/2018 | 36/2018 | Refund Application | UIN entities |
| 22 | 13/04/2018 | 43/2018 | Refund Application | UIN entities |
| 23 | 04/09/2018 | 60/2018 | Refund Application | Canteen Stores Department (CSD) |
| 24 | 28/06/2019 | 104/2019 | Refund Application | Processing of refund applications in FORM GST RFD-01A submitted by taxpayers wrongly mapped on the common portal |

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| 25 | 18-11-2019 | 125/2019 | Refund Application Electronic | Clarify the fully electronic refund process through FORM GST RFD-01 and single disbursement. |
| 26 | 04/10/2017 | 8/2017 | LUT Bond | Detailed clarifications on LUT Bond. Amended by circular 88/2019. |
| 27 | 06/04/2018 | 40/2018 | LUT Bond | Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports |
| 28 | 01/08/2019 | 88/2019 | LUT Bond | Amending Circular 8/2017 |
| 29 | 13/04/2020 | 137/2020 | LUT Bond Limitation Period | Clarifying extending date to furnish LUT Bond for the year 2019-20 till 30-06-2020 in terms of Notification 35/2020-Central Tax.<br>Notification 35/2020 further amended vide Notification No.55/2020 by which due dated falls between 20-03-20 to 30-08-20 will be extended to 31-08-2020. |
| 30 | 13/04/2020 | 137/2020 | Limitation Period to file Refund Application | Clarifying in terms of Notification 35/2020-Central Tax if due date to file application for refund falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020.<br>Notification 35/2020 further amended vide Notification No.55/2020 by which due dated falls between 20-03-20 to 30-08-20 will be extended to 31-08-2020.<br>Notification 35/2020 further amended vide Notification No.55/2020 by which due dated falls between 20-03-20 to 30-08-20 will be extended to 31-08-2020. |
| 29 | 06/05/2020 | 138/2020 | Limitation Period for Merchant Exporter | The merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier.<br>It is clarified that the said requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.<br>Notification 35/2020 further amended vide Notification No.55/2020 by which due dated falls between 20-03-20 to 30-08-20 will be extended to 31-08-2020. |
| 30 | 18/07/2019 | 108/2019 | Refund on Supply made in exhibition, exhibition held in Out of India | Clarification for goods sent out of India without covering under the definition of Supply |

**O. Proposed Amendment in section 16 IGST Act according to para 114 of the Finance Bill 2021 in regard to Export and Refund (Para 114 is reproduced as under)**

114. In the Integrated Goods and Services Tax Act, 2017, in section 16, —

(a) in sub-section (1), in clause (b), after the words "supply of goods or services or both", the words "for authorised operations" shall be inserted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify–

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or

# Works Contract Services under GST - Detailed Analysis

*Parveen Kumar Mahajan, Advocate*

The combination of words "Works contract" itself states that it is a contract for doing the agreed work. Works Contract may be done for immovable property as well as for movable property. Basically works contract is a combination of supply of goods and supply of services. Pre-GST, tax was levied under the provisions of Service Tax on service part as well as levied under the provisions of VAT Laws on goods part transferred through Works Contract. A person had to pay both taxes i.e. service tax and VAT on a single transaction of works contract. The Service Tax Law was introduced in the year 1994. Prior to introduction of service tax law the tax was levied only on sale of goods.

The dispute whether works contract is supply of goods or supply of service, reached before the Hon'ble Supreme Court. The Hon'ble Supreme Court held in the case of Gannon Dunkerly that Works Contract was a supply of service. **The Court held that in case of a works contract, the dominant intention of the contract is the execution of works, which is a service and there is no element of sale of goods (as per Sale of Goods Act).** The contract being one indivisible contract, it cannot be broken up to levy VAT on sale of goods involved in the execution of works contract. This decision led the Government to amend the Constitution of India and insert Article 366(29A) (b) which enabled the State Governments to levy tax (VAT) on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Prior to GST Works Contract was applicable for both contract i.e contract for movable property and contract for immovable property.

**Under GST regime it is applicable only to contract for immovable property.**

This article contains following concepts in regard of Works Contract under GST:

1. What is Works Contract?

2. What is immovable Property for the purpose of Works Contract?

3. Whether Works Contract Supply is a Supply of Service or Supply of Goods or both?

4. Input Tax Credit provisions for Works Contract.

5. Notification for rate of tax in relation to Works Contract.

6. Definition of Original Work.

7. Place of Supply in case of Works Contract under GST.

8. Additional requirement of maintenance of accounts by the Works Contractor under GST.

9. GST Registration clarification if work is done in other State.

10. Advance Ruling on rate of tax specified under s.no.3 (v) of the Notification No.11/2017 – Central Tax (Rate).

**Q1. What is Works Contract?**

Works Contract is defined under section 2 (119) of the CGST Act as "*works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*"

Thus Works Contract is applicable to fourteen types of contract to be executed for immovable property. Such contracts are building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning.

Other mandatory condition for Works Contract under GST is that transfer of property in goods must be there. If there is a contract of pure service contract without transferring any type of goods then that contract shall not be treated as Works Contract under GST. For example a person provides pure labour service to construct building without any transfer of goods then this contract shall not be treated as Works Contract.

Under GST regime Works Contract done for movable property shall not be treated as Works Contract.

**Q.2. What is immovable Property for the purpose of Works Contract?**

The immovable property has not been defined under the GST Law. The definition of immovable property under section 3 (26) of the General Clause Act, 1897 is reproduced as – "*"immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth*."

According to the section 2 (6) of the Registration Act, 1908 immovable property means –

> "Immovable Property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;"

According to interpretation clause under section 3 of the Transfer of Property Act *"immoveable property" does not include standing timber, growing crops or grass;"*

Under the interpretation clause it is also interpreted for *"*attached to the earth*" "attached to the earth" means—*

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

On perusal of the definitions given for immovable property it has been noticed that prime property under the term of "immovable property" is land or earth. Further permanently fastened or attached to land or benefits to arise out of land are also treated as immovable properties.

**A work shall be treated as Works Contract if that work is done for land or earth or for immovable property. Immovable property cannot be moved. It cannot be separated from the land or earth. If it is detached it shall have to destroy. For example a building or bridge cannot be detached from the earth. Platform, constructed to fix plant and machinery, cannot be detached from the land. If the platform is detached that shall have to destroy.**

**The Authority in advance ruling M/S ABB India Ltd; AAR-West Bengal observed about immovable property is as under:**

**Para 4.4** – "*The essential character of immovable property is that it is attached to the earth, or permanently fastened to anything attached to the earth, or forming pan of the land and not agreed to be severed before supply or under a contract of supply.*"

**Para 4.5** – "*In S/S Triveni N L Ltd [RN - 910, 911 & 912 of 2001 (All)] Allahabad High Court observes that permanently fastened to anything attached to the earth has to be read in the context for the reason that nothing can be fastened to the earth permanently so that it can never be removed. If the article cannot be used without fastening or attaching it to the earth and is not removed under ordinary circumstances, it may be considered permanently fastened to anything attached to the earth.*

*Furthermore, in the context of the GST Act, if the article attached to the earth is not agreed to be severed before supply or under a contract for supply, it ceases to be goods and, for that matter, a moveable property.*"

**Q.3. Whether Works Contract is Supply of Service or Supply of Goods or both?**

Prior to GST both provisions relating to services and sale of goods were separately treated. Both taxes i.e. Service Tax and Vat were levied on a single transaction of Works Contract. Under the GST regime the Legislature has provided provisions of Composite Supply and Mixed Supply.

Composite Supply means a combination of different supplies which is naturally bundled and cannot be segregated from each other. One of which is a principal supply. Tax is levied on such composite supply with rate of tax which is applicable to principal supply.

Mixed Supply means which are two or more individual supplies of goods or services. This mixed supply is not naturally bundled and can be segregated from each other. Rate of tax on such supply if sold at single price shall be the higher rate which is applicable to anyone of the supplies.

Works Contract is a Composite Supply which is a bundle of supply of goods and supply of services used in the works contract.

The Legislature has treated Works Contract Supply as Supply of Services vide para 6 of Schedule II of the CGST Act.

**Q. 4. Input Tax Credit provisions for Works Contract?**

According to Section 16 of the CGST Act every registered person is entitled to input tax credit, subject to conditions and restrictions specified in rules, if the person made purchases to use or intended to be used in the course of or furtherance of his business.

But Section 17 (5) stops the registered person to avail input tax credit on such supplies which have been specified under this section 17 (5) of the CGST Act.

Section 17 (5)( c ) and 17 (5) (d) blocks input tax credit relating to supplies of Works Contract and goods or services or both received for construction of an immovable property.

Section 17 (5) (c) says that 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;

Section 17 (5)(d) says that goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

On perusal of the above provisions it is cleared that

- ITC on Works Contract in relation to construction of immovable property is not available;
- ITC on Works Contract is not available if works contract service for immovable property is to be capitalized in the business;
- ITC is not available on such goods or services or both which are to be used for construction of immovable property;
- ITC on works contract is available if such service is to be used for plant and machinery;

- ITC on works contract is available if such service is to be further supplied by the recipient.

For example a factory owner gets construct factory shed for his business. Factory shed is an immovable property, therefore input tax paid to the contractor for supply of construction service for factory shed cannot be availed as input tax credit.

Further example a building developer may engage services of a sub-contractor for certain portion of the whole work. The sub-contractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service. However if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company. Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business.

**Q. 5. Notification for rate of tax in relation to Works Contract.**

Rate of Tax for Works Contract is available at Serial No.3 of the Notification No.11/2017 – Central Tax (Rate). Analysis of this serial no.3 is as under:-

**Heading of this Service is 9954;**

**Service name is "Construction Service"**

Rate of tax under column no.(3) of the Notification is as under:

| Sub S.No. of S.No.3 | Construction Services | Rate of Tax | Condition |
|---|---|---|---|
| **For ( I ), ( ia ), ( ib ), ( ic), ( id ) and ( va )** | | | |
| **Rate of Tax for Construction commences on or after 01-04-2019 or in an ongoing projects in respect of which the promoter has not exercised option to pay tax applicable before 01-04-2019.** | | | |

| | | | |
|---|---|---|---|
| ( i ) | Construction of affordable residential apartments by a promoter in a RREP | 0.75 | Condition applied |
| ( ia ) | Construction of residential apartments other than affordable residential apartments by a promoter in an RREP | 3.75 | Condition applied |
| ( ib ) | Construction of commercial apartments (shops, offices, godowns, etc.) by a promoterin an RREP | 3.75 | Condition applied |
| ( ic ) | Construction of affordable residential apartments by a promoter in a REP other than RREP | 0.75 | Condition applied |
| ( id ) | Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP | 3.75 | Condition applied |
| ( va ) | Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below | 6 | Condition applied |
| **For ( ie ) and ( if )**<br>**Rate of tax for ongoing projects which constructions have been started before 01-04-2019 and for which the promoter has exercised option to pay central tax as applicable before 01-04-2019.** | | | |
| ( ie ) | Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), subitem(d), sub-item (da) and sub-item (db) of item (iv); subitem (b), sub-item (c), sub-item(d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table | 6 | Condition applied |
| ( if ) | Construction of a complex, building, civil structure or a part thereof, including,—<br>(i) commercial apartments (shops, offices, godowns, etc.) by a promoter in a REP otherthan RREP;<br>(ii) residential apartments in an ongoing project, other than affordable residentialapartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments atthe rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, | 9 | Condition applied |
| ( ii ) | Omitted w.e.f. 01-04-2019 | | |

| | | | |
|---|---|---|---|
| **For ( iii ), ( vi ) and ( vii )**<br>**Supply provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—** | | | |
| ( iii ) | Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017<br>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);<br>(b) canal, dam or other irrigation works;<br>(c) pipeline, conduit or plant for (i) water supply, (ii) water treatment, or (iii) sewerage treatment or disposal | 6 | Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be |
| ( vi ) | Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above<br>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;<br>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or<br>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.<br>Explanation.—For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. | 6 | Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be |
| ( vii ) | Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work that is, constituting more than 75 per cent of the value of the works contract | 2.5 | Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be |

| | | | |
|---|---|---|---|
| **For ( ix ) and ( x )**<br>**Services provided by a sub-contractor to the main contractor providing services to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.** | | | |
| ( ix ) | Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) | 6 | Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be |
| ( x ) | Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) | 2.5 | Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be |
| ( iv ) | Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia),(ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—<br>(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;<br>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana;<br>(c) a civil structure or any other original works pertaining to the “In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);<br>(d) a civil structure or any other original works pertaining to the “Beneficiary led individual house construction/ enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;<br>(da) a civil structure or any other original works pertaining to the “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or | 6 | No any Condition |

| | | | |
|---|---|---|---|
| | Union territory or local authority or urban development uthority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana<br>(Urban);<br>(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker<br>Section (EWS)/Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/Middle<br>Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/PradhanMantri Awas Yojana (Urban);<br>(e) a pollution control or effluent treatment plant, except located as a part of a factory; or<br>(f) a structure meant for funeral, burial orcremation of deceased.<br>(g) a building owned by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralized cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities. | | |
| ( v ) | Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, or installation of original works pertaining to, —<br>(a) railways, including monorail and metro;<br>(b) a single residential unit otherwise than as a part of a residential complex;<br>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;<br>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under—<br>(1) the "Affordable Housing in Partnership"component of the Housing for All (Urban)Mission/Pradhan Mantri Awas Yojana;<br>(2) any housing scheme of a State Government; | 6 | No any condition |

| | | | |
|---|---|---|---|
| | (da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No.13/6/2009-INF, dated the 30th March, 2017;<br>(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or<br>(f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages. | | |
| ( viii ) | Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in theoffshore area beyond 12 nautical miles from the nearest point of the appropriate base line. | 6 | No any condition |
| ( xi ) | Services by way of housekeeping, such as plumbing, carpentering, etc. where theperson supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017. | 2.5 | Condition applied |
| ( xii ) | Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.<br>Explanation.—For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id), (ie) and (if) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry. | 9 | No any condition |

**Q.6. Definition of Original Work.**

According to para 2 (zs) of the Notification 12/2017 – Central Tax (Rate) Original Work means –

“original works” means- all new constructions;

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

**Q.7. Place of Supply in case of Works Contract under GST.**

Works Contract Service is a supply of service for immovable property. Place of Supply in relation to immovable property is governed by Section 12 (3) of the IGST Act,2017 where both Supplier and Recipient are located in India.

- Place of Supply shall be the location at which the immovable property is located or intended to be located.

- If location of immovable property is outside India, the place of supply shall be the location of the recipient.

In case where either the Supplier or the Recipient are located outside India the place of supply shall be the place where the immovable property is located or intended to be located as per section 13 (4) of the IGST Act, 2017.

**Q.8. Additional requirement of maintenance of accounts by the Works Contractor under GST.**

In addition to normal course of maintaining of accounts by a Works Contractor, the Works Contractor shall have to maintain additional accounts as per rule 56 (14) of CGST Rules, 2017. It is reproduced as under:

"*(14) Every registered person executing works contract shall keep separate accounts for works contract showing—*

(a) the names and addresses of the persons on whose behalf the works contract is executed;

(b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;

(c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;

(d) the details of payment received in respect of each works contract; and

(e) the names and addresses of suppliers from whom he received goods or services."

**Q.9. GST Registration clarification if work is done in other State.**

The ask GST_GoI clarified in its tweet as under :

**Tweet -** Whether civil contractor doing projects in various states requires separate registration for all states or a single registration at state of head office will suffice?

**Reply -** A supplier of service will have to register at the location from where he is supplying services.

For example a contractor of Delhi is providing works contract service at Gurgaon. He has no fixed place of business including ware house at Gurgaon. All services are being supplied from Delhi. Goods required to be used in works contract are also being sent directly at site of the works contract through delivery challan from godown in Delhi or through the Supplier who issues bill to Works Contractor of Delhi and ship to at Gurgaon site. In this case such contractor would not require to register himself in the state of Gurgaon.

If any of the terms of Place of business as defined under section 2 (85) of the CGST Act, 2017 is attracting in the case of the said Contractor, the contractor shall have to register himself from the state of Gurgaon. These terms are :

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

**Q. 10. Advance Ruling on rate of tax specified under s.no.3 (v) of the Notification No.11/2017 – Central Tax (Rate).**

Shree Construction (AAAR-MAHARASHTRA) dated – 03-01-2019

Applicant is providing works contract service as sub-contractor to main contractor for original contract work pertaining to railways.

The question before the Authority was that –

1. What tax rate to be charged by the applicant to main contractor on works contract services pertaining to railways original works contract.

2. Whether to charge tax rate of 12 per cent GST or 18 per cent GST.

The Authority for Advance Rulings ruled that The tax rate to be charged would be 12 per cent.

Para 11 of the Advance Ruling says - As regards the appellant's contention that there is no specific mention of sub-contractor providing services in Sr. (v) as provided in item (ix) and (x) which were incorporated into the Notification 11/2017-C.T. by the amending Notification 1/2018, dated 25.01.2018, we are of the opinion that there was no need to include such sub-contractors in the item (v) of the Notification as there was no confusion whether the subcontractor will be eligible to such concessional rate of GST, since the activities described under item (v) of Sr. 3 of the notification are services specific. The service provider and the service recipient are immaterial for the determination of beneficiary of this concessional rate of GST. That is, if the works contract services provided by the main contractor or sub-contractor are pertaining to the railways, the concessional rate of 12% GST is allowed to the person who carries out the such works contract pertaining to railways.

**Thus tax on supplies as stated in s.no.3 (v) of the Notification No.11/2017 – Central Tax (Rate) shall be levied at the rate of six percent, it is immaterial who makes supplies either by the main contractor to the principal or by the sub-contractor to the main contractor if his supplies relating to original work as specified in s.no.3(v) of the said notification.**

# Supply of Old and Used Fixed Assets under GST

*Parveen Kumar Mahajan, Advocate*

The Article titled "**Supply of Old and Used Fixed Assets**" discusses all such aspects in regard of if such assets are supplied by the following persons.

1. A registered person;

2. An unregistered person;

3. A composition dealer;

4. An individual who sells his personal assets and

5. A person who deals in sale and purchase of second hand goods.

6. Rate of GST on old Motor Vehicles as per Notification No.8/2018 Central Tax (Rate)

**Q1. A registered person who sells his old and used fixed assets.**

1. If the registered person sells such assets on which the person has taken input tax credit then tax shall be paid according to section 18(6) of the CGST Act, 2017 read with rule 44(6). This matter may be understood by the following example.

For example, fixed asset purchased worth Rs. 100000/- in the month of July 2017 and input tax credit @ 18% i.e. Rs.18000/- had been taken in the month of July 2017. This fixed asset was sold out in the month of August 2019. The person has used this fixed asset from July 2017 to August 2019 i.e. for 26 months.

Useful Life of the Fixed asset is 5 years according to Rule 44(1)(b) i.e. 60 months. Remaining unused life of the Fixed asset is 34 months (60-26).The Fixed asset has been sold for Rs.60000/= and tax charged Rs.10800/=.

| | |
|---|---|
| Total Input Tax Availed | = Rs.18000/- |
| Useful Life of the Fixed asset | = 60 months |
| Period of Fixed asset Used | = 26 months |
| Unused period of Fixed asset | = 34 months |
| Tax on Pro rata basis for unused period i.e.34 months (18000/60*34) | = Rs.10200/- |

Since the tax Rs.10800/= charged on transaction value of the Fixed asset is more than the tax Rs.10200/= as calculated for unused period of the Fixed asset, therefore the higher amount of tax Rs.10800/= shall be paid.

**In the above example** if the supply of the Fixed asset is made for Rs.50000/= and tax Rs.9000/= be charged on this supply then higher amount of the tax Rs.10200/= calculated for unused period of the Fixed asset shall be paid in place of tax Rs.9000/= charged on transaction value of Rs.50000/=.

**Supply of refractory bricks, moulds and dies, jigs and fixtures as scrap then tax shall be paid on transaction value determined under section 15.**

2. If the registered person sells Motor Vehicles then taxable value and rate of tax to be charged as per Notification No.8/2018 – Central Tax (Rate) dated 25-01-2018. **The only condition to avail this notification is that the person had not availed input tax credit on such motor vehicle.** The taxable value in this case shall be **margin amount determined as** under:

2.1 If the depreciation has been claimed on such vehicle then transaction value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply.

2.2 If the depreciation is not claimed by the person on such vehicle then the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price.

2.3 If the margin in the above stated both cases is negative then it shall be ignored. Meaning thereby that the transaction value of such vehicle shall be zero.

For example, the depreciated value of the motor vehicle as on 31-03-2020 is Rs.150000.00 and the person supplies this motor vehicle at Rs.160000.00. The margin shall be Rs.10000.00 i.e. difference between the consideration received and the depreciated value. The tax shall be charged on Rs.10000.00 with rate prescribed under notification no.8/2018-Central Tax (Rate). **List of such rate of tax has been provided below of this article.**

In the above example if the motor vehicle is supplied at Rs.140000.00 then margin between consideration (140000.00) and depreciated value (150000.00) shall be -10000.00 which shall be ignored due to margin in negative value and no tax shall be charged.

**Motor Vehicle purchased in Pre-GST period.**

**Whether the terms of notification no.8/2018 shall be applied on motor vehicles which were purchased in Pre-GST period. The answer is yes if the supplier had not availed input tax credit in pre-gst regime also.** The circumstances when the notification shall not be applied, have been stated in para 2 of the notification. This para 2 is reproduced as under:

> "*This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods.*"

3. **If the registered person sells fixed asset other than Motor Vehicle on which he had not availed input tax credit.** The person had not taken input tax credit because of following reasons:

3.1 The fixed asset was used for supply of goods which are exempted under GST or

3.2 The person had not taken the input tax credit for any reason.

**Transaction Value,** in all the above cases stated in paras 3.1 or 3.2 or in the case when the fixed asset was purchased during pre-GST regime, shall be the value on which value such asset is to be sold. Tax shall be charged on transaction value as per rate applicable to the asset to be sold.

**What about input tax credit which had not been availed as per facts stated in para 3.1 and 3.2**

As per para 3.1 the person was not eligible to avail input tax credit because the asset was used for supply of exempted goods. Fixed Asset itself is not exempted goods. The Supplier shall have to charge tax on supply of such fixed asset when he sells it. The Supplier asks the question whether he can avail input tax credit now when he sells the asset on which he had not taken input tax credit due to asset was used for supply of exempted goods.

As per my opinion the answer is NO. There may be different opinions that some experts may say YES. Thus, it is a debatable agenda and clarification must be issued by the GST Council in this respect. The reader should take his own decision on this matter while consider provisions as stated in section 18(1)(d) of the CGST Act in this regard.

The section 18(1)(d) entitles to take input tax credit on capital goods when capital goods exclusively used for exempt supply becomes taxable supply. Such input tax credit shall be the amount after reducing proportionate input tax for period for which the said asset had been used for exempt supply of goods. **My opinion is that input tax credit is to be allowed when capital goods is to be used for taxable supply of goods. If the said capital goods is to be sold out without further use for taxable supply of goods then the person can not avail input tax credit.**

As per para 3.2 the person had not taken input tax credit on fixed asset purchased for any reason. The Fixed Asset is a taxable goods and the same (fixed asset) was being used for supply of taxable goods. The person sells such asset and asks whether can he claim input tax credit now?

Supply of Fixed Asset and claiming of input tax credit are both different terms. Sections 16, 17, 18 and other sections and rules shall apply for claiming of input 1tax credit. Section 16(4) allows the person to claim input tax credit maximum by due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains or furnishing of the relevant annual return, whichever is earlier. Thus, the person can claim input tax credit within stipulated period. If such period has elapsed, the person is not eligible to claim input tax credit. **Therefore, if the asset is sold out within the period that had not been elapsed according to section 16(4) of the CGST Act then the person can claim input tax credit otherwise not. If the person avails input tax credit then he shall sell such assets according to section 18(6) as stated above.**

**Q2. An unregistered person who sells his old and used fixed assets.**

An unregistered person can sell old and used fixed asset without charging any tax. But if by selling this asset he becomes liable for registration then he shall have to get register himself under the GST Law. He shall be liable for registration if his aggregate turnover exceeds turnover specified under section 22 of the CGST Act or he is required compulsory registration as per section 24 if he sells asset interstate.

**Q3. A composition dealer who sells his old and used fixed assets.**

A composition dealer can sell old and used fixed assets. Now question arise about rate of tax to be charged on such asset. Whether rate of tax shall be the rate being appliCable to such asset or the rate equal to the composition levy being paid by the composition dealer according to section 10 read with rule 7?

The Composition Dealer has to pay tax on the turnover in state or turnover in union territory. According to section 2(112) of the Act "**turnover in State**" or "**turnover in Union territory**" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Section 7(1)(a) of the Act says "**Supply**" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Supply terms include supply of regular of supply of goods or services or both and also include if fixed assets are sold. There is no such provision under the GST Law which excludes supply of fixed asset by the Composition Dealer from the regular supply being made by the Composition Dealer.

**Thus, rate of tax be charged on supply of asset by the Composition Dealer shall be the rate equal to the composition levy being paid by the Composition Dealer on his regular supply of goods.**

**Q4. An individual who sells his personal assets**.

An individual, who is not doing any business, sells his personal assets whether the GST shall be charged on such asset or not. The answer is NO. Because one of the conditions for the term of "Supply" under the GST Law, according to section 7 of the Act, is that Supply is to be made or agreed to be made in the course or furtherance of the business. Since the person is not doing any business, therefore, GST tax shall not be charged on supply of such asset made by such person.

**Q5. Supply of second hand goods by a person dealing in purchase and sales of second hand goods**.

In this regard specific provisions have been framed by the Legislature under rule 32(5) of the CGST Rules, 2017. According to this rule –

**Taxable Value for supply of second hand goods** shall be the margin value i.e. the difference between the selling price and the purchase price and where the margin value of such supply is negative, it shall be ignored. For example, a person purchases second hand refrigerator for Rs.3000.00. After some repairing the person sells it for Rs.4000.00. The taxable value (margin value) shall be Rs.1000.00 being difference between selling value and purchase value. Tax shall be charged on Rs.1000.00. Rate of tax on such supply of goods shall be the same as applicable to such goods in normal course.

To avail this margin value scheme the following conditions should be fulfilled: -

1. The Supplier should be registered under the GST;

2. The supply of goods shall be sold as such as it were purchased or after minor processing which does not change the nature of goods and

3. Where no input tax credit has been availed on the purchase of such goods.

**Purchase value of goods repossessed from a defaulting borrower -** The purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

| Date of Purchase by Defaulting Borrower | Amount of Purchase | Date of Disposal | Qtrs. Including part qtr. between date of purchase and date of disposal | Value after reduce @ 5% for each qtr and part qtr. |
|---|---|---|---|---|
| 01/04/2018 | 118000.00 | 31/03/2020 | 8 | 70800.00 |
| 01/04/2018 | 118000.00 | 01/04/2020 | 9 | 64900.00 |

**Q6. Rate of GST on old Motor Vehicles as per Notification No. 8/2018 Central Tax (Rate)**

| Rate of Old & Used Motor Vehicles (Notification 8/2018-Central Tax (Rate) | | | |
|---|---|---|---|
| **S. No.** | **Chapter, Heading, Subheading or Tariff item** | **Description of Goods** | **Rate** |
| 1 | 8703 | Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more.<br>Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under | 9% |
| 2 | 8703 | Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm<br>Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under. | 9% |
| 3 | 8703 | Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles.<br>Explanation. - For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above. | 9% |
| 4 | 87 | All Old and used Vehicles other than those mentioned from S. No. 1 to S.No.3 | 6% |

# Real Estate Joint Development Agreement under GST

*Parveen Kumar Mahajan, Advocate*

**Joint Development Agreement (JDA)** means an agreement between the Land Owner and the person (may be in differ names i.e. Builder, Developer, construction company etc..) wherein the Land Owner provides land to the builder for the construction of a real estate project. In return for the land provided by the Land Owner, the Builder provides as per agreement that may be:

- Lump sum consideration or
- Percentage of sale revenue or
- Provide share in newly constructed property.

I shall discuss about Area Sharing JDA through this article. To understand the article an example relating to the subject of the article is given as under:

**Example -** The JDA has been executed between the parties on 02-04-2019. A Land Owner provides the land measuring about 1800 sq.mtr to the Builder to construct Non-Affordable 12 residential flats and 2 commercial shops. The Carpet Area of the commercial shops is less than 15 per cent of the total carpet area of the project, therefore, the project shall fall under Residential Real Estate Project (RREP) according to the Notification – 06/2019 – Central Tax (Rate) dated 29-03-2019. According to sharing areas settlement clause, the Land Owner shall get 6 built-up residential flats and 1 shop in lieu of consideration towards Transfer of Development Rights and balance 6 residential flats and 1 shop shall be kept by the Builder.

On the basis of the above example following points are to be discussed:

**A. What are the Supplies under the project?**

**B. Considerations for the Supplies specified in clause A**

**C. Rate of Tax against Supplies with effect from 01-04-2019**

**D. Valuation of Services Supplied under the project**

**E. Time of Supply**

**F. Reverse Charge Mechanism for any Supply under the project**

**G. Input Tax Credit**

**H. Calculation of Output Tax Liability and comparison between output tax liability against project sold before completion certificate and output tax liability against project not sold before completion certificate.**

**A. What are the Supplies under the project?**

1. Supply of Development Rights by the Land Owner to the Builder;

2. Supply of Construction Services by the Builder to the Land Owner;

3. Supply of Construction Services towards own share of Proposed Residential Flats and One Shop by the Land Owner and

4. Supply of Construction Services towards own share of Proposed Residential Flats and One Shop by the Builder.

**B. Considerations for the Supplies specified in clause A**

| S. No. | Supply | Consideration |
|---|---|---|
| 1 | Supply of Development Rights by the Land Owner to the Builder | Constructions services for six residential flats and one commercial shop exchanged by the Builder |
| 2 | Supply of Construction Services by the Builder to the Land Owner | Supply of Development Rights exchanged by the Land Owner |
| 3 | Supply of Construction Services towards own share of Proposed Residential Flats and One Shop by the Land Owner | Transaction value as settled with the consumer |
| 4 | Supply of Construction Services towards own share of Proposed Residential Flats and One Shop by the Builder | Transaction value as settled with the consumer |

## C. Rate of Tax against Supplies with effect from 01-04-2019

### 1. **Rate for Transfer of Development Rights** –

Rate for TDR services is 18 % except rate on such service is NIL with condition as notified vide Notification No. 04/2019 - Central Tax (Rate). The Notification is reproduced as under:

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| 41A | Heading 9972 | Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.<br><br>The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:<br><br>[GST payable on TDR or FSI (including additional FSI) or both for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project) | NIL | Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain unbooked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner –<br><br>[GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project)<br><br>Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 percent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation.<br><br>The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on thedate of completion or first occupation of the project, as the case may be, whichever is earlier. |

2. **Rate for Construction Services for Non Affordable Residential Projects and construction services for shops fall under RREP Project**–

2.1 **2.5 percent each under CGST and SGST Act on total value** i.e. value including share of land. Otherwise rate specified in Notification 11/2017-CT (Rate) is 3.75 percent each under the Act. For example total cost of the apartment is Rs.60 lakh, tax @ 5% is Rs.3 lakh. If deduct the 1/3rd value of land from the total value Rs.60 lakh i.e. Rs.40 lakh and then calculate tax @ 7.5% on 40 lakh which is also be Rs.3 lakh.

**D. Valuation of Services Supplied under the project**

1. **Valuation of TDR services -**

According to para 1A of the NOTIFICATION NO. 12/2017-CENTRAL TAX (RATE) inserted vide notification no. 4/2019 – CT (Rate) "*Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.*"

**2. Valuation of Unbooked flats -**

According to para 1A of the NOTIFICATION NO. 12/2017-CENTRAL TAX (RATE) inserted vide notification no. 4/2019 – CT (Rate) "*Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be."*

3. **Valuation of construction services, supplied by the builder or by the land-owner, of their respective shares -**

Value of such services shall be transaction value or determined according to section 15 of the CGST Act.

**4. Valuation of construction services supplied by the Builder to the land-owner in lieu of consideration towards Transfer of Development Rights –**

According to question no.26 the FAQ dated 14-05-2019 - *Value of construction services provided by the promoter to land owner*

*in such cases shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the. promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No.11/2017-CT(R) dated 28.06.2017*

## E. Time of Supply

1. **Time of supply of TDR services –**

   According Notification No. 06/2019-Central Tax (Rate) dated 29-03-2019, the time of supply for TDR services shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

2. **Time of supply of construction services supplied by the Builder to the Land-Owner –**

   In such case the time of supply shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

3. **Time of supply for construction services, supplied by the builder or by the land-owner, of their respective shares –**

   Provisions of section 13 shall prevail on these transactions. The main gist of this section is that time of supply of service shall be the earliest date between date of receipt of the payment or date of issue of invoice if the same is issued within the period prescribed under section 31.

## F. Reverse Charge Mechanism for any Supply under the project

TDR (Transfer of Development Rights) services fall under the Reverse Charge Mechanism. According to Notification No. 07/2019- Central Tax (Rate) dated 29-03-2019. Tax shall be paid by the builder being a recipient on TDR services supplied by any person.

## G. Input Tax Credit

The detailed analysis in respect to the Input Tax Credit shall be available in article "**Real Estate & Joint Development Agreement under**

**GST**" published in Taxguru.in. The link of this article is https://taxguru.in/goods-and-service-tax/real-estate-joint-development-agreement-gst.html.

**H. Calculation of Output Tax Liability and comparison between output tax liability against project sold before completion certificate and output tax liability against project not sold before completion certificate.**

| **Tax Payable Liability upon the Builder** | | |
|---|---|---|
| **Liability for payment of Tax shall be the equal to the tax calculated on total selling value of the project even if all project had not been sold out before completion certificate** | | |
| **Case Number 1** | | |
| 1 | Date of JDA | 01/04/2019 |
| 2 | Date of Completion Certificate | 30/08/2020 |
| 3 | No.of Flats | 20 |
| 4 | Land Owner Share | 10 |
| 5 | Builder Share | 10 |
| 6 | Cost of Flat per flat | 5000000 |
| 7 | Rate of GST | 5% |
| 8 | Total Value of Flats = ( S.No.3 * S.No.6 ) | 100000000 |
| 9 | Output Tax Liability = ( S.No.8* S.No.7 ) if all flats sold before completion certificate | 5000000 |
| 10 | Flat Sold before Completion Certificate | |
| 11 | By the Builder | 6 |
| 12 | By the Land Owner | 0 |
| 13 | Unsold Flats till Completion Certificate | |
| 14 | By the Builder | 4 |
| 15 | By the Land Owner | 10 |
| 16 | TDA value ( S.No.6 * S.No.4 ) | 50000000 |
| 17 | Tax Payable on TDA Value @18% | 9000000 |

| | | |
|---|---|---|
| 18 | Tax Payable of TDA on unbooked area ( 2 lakh * 18% ) | 3600000 |
| 19 | Tax Payable on unbooked flats @5% | 1000000 |
| 20 | Maximum Payable amount on unbooked Flats (maximum payable amount shall not exceed 5%) | 1000000 |
| 21 | Tax Payable on construction services supplied by the builder to the Land-Owner @ 5% | 2500000 |
| 22 | Tax Paid before completion certificate on sold flats | 1500000 |
| 23 | Total Paid ( 20+21+22 ) | 5000000 |
| 24 | Difference between ( 23 – 9 ) | 0 |
| **Tax Payable Liability on Builder** | | |
| **Calculation with Commercial Property** | | |
| **Case Number 2** | | |
| 1 | Date of JDA | 01/04/2019 |
| 2 | Date of Completion Certificate | 30/08/2020 |
| 3 | No.of Flats | |
| 3.1 | Residential | 12 |
| 3.2 | Commercial | 2 |
| 4 | Land Owner Share | |
| 4.1 | Residential | 6 |
| 4.2 | Commercial | 1 |
| 5 | Builder Share | |
| 5.1 | Residential | 6 |
| 5.2 | Commercial | 1 |
| 6 | Cost of Flat | |
| 6.1 | Residential per flat | 5000000 |
| 6.2 | Commercial per shop | 10000000 |
| 7 | Rate of GST | 5% |
| 8 | Total Value of Flats = ( S.No.3.1 * S.No.6.1+3.2*6.2 ) | 80000000 |
| 9 | Output Tax Liability = ( S.No.8* S.No.7 ) if all flats sold before completion certificate | 4000000 |

| | | |
|---|---|---|
| 10 | Flat Sold before Completion Certificate | |
| 10.1 | By the Builder - Residential only | 4 |
| 10.2 | By the Land Owner | 0 |
| 11 | Unsold Flats till Completion Certificate | 10 |
| 11.1 | By the Builder ( 2 residential + 1 commercial ) | 3 |
| 11.2 | By the Land Owner ( 6 residential + 1 commercial ) | 7 |
| 12 | TDA value {( S.No.4.1*6.1)+(4.2 * 6.2)} | 40000000 |
| 13 | Tax Payable on TDA Value @18% ( 12*18% ) | 7200000 |
| 14 | Tax Payable of TDA on unbooked residential flats (10000000*18%) | 1800000 |
| 15 | Tax Payable on unbooked residential flats @ 5% | 500000 |
| 16 | Tax Payable on unbooked commercial flat @ 18% | 1800000 |
| 17 | Tax Payable on construction services supplied by the builder to the Land-Owner @ 5% on 40000000 | 2000000 |
| 18 | Tax Paid before completion certificate on sold flats by the Builder (20000000 *5%) | 1000000 |
| 19 | Total Paid at the time of completion (15+16+17+18) | 5300000 |
| 20 | Difference between (19 - 9) | 1300000 |
| 21 | **Difference due to TDA paid on commercial @ 18% as it is 5% on residential property** | |

# Faceless Assessments and Appeals Under Direct Tax Regime – Will it Stand Judicial Test in India?

*Sushil K Verma, Advocate*

Prime Minister Narendra Modi stated: (while introducing Faceless Tax Regime Concept)

> "So far, the tax department in our city handled all issues. Scrutiny, notice, survey or confiscation, the income tax officer in the same city plays the principal role. In a way, this will end. Now, scrutiny cases will be allotted randomly in any part of the country… Under this system, a taxpayer will not have an opportunity to know people in the tax department or exert influence,"

The Unique Selling Proposition of the scheme was that the scheme will revolutionise the way in which the scrutiny assessments of the tax returns that are filed by taxpayers are conducted and will fully digitise the interactions between taxpayers and the revenue. The scheme has been introduced with the intention of making direct tax administration seamless, painless, and faceless.

Similar to the revenue audits that are carried out in many countries, the Indian revenue authorities also conduct assessment proceedings in order to determine whether any adjustments are required to the income that taxpayers have declared on their tax returns. Historically, such proceedings have involved sitting across the table from the tax officer, providing details and clarifications from time to time. The faceless assessment scheme aims to change that completely.

Well friends, we are all aware of the above face assessment and faceless first appeal Scheme. (Summarised below) announced with a lot of fan-fare by the Prime Minister and subsequent Notifications issued and provisions of the income tax act amended suitably. The USP of such celebrated announcements made on National TV were that such schemes will virtually finish the interface of the tax payers with the officers; such schemes shall be transparent and that will substantially reduce harassment and extra judicial practices that are so prevalent in Indian tax regime. And hundreds of such assessments have been completed with majority of

orders not levying any significant additional tax liabilities on the tax payers. The experts in this field are sceptical and view such orders as “selling propaganda” of such schemes. However, I am not personally of this view: may be the collective wisdom of many officers involved in such schemes resulted into NIL additional tax liability. Notwithstanding contrary views of experts and the tax payers in this regard, let us not initiate this scheme with theory of “vested interest” on the part of the Government. No doubt, the scheme has teething and survival issues, but that would be true for any such artificial intelligence based initiative anywhere in the world and in time we shall certainly overcome such hiccups, keeping in view of past our track record with digitizing TDS, Tax audit, Transfer pricing etc are classic testimony to our ability to embrace change.

The Scheme is nothing but akin to Online Dispute Resolution Mechanism which is followed in many countries of the world, albeit with very different legal and factual contextual matrix.

2. I am of the view that the citizens experience true liberty and their expectations flourish when the tax systems are transparent and so are the Governments that govern us. The Indian tax system has also been criticised for heavy dependence on bureaucratic babus; unclear rules and regulations leading to different judicial interpretations and subject and personal biased approach to tax system. However, as much as minimizing regulations is important, simplifying the enforcement process and making bureaucracy accountable is equally relevant if not more. India has been gradually moving up the ladder in the ease of doing business index from 134 in 2013 to 63 in 2020 thanks predominantly to a spate of e-governance initiatives including SPICe for company incorporation, electronic MOA and AOA, single platform for reporting under FEMA, Online IEC application for cross border trade, computerization of Government departments and several other state reforms. In simple terms what I want to experience and want to say is that the Faceless Regime, though invoked for direct taxes is not a bad idea for a very large and vast country like India. But the key question is target fixing; revenue generation, pressure tactics and a Circular Raj must not plague this face less regime and this is where I doubt about the efficacy of Indian Tax machinery to deviate from this trend and if they do not then such a scheme will not yield the expected results as announced with such fan-fare by the Tax Department and MOF.

**The key features of the Scheme:**

Two notifications bearing Numbers 60 and 61 of 2020 have been issued by CBDT on 13th August 2020 in this regard. The key features of

the Scheme are -

- All territorial jurisdictions of the assessing authorities have been abolished.

- Instead a National E-Assessment Centre (NEAC) and 30 Regional E-Assessment Centres (REACs) have been set up each headed by a Chief Commissioners and comprising of various Principal Commissioners and other officers. The NEAC and each REAC will have jurisdiction across the country.

- Each REAC will have four units: Assessment Unit (AU), Verification Unit (VU), Review Unit (RU) and Technical Unit (TU). Each of these will be headed by a Principal Commissioner.

- Returns of income will be selected for scrutiny only through Computerised system using Data Analytics and Artificial Intelligence.

- NEAC shall issue notices electronically to the taxpayers whose returns are selected for scrutiny specifying the issues for selection of the return.

- All notices to taxpayers shall be issued centrally online through NEAC only. These will carry a unique Document Identification Number (DIN). No physical notice will be issued by any officer otherwise than through NEAC.

- The NEAC shall assign the selected returns for e-assessment under this Scheme to an Assessment Unit in any REAC through an automated allocation system.

- Assessment notices/ questionnaires for obtaining further information, documents or evidence from the taxpayer or from any other person in respect of the returns so selected will be sent by the Assessment Units of the concerned REAC online to NEAC for issue to the taxpayer or the concerned third party.

- Taxpayers will be required to provide replies to notices/ questionnaires online to NEAC. There will be no physical interface with taxpayer and no requirement to visit income tax offices.

- Replies provided by taxpayers will be examined by the concerned Assessment Unit. Wherever necessary it may request the NEAC

for obtaining additional document or information. NEAC will in turn issue notice online to the taxpayer calling for the same and provide it to the Assessment Unit.

- Wherever any enquiry or verification by Verification Unit, and/ or technical assistance from the Technical Unit becomes necessary the NEAC will assign the enquiry to Verification Unit or Technical Unit of any REAC across the country through an automated allocation system and provide its report to the concerned Assessment Unit.

- Assessment orders will be drafted by teams of officers of the Assessment Unit of the concerned REAC based on the material so coming on record and will be sent online to NEAC.

- The NEAC will examine the draft assessment order in accordance with the risk management strategy of the Board. It may either accept the draft and send it to taxpayer, OR send it to the taxpayer with a notice proposing modification

- and providing opportunity to him to counter the proposed modification, OR assign the draft assessment order to a Review Unit in any other REAC through an automated allocation system for reviewing the draft order.

- The draft orders so referred will thereafter be reviewed by Review Unit in a different REAC. Where the Review Unit proposes modification of the draft assessment order a further opportunity will be granted to the taxpayer by the NEAC online and the assessment order will be finalised taking into account the response of the taxpayer.

- In a case where a modification is proposed in the draft assessment order, the taxpayer may seek personal hearing before an Income Tax authority in any Unit under this Scheme. The Chief Commissioner of the concerned REAC may permit oral hearing. The hearing will take place exclusively through video conferencing, including use of any telecommunication application software in accordance with the procedure laid down by the Board.

- All final assessment orders demand notices/ refunds, and penalty notices will be issued to the taxpayers online by NEAC only.

- In cases where the taxpayer fails to comply with any of the notices issued by NEAC it will refer the matter to the Assessment Unit for

completing the assessment the best of its judgment under section 144 of the Income Tax Act based on material available on record.

- Penalty proceedings wherever initiated as part of the assessment orders will also be completed in the same manner.

- Thus, the assessment notices, draft assessment orders, and final orders in the same case will be prepared by officers in different REACs, which may be even in different cities.

- Online information relating to high value transactions coming to the Department via Statements of Financial Transaction (SFT) will be assigned to Verification Unit (VU) of different REACs through computerised systems for verifications.

- Powers of conducting surveys at business premises under section 133A of Income Tax Act have been withdrawn from all officers and have been assigned exclusively to Director Generals (Investigation) and Chief Commissioners (TDS).

Exceptions:

The Scheme will not apply to cases of -

- Search and seizure, major tax frauds/evasion assigned to Central Circles,
- Cases of International Tax Division, and
- Cases under the Foreign Black Money Act & the Benami Property Act.

1. ***Expansion of scope of reporting of financial transactions:***

Section 285 BA of Income Tax Act requires certain entities to file Statements of Financial Transactions (SFT) above certain amounts online with Income Tax department. The existing list of these transactions is proposed to be expanded to include the following types of transactions/ expenses:

- Payment of educational fee /donations above INR 1 lakh per annum,

- Payments relating to electricity consumption above INR 1 lakh per annum,

- Expenses on domestic business class /foreign air travel above certain amount,
- Payment to hotels above INR 20,000/-,
- Purchase of jewellery, white goods, paintings, marble, etc. above INR 1 lakh,
- Deposit or credits in current account with banks above INR 50 lakh,
- Deposits or credits in other bank accounts above INR 25 lakh,
- Payment of property tax above INR 20,000/- per annum,
- Payment of Life Insurance premium above INR 50,000/-,
- Payment of Health insurance premium above INR 20,000/- and
- Sale of foreign exchange above INR 10 lakh.

Besides the above, the existing reporting requirements for transactions of investments in mutual funds, credit card transactions, immovable properties, etc. are also being rationalised.

***2. Faceless Appeals:***

Under the Income Tax Act first appeals against the Assessment Orders can be filed before the concerned Commissioner (Appeals). The procedure for disposal of these appeals is being changed under the Faceless Appeal Scheme which will be implemented from 25th September 2020.

Key features of the Scheme: (for faceless appeals )

- The territorial jurisdictions of Commissioner (Appeals) will be abolished. Instead they will have country-wide jurisdiction in respect of appeals falling under the Faceless Appeals Scheme.
- Pending as well as new appeals will be randomly allotted by a computerised process to any Commissioner (Appeals) anywhere in the country.
- The identity of the Commissioners deciding an appeal will remain unknown.

- Appeal documents as well as submissions will be filed by Appellants online. There will be no need to visit the Income Tax Office or the Commissioner deciding the appeal.

- In appropriate cases oral hearing may be permitted on the request of the Appellant. Such hearings will take place exclusively through video conferencing in accordance with the procedure that may be laid down by the Board.

- The appellate decisions will also be team-based & will be reviewed by a different Commissioner before issue of appeal orders

3. Well in this Article my limited issue is whether such a scheme, where many officers (whether acting alone or a part of the bench)who collect evidence behind the back of the tax payer; discuss together, review together and frame issues before issuing the default assessment order for comments by the tax payer, will test the Judicial Test of following the “Due Process of Law” or principle of natural justice.

The entire process of assessment is routed through National e-Assessment Centre (NeAC) where it shall allocate cases selected for faceless assessment under the scheme to regional e-assessment centers through an automated allocation system. The assessment proceedings thereafter proceed through all communication, predominantly via written electronic exchanges, routed through the National e-assessment center.

There is also provision for a personal hearing through video conferencing according to the procedure laid down by the scheme. However, the personal hearing through video conference is not a matter of right and seems to be an exception rather than the norm.

The faceless scheme necessarily gives rise to the Constitutional Challenges by the very nature of the role that is played by the assessing officer during the assessment. It is a well-settled principle of law that the assessing officer is a quasi-judicial authority and it fulfils a judicial function while making an assessment. Thus, when a judicial function is being performed by a quasi-judicial authority such as an assessing officer, the rules of natural justice cannot be given a go-by.

The courts have time and again stressed on the principles of natural justice being followed during the assessment and that no interference is to be made any superior authority in the assessment. The scheme prima facie does not have a provision for a default personal hearing as a matter

of right and secondly, there is a direct encroachment by the National e-Assessment Centres upon the autonomy of the assessing officer.

In my view the faceless scheme seems to violate the most basic principle of natural justice i.e., Audi-Alteram Partem (hear the other side) in the following manner:

- The scheme does not provide the right to a personal hearing.
- The officer making the assessment also does not have the power to grant such a hearing.
- Approval has to be obtained from the Chief Commissioner or Director-General of Income-tax in charge of the regional e-assessment center.
- The scheme leaves no room for solving any queries that the assessing officer may have during the course of the assessment.

Therefore, if such approval is rejected, the assessee will not have a right to a personal hearing. Moreover, the scheme also states that the opportunity of hearing should be provided only when the modification is proposed and not at any other stage nor at the stage when the draft assessment is finalized.

Notwithstanding the right to appeal against such an order that may involve a lot of money to be deposited to obtain stay, if the personal hearing is not allowed through video conferencing or by any other means it will be cause irreparable financial injury and substantial prejudice to the tax payer. Hence, hearing before even default assessment order or a notice is prepared is a must.

**Does this Mechanism violate Principles of Natural Justice? Is Oral Hearing mandatory to the observance of such Principles? Whether a Post Decisional Hearing will servce the requirement of due process of Law? Are the questions we must answer.**

'Natural Justice' is an expression of English common law. In one of the English decisions, reported In (1915) AC 120 (138) HL, Local Government Board v. Arlidge, Viscount Haldane observed,

> "...those whose duty it Is to decide must act Judicially. They must deal with the question referred to them without bias and they must

> give to each of the parties the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of a tribunal whose duty it is to meet out justice."

Hon'ble Supreme Court In the case of Mohinder Singh Gill v. Chief Election Commissioner (AIR 1978 SC 851), may be usefully quoted:

> "Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam-and of Kautllya's Arthashastra-the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not newfangled. Today its application must be sustained by current legislation, case law or Extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

In Swadeshi Cotton Mills V. Union of India (AIR 1981 SC 818) , It was observed that Natural justice is a branch of public law and is a formidable weapon which can be wielded to secure justice to the citizen.

Also in Canara Bank V. V K Awasthi (Air 2005 6 SCC 321) the Supreme Court observed that principles of natural justice are those rules which have been laid down by courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, Quasi–judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

De Smith, in his Judicial Review of Administrative Action (1980), at page 161, observed,

> "Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice."

Wade in Administrative Law (1977) at page 395 says that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power.

In the case of ,Cooper v. Sandworth Board of Works12, it was observed,

> "...Although there is no positive word In the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature."

In A.K. Kraipak's case, the Hon'ble Supreme Court observed that the rules of natural justice operate only in areas not covered by any law validly made. These principles thus supplement the law of the land.

In the case of Smt. Maneka Gandhi v. Union of India and another (AIR 1978 SC 597), it has been observed that even where there is no specific provision for showing cause, yet in a proposed action which affects the rights of an individual it is the duty of the authority to give reasonable opportunity to be heard. This duty is said to be implied by nature of function to be performed by the authority having power to take punitive or damaging action.

In Rajesh Kumar v. DCIT [2006] 287 ITR 91 (SC) the Hon'ble Supreme Court of India had re-iterated that proceedings before Income-tax Authorities are judicial proceedings. The restriction on the right to be heard therefore is a serious violation of the fundamental rights of the Assessee and is prima-facie unconstitutional.

In tax cases it is utmost essential to the proper administration of justice is that every party should have an opportunity of being heard, so that he may put forward his own views and support them by argument, and answer the views put forward by his opponents.

In Charan Lal Sahu vs. Union of India, (1990) 1 SCC 613,

The present Writ Petitions challenge the constitutional validity of the said Act inter alia on the grounds that the Act is violative of the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution: that

the Act is violative of the Principles of Natural Justice mainly on the ground that Union of India, being a joint tort-feasor, in that it has permitted establishment of such factories without necessary safeguards, has no locus standi to compromise on behalf of the victims; that the victims and their legal heirs were not given the opportunity of being heard, before the Act was passed; that in the guise of giving aid, the State could not destroy the rights inherent in its citizens; nor could it demand the citizens to surrender their rights to the State; that vesting of the rights in Central Government was bad and unreasonable because there was conflict of interest between the Central Government and the victim and the Apex Court observed that justice, it ought to be noted, is a psychological yearning in which men seek acceptance of their viewpoint before the forum or the authority enjoined or obliged to take a decision before affecting their right.

Supreme Court Rules 1966-O.XL, rules 2 and 3 Scope of-Disposal of review petitions by circulation without oral arguments-If violative of Art. 14.

In a petition under Article 32 of the Constitution the Petitioners contended that scuttling of oral presentation and open hearing is subversive of the basic creed that public justice shall be rendered from the public seat and that secrecy and circulation are negation of judicial justice

**The Court held:**

> "……Circulation in the judicial context merely means not in court through oral arguments but by discussion at judicial conference. Judges, even under the amended rule, must meet, collectively cerebrate and reach conclusions. In a review petition the same judges who have once heard oral arguments and are familiar with the case direct a hearing in court if they find good grounds. It is not as if all oral advocacies is altogether shut out. Where oral presentation is not that essential its exclusion is not obnoxious. What is crucial is the guarantee of the application of an impartial and open mind to the points presented. If without much injury a certain class of cases can be disposed of without oral hearing, there is no good reason for not making such an experiment. If on a close perusal of the paper book the judges find that there is no merit or statable case, there is no special virtue in sanctifying the dismissal by an oral ritual….

The Court observed that oral hearing is not an essential requirement if on a preliminary examination a review application is found to be devoid of substance. A review application attempts nothing more than to obtain a

reconsideration of the judgment of the court disposing of the substantive proceeding. The merits of the controversy having already been examined the re -examination sought cannot proceed beyond the controversy already disposed of. If the judges, on screening the review application, hold that there is no case whatever for review they will reject it. If on the other hand they find that a good prima facie case for review has been made out, they will give an oral hearing in the presence of the parties. There may also be cases where even after they are satisfied that no prima facie case has been made out they consider it desirable to hear an applicant orally they will afford him an opportunity of oral hearing and in the event of a prima facie case being made out they will issue notice to the respondent and oral hearing will follow, in the presence of the parties. In short the denial of oral hearing is confined to the preliminary stage only. It is not possible to hold that at that preliminary stage also the applicant for review is entitled to be heard orally. The merit of the oral hearing lies in the fact that counsel addressing the court is able to discern as to what are the aspects of the controversy on which more light is needed to be thrown. The court can utilise an oral hearing in order to express its doubts on a point and seek clarification thereon from counsel. If there is no doubt whatever oral hearing becomes a superfluity and at best a mere formality.

A written submission is capable of careful drafting and explicit expression, and is amenable to such arrangement in its written content that it pointedly brings to the notice of the reader the true scope and merit of the submission. It is not correct to say that oral hearing is mandatory in all classes of cases and at every stage of every case.

[The question under consideration being the need for an oral hearing in relation to review applications only, there is no need to express any opinion on whether an oral hearing is an imperative requirement in the disposal of other kinds of cases brought before the Court.]

The Court went on to hold that

> "We must make it perfectly plain, right at the outset, that audialterampartem is a basic value of our judicial system. Hearing the party affected is too deeply embedded in the consciousness of our constitutional order."

Fair hearing has two justiciable elements. The first is that an opportunity of hearing must be given; and the second is that the opportunity must be reasonable.

In Mineral Development Ltd. vs. The State of Bihar, AIR 1960 SC 468, the Apex Court held that the concept of "reasonable opportunity", is

an elastic one and is not susceptible of easy and precise definition. The Apex Court further held that what is reasonable opportunity under one set of circumstances need not be reasonable under different circumstances. A realistic view has to be taken while determining whether the opportunity given was reasonable or not.

When the word “hearing” or the words “opportunity to be heard” are used in legislation, it normally always denotes a hearing at which oral submissions and evidence may be tendered. In the absence of a clear statutory guidance on the matter, it is to be noted that the one who is entitled to the protection of the audialterampartem rule is prima facie entitled to put his case orally, but in a number of contexts, the Courts have held natural justice to have been satisfied by an opportunity to make written representations to the deciding body.

Recently in the Finance Bill, 2021, it has been proposed to make the Income Tax Appellate Tribunal (ITAT) to be faceless by amending section 255 of the Income Tax Act, 1961. As per section 255 (5) of the Income Tax Act, 1961, it is the Appellate Tribunal that has the power to regulate its own procedure and the procedure of benches thereof in all the matters arising out of the exercise of its powers or discharge of its functions including places at where benches shall hold their sittings.

After the proposed amendment by the Finance Bill, 2021 to make the ITAT faceless, a debate is going on as to whether not giving an opportunity of personal hearing before the Tribunal is a violation of the principles of natural justice and contrary to the safeguards guaranteed by the Constitution of India in Article 14 to 21. In this context, it has become imperative to examine as to whether oral hearing is necessary in every case and as to whether denial of oral hearing shall result in the violation of the principles of natural justice.

Speaking with reference to the quasi-judicial tribunal, the Apex Court in MP Industries vs. Union of India, AIR 1966 SC 671, held as under:

Mines and Minerals (Regulation and Development) Act (67 of 1957), S. 17 and Mineral Concession Rules, r. 55-Revisional Jurisdiction of Central Government--obligation to give reasons and personal hearing. Constitution of India, 1950, Art. 136- Discretionary jurisdiction.

The judges expressed their opinions as follows:

“Per Subba Rao. J.-Rule 55, requires a reasonable opportunity to be given to the applicant. But the opportunity need not necessarily

be by personal hearing, even if it was asked for. It could be by written representation. It depends on the facts of each case and is ordinarily in the discretion of the tribunal.

(v) Per Mudholkar and Bachawat, JJ. The revision application was rejected by the Central Government because it agreed with the reasons given by the Government of Maharashtra, for refusing the appellant's application for a mining lease. The Central Government acting under r. 55, was therefore not bound to give in its order, fuller reasons for rejecting the application.

Per Subba Rao, J. (Contra): Neither the State Government's nor the Central Government's order disclosed reasons for rejecting the appellant's application, and therefore the Central Government's order was vitiated. [473 E] The Central Government was acting judicially as a tribunal, under r. 55, and so it should have known that its decision was subject to an appeal to the Supreme Court under Art. 136. Therefore, it should give reasons for its order. If tribunals can make orders without giving reasons, it may lead to abuse of power in the hands of unscrupulous or dishonest officers. But, if reasons are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order at its best will be reasonable and at its worst plausible. But, the extent, and nature of the reasons depend upon each case. What is essential is that reasons be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal.

> "It is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed Rule 55 of the Rules, quoted supra, recognizes the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal."

Oral hearing is not necessary in every case. Whether an oral hearing would be necessary would depend upon the nature of the enquiry, nature of facts involved, circumstances of a case and the nature of deciding

authority. There is no right to an oral hearing unless such a hearing is expressly prescribed or unless the context indicates that without such a hearing, the person cannot adequately present his case. The question of personal hearing is one of discretion and not of jurisdiction. Where matters are complicated and fresh materials are brought on record, personal hearing should be given.

In Assam vs Gauhati Municipal Board, Gauhati, AIR 1967 13928, where under the Assam Municipalities Act, 1957, the State Government could supersede a municipal board if in its opinion it was not competent, it was held that it was enough that the government issued a notice and gave an opportunity to the board to explain and there was no necessity to give a personal hearing. In the Court's opinion, the Board had been given adequate opportunity of being heard and the absence of an oral hearing did not vitiate the Government's decision.

No doubt oral hearing does not always constitute the Doctrine of natural Justice, and cannot be claimed as a matter of right in all matters but the requirement of oral hearing must be insisted upon as a matter of public policy, namely, to prevent not only a perverse decision but also to secure a decision which is not vitiated by well-meaning ignorance or carelessness due to absence of oral hearing. Personal hearing, as held by the Apex Court in GN Rao vs. Andhra Pradesh State Road Transport Corporation, AIR 1959 SC 308, enables a party appearing at such hearing to persuade the authority concerned by reasoned arguments to accept his point of view by removing the authority's doubt and by answering the authority's question.

The Apex Court in P.N. EswaraIyer's case ( 1980 AIR 808, 1980 SCR (2) 889)held that the normal rule of judicial process is oral hearing and its elimination an unusual exception. The Apex Court further held that justicing is an art even as advocacy is an art. It was held that no judicial "emergency" can jettison the vital breath of spoken advocacy in an open forum and there is no judicial cry for extinguishment of oral argument altogether. The Apex Court, in the said judgment, held as under:

"The possible impression that we are debunking the value of oral advocacy in open court must be erased. Experience has shown that, at all levels, the bar, through the spoken word and the written brief, has aided the process of judicial justice. Justicing is an art even as advocacy is an art. Happy interaction between the two makes for the functional fulfilment of the court system. No judicial "emergency" can jettison the vital breath of spoken advocacy in an open forum. Indeed, there is no judicial cry for extinguishment of oral argument altogether."

Justice Harlan of the United States Supreme Court has insisted that oral argument should play a leading part. It is not "a traditionally tolerated part of the appellate process" but a decisively effective instrument of appellate advocacy. He rightly stresses that there are many Judges "who are more receptive to the spoken than the written word". He hits the nail on the head when he states:

> "For my part, there is no substitute, even within the time-limits afforded by the busy calendars of modern appellate courts, for the Socratic method of procedure in getting at the real heart of an issue and in finding out where the truth lies.

The Apex Court in P.N. Eswaralyer (Supra) endorsed the conclusion of Justice Harlan of the United States Supreme Court on oral arguments which was as under:

> "Oral argument is exciting and will return rich dividends if it is done well. And I think it will be a sorry day for the American Bar if the place of the oral argument in our appellate courts is depreciated and oral advocacy becomes looked upon as a proforma exercise which, because of tradition or because of the insistence of his client, a lawyer has to go through."

In the aforesaid landmark judgment of the Apex Court in P.N. Eswaralyer (Supra), the Apex Court held that among the methods of persuasion, the power of the spoken word cannot be sacrificed without paying too high a price in the quality of justice especially in the Supreme Court litigation. Maybe, that the brief is valuable; indeed, a well prepared brief gives the detailed story of the case; the oral argument gives the high spots. The Apex Court referred to the observation of George Rossman in American Bar Association Journal, January 1959, Vol. 45, No. 1, P. 676, wherein it was held as under:

> ""The oral argument can portray the case as a human experience which engulfed the parties but which they could not solve. Thus, the oral argument can help to keep the law human and adapted to the needs of life. It typifes the Bar at its best."

The Apex Court in P.N. Eswaralyer (Supra), held that the value of oral submission need not be under-rated nor written briefs over-rated. In the aforesaid case, the Apex Court was dealing with the denial of oral hearing while considering a review petition before the same Court and in that context, the Apex Court held that in the dynamics of hearing, orality

does play a role at the first round, but at the second round in the same Court is partly expendable. The Court held that romance with oral hearing must terminate at some point and nor can it be made a sacred cow of the judicial process. While emphasising that oral advocacy is a decisive art in promoting justice, the Apex Court made a distinction between the first hearing and the review petition before the same Court. While the necessity of oral hearing at first hearing was emphasised by the Apex Court, the Apex Court held that in view of practical differences and ever increasing work load, in case of second opportunity by way of review petition before the same Court, oral hearing may be avoided.

The aforesaid decision of the Apex Court can therefore be understood that in first hearing before any Court, oral hearing is a must but in case of second hearing like a review petition before the same Court, oral hearing may be avoided.

> "The opportunity to be heard", observed the U.S. Supreme Court, "must be tailored to the capacities and circumstances of those who are to be heard. Written submissions are an unrealistic option for most recipients who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipients to mould his arguments to the issues the decision makers appear to regard as important. Particularly, when credibility and veracity are at issue, as they must be, in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision."

It is well known in modern times that increasingly greater powers have been conferred upon the statutory authorities in administrative or quasi-judicial functioning. With such greater powers being conferred, decisions are being taken which largely affect citizens in every sphere of life. A decision on a question whether without an oral hearing, (such hearing is demanded or not) , will be an unfair decision to answer.

The Queen's Bench Division decision in R. Vs. Immigration Appeal Tribunal, (1977) 2 All ER 602, quashed a deportation order on the ground that there was no oral hearing given to the affected person and observed that if the applicant had had an oral hearing before the Tribunal, on the hearing of his appeal, further matter could have been advanced on his behalf and thereby the applicant has been deprived of the said opportunity. Judicial justice, with the procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise.

The quasi-judicial authority including the Tribunals established under the special Statues are a final fact finding authority. Being the final fact finding authority, it becomes more important and necessary that oral hearing is allowed to the parties. The first appeal before the Commissioner of Income Tax has already been made faceless and no oral hearing is allowed. In case the ITAT is made faceless and no oral hearing is allowed, the assessee shall have no opportunity to contradict any factual things by making oral submission before the Tribunal. In our own legal jurisprudence, both pleadings and oral submissions have got equal importance and one cannot take place of another. The entire legal system depends on the art of pleading and of advocacy. For taking a fair decision, it becomes all necessary to give an oral hearing to the party affected by the decision in question and as such a requirement of oral hearing is implicit in the concept of fairness in quasi-judicial functioning and administration. Deciding of an appeal by the ITAT on the basis of written submission without offering an opportunity of oral hearing will certainly suffer from the vice of unfairness.

The cry 'That isn't fair' is to be found from the earliest days on any action not based on fairness. The common expectation of mankind would be that a decision should be reached and a power should be exercised fairly in accordance with the principles of natural justice. Whenever an authority acts contrary to this fundamental expectation, it acts unfairly and in derogation of common and universal expectation.

We should also know and so should our law makers that the desire for speedy disposal cannot be at the cost of fairness. Speedy disposal of cases does not mean that one should decide the cases in violation of principles of natural justice and fairness. After all, the motto is that justice is not only to be done but also must be seen to have been done. In case an aggrieved person is not given an opportunity to fully explain his case by denying him oral hearing, he shall always have a feeling that justice has not been done to him as he was not given adequate an fair opportunity to explain his case.

Further, in the case of Jesus Sales Corporation vs the Union Of India, the Delhi high court observed that on the basis of decisions of the Supreme Court, high courts and other English decisions, the ratio which can be extracted of all these decisions is that the person concerned who has to pay duty and penalty should have a reasonable opportunity of presenting his case. Any decision taken without affording reasonable opportunity to the concerned parties would be violative of the principles of natural justice.

The judiciary is one of the pillars on which the edifice of the constitution is built. It is the guiding pillar of democracy, what is happening inside it

is a fascinating study. Its logbook shows that often the judgments of the Apex court degenerated into a dismal failure. There are many self inflicted wounds. This is the story of 59 years of the Supreme Court.

Speaking of the Supreme Court of United States of America, Jackson J., of the court said,

> "we are final, not because we are infallible, we are infallible because we are final."

## DOCTRINE OF POST DECISIONAL HEARING

Post decisional hearing is a hearing which takes after a provisional decision is reached. Post decisional hearing takes place where it may not be feasible to hold pre decisional hearing.

The idea of Post Decision Hearing has been developed to maintain a balance between administrative efficiency and fairness to individuals. In Post Decisional Hearing, an individual is given an opportunity to be heard after a tentative decision has been taken by the authorities. In certain situations, it is not feasible for the authorities to have a normal predecisional hearing and decisions are being taken on first instance before providing the individual to present his views, than it would be considered reasonable if the authorities provide Post Decision Hearing as well, and this may or will be in compliance with the Principle of Natural Justice. In Post Decision Hearing, the prominent point is that authorities must take only a tentative decision and not a final decision without hearing the party concerned. The fundamental objective is that when a final decision is taken than it becomes difficult for the authorities to reverse it and the purpose of providing a fair hearing gets defeated, therefore, for an accused it turns out to be a less effective than pre decision hearing. The similar proposition was ingeminated by the Apex Court. With the introduction of this concept, the prospect of Principle of Natural Justice has widened. The Supreme Court has been emphatic and prefers for Pre Decision Hearing rather Post Decision Hearing which must be done only in extreme and unavoidable cases. It strengthens the concept of Audi Alteram Partem by providing Right to Heard at a later stage. The Supreme Court has different views on Post Decision Hearing, on whether providing opportunity to be heard at a later stage sub serves the Principle of Natural Justice or not, or can post decision hearing be an absolute substitute for pre decision hearing. The concept of post-decisional hearing, though jurisprudentially ground breaking, has been rather frequently discussed; so much so that there only a handful of cases which can be cited to discuss the concept and its

jurisprudence in depth and detail. An analysis of the same is as follows with the help of case laws.

Mankea Gandhi vs. Union of India (1978 SCR (2) 621)

This case is a landmark judgement on this point and was instrumental in introducing the concept of Post Decision Hearing in Indian Legal Jurisprudence. The petitioner was provided with a notice by the Regional Passport Office, Delhi to submit the passport within seven days of her receiving the notice. The decision was made by the Government of India under Section 10(3)(c) of Passport Act,1967 on the ground of Public Interest. The petitioner immediately asked the Passport Office to furnish the grounds on which her passport is impounded upon as provided under Section 10(5), the Government refused to provide the same stating in the interest of the general public, they will not provide the reasons for this order. The petitioner filed a writ petition challenging the order passed by the Government. The argument presented by the Attorney General regarding the applicability of Audi alterampartem was rejected by the Court. The court stated that is necessary for the authorities to comply by the principle of Natural Justice and an opportunity to be heard must be provided to the petitioner before passing any final order. Court held that procedure established by section 10(3)(c) of Passport Act, 1967 is in conformity with the requirement of Article 21. The Act provides the ground on which the passport could be impounded and this procedure was comprehensively recognized by the Court. Finally the court did not pass any order as assurance was provided by the Attorney General to provide the petitioner with the opportunity to present her views within two weeks (Post Decisional Hearing) and prior to the taking of final decision authorities will consider the views given by the petitioner. Hence first time in Indian Legal Jurisprudence the concept to Audi AlteramPartem was evolved.

Swadeshi Cotton Mills vs. Union Of India

In 1978, Swadeshi Cotton Mills was taken over by the Government through the Industries (Development and Regulation) Act, 1951 on the ground that the production of articles will be drastically reduced and immediate action is required to protect it. The management was handed over to National Textile Corporation Limited for a term of five years. The act provides the Centre Government with the power to issue orders regarding any public limited industry which is not been able to function properly. The company decided to file a writ petition in Delhi High Court against the Government's order. The High Court upheld the order of government. The appellant than filed a revision petition before Supreme Court. The court

reversed the decision of High Court and held that Section 18AA does not exclude the rule of audialterampartem at pre decisional stage The court recognized the principle of Post Decisional Hearing and held that in certain situations it is not possible to give prior notice or opportunity to be heard, in such circumstances the authorities may take the necessary decisions but it must be followed by a full remedial hearing. Regarding the judicial review of the order Apex Court differed from the respondent and stated that taking immediate action is the question of fact and therefore court can interfere if the administration is notreasonable in its approach as they form their opinion by collecting evidences. Post decisional hearing does not exclude the rule of pre decisional hearing unless specifically prescribed by the act. And in this case the Government has violated the Principle of Natural Justice by not providing an opportunity to be heard.

Canara Bank vs. V.K. Awasthi-(2005) 6 SCC 321.

The respondent was served with a show cause notice on 6.08.1992 and was granted 15 days to reply. The respondent failed to reply and as a consequence was terminated from the service on17.08.1992. The respondent contended that principles of natural justice was not followed and High Court upholding the said contention ordered the bank to provide proper hearing to the respondent before the disciplinary committee. Hence, the bank filed an appeal before the Supreme Court. The respondent was served with a show cause notice on 6.08.1992 and was granted 15 days to reply. The respondent failed to reply and as a consequence was terminated from the service on 17.08.1992. The respondent contended that principles of natural justice was not followed and High Court upholding the said contention ordered the bank to provide proper hearing to the respondent before the disciplinary committee. Hence, the bank filed an appeal before the Supreme Court.

Election Commission of India & another 3 LPA No. 2/2O11.

The Delhi High Court ruled out the application of Post Decisional hearing.

The issue was regarding the deletion of voter’s names from their electoral roll. Section 22-C of Representation of Peoples Act provides that hearing must be provided to the voter before removing their name from the electoral roll. The Election Commission without providing hearing deleted 841 names from the electoral roll. Petitioners challenged before the High Court. Election Commission contended that they are willing to provide post decisional hearing but the Court rejecting their argument held that

in such matters post Decisional Hearing does not serve as substitute of Pre Decisional Hearing and if the legislation clearly provides for hearing before deletion of names, than providing hearing after the decision is taken to remove the names does not serve the purpose and hence, Election Commission was ordered to reinstate their names in the Electoral Roll.

In AIR 1977 SC 1691, Srikrishna v. State of M.P.

It has been observed that the principles of natural justice are flexible and the test is that the adjudicating authority must be impartial and fair hearing must be given to the person concerned. Similar view was taken in AIR 1966 SC 671, MP Industries Ltd. v. Union of India and others where personal hearing was not considered to be necessary. A mere written representation as provided under the Rules was held to be sufficient to comply with the principles of natural justice. Similarly it will depend upon the facts and circumstances of the case in which a delinquent may be allowed to be represented through counsel; such a demand cannot be made as of right. But there may be circumstances where a counsel may be permitted, e.g. where the person concerned may not be in a position to express or to place before the authority complicated nature of facts and law. In one of the cases, reported in AIR 1973 SC 1260, Hiranath Misra v. Principal, Rajendra Medical College, the request for opportunity to cross-examine the witnesses was refused, which was upheld by the Supreme Court. The boy students of the Medical College had misbehaved with the girl students residing in Hostels. A committee of three independent members of the staff was appointed by the Principal who enquired into the complaints of the inmates and recorded their statements. Charges were framed and the boy students were made known of the charges and their explanation was called. This was held to be sufficient to comply with the principles of natural justice and in the facts and circumstances of the case it was not necessary to allow them cross-examination etc., as it would have exposed the individual girl students to harassment by the male students. The arrangement made by the Principal to enquire into the matter was approved by the High Court.

In one of the recent decisions of the Hon'ble Supreme Court reported in (1994) 5 SCC 566, Maharashtra State Financial Corporation v. Suvarna Board Mills and another, it has been observed that the natural Justice cannot be placed in a strait Jacket; rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law. All

will depend on facts and circumstances of each case. It was, however, provided that since a representation was made, the corporation would give post- decisional hearing considering the offer made in the representation for repayment of loan. As a matter of fact, sometimes, there 6 may be urgency in taking a particular action failing which the whole purpose may frustrate. In such circumstances, it has been found advisable to provide post- decisional hearing, i.e. after a decision is taken, but such a case must be justified on the facts and circumstance as to why it was not possible to provide a pre-decisional hearing. In given circumstances of a case such a step to provide post-decisional hearing may cure the defect of violation of principles of natural justice.

In AIR 1995 SC 1512, State of U.P. v. Pradhan Sangh Kshethra Samiti, also the Hon'ble Supreme Court has held that in matters, which are urgent, even a post-decisional hearing is a sufficient compliance of the principle of natural justice, viz audialterampartem.

In an another case reported in AIR 1995 SC 1130, State of U.P. v. Vijai Kumar Tripathi, the Hon'ble Supreme Court has held that it is up to the competent authority to decide whether In the given circumstances the opportunity to be provided should be a prior one or post - decisional opportunity. Normal rule, of course, is prior opportunity.

It is though true that the principles of natural justice are flexible in application but its compliance cannot be jumped over on the ground that even if hearing had been provided, it would not have served any useful purpose. The opportunity of hearing will serve the purpose or not is a later stage. Things cannot be presumed by the authority. This view is supported by observations made in 1943 AC 627, General Medical Council v. Spackman.

In one of the cases before the Hon'ble Supreme Court reported in 1970 SC 1039, Board of High School v. Km. Chittra, the authorities took the view that since the facts were not in dispute, no useful purpose would be served by giving an opportunity of hearing. The examination of the petitioner was cancelled for shortage of attendance. The Court held that the Board was acting in a quasi-judicial capacity; hence, the principles of natural justice had to be complied with. Therefore, what defense would be put forward has to be left to the delinquent and no presumptions can be raised about it. Any hearing provided in appeal or before the higher tribunal, cannot be said to be a substitute for hearing, which is to be afforded initially.

These cases are a proof that post decisional hearing as a process is here to stay. Primarily, because it is done in cases of extreme and grave

importance which have huge bearing on the legality of the thing or act concerned. So, they serve as a good and reasonable method to pass and carry out orders so that the matter doesn't worsen, as well as, respecting the urgency of the situation. Also, post decisional hearing is well within the boundaries of Natural Justice, and we can say that it challenges the boundaries of natural justice to the point on furthering it but never crosses those boundaries. Therefore it is a way to enlarge and broaden the scope of Natural Justice on case to case basis, thus, accrediting the legal jurisprudence with some very practical and sound processes.

**Delhi High Court**

Sales Tax Bar Association (Regd.) vs Govt. Of NctOf Delhi &Ors on 7 December, 2012

While discussing the scheme of Section 32 of the Delhi VAT Act:

"24. Even if the hearing, at the stage of objections, is to be treated as a post decisional hearing, we fail to see any effect on the efficacy thereof. Though post decisional hearing was, as aforesaid, held to be not sufficient or effective, being held with a closed mind, after a decision has already been taken but those observations came to be made in the context of a post decisional hearing in the exercise of administrative powers. Here, the scheme of the statute itself is first allowing a unilateral assessment by the assessee, thereafter a unilateral assessment by the Assessing Officer and thereafter providing for a bilateral assessment after opportunity of hearing. With such a statutory scheme, it cannot be said that the post decisional hearing will be farcical or a sham. Moreover such hearing is in exercise of quasi judicial power and is subject to an appeal to the Tribunal. Further, it is the contention of the counsels for the petitioners themselves, that the Assessing Authority and the Objection Hearing Authority are different. It thus cannot be said that the same officer would shy away from admitting mistakes and thereby reducing the hearing to a farce.

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32. Once the legislative scheme is not found to be in contravention of the Constitution of India or as causing any prejudice to the assessees, this Court will not interfere therewith merely because the practioners in the field of VAT find themselves reluctant to change to the new law or because it introduces a new scheme. :

**Recent High Court Interim Orders- On Assessments or Notices Under Faceless Assessment Scheme of Income Tax Act**

In a recent order in M/s DJ Surfactants v National e-Assessment Centre, Income Tax Department, New Delhi and Others (Writ Petition No. 4814/2021) (Order), the Hon'ble Delhi High Court (High Court) has granted interim stay on the assessment order (Assessment Order) passed in faceless assessment proceedings. The High Court, in doing so, observed that DJ Surfactants (Taxpayer) established a prima facie case of violation of the 'principles of natural justice' by National e-Assessment Centre (Tax Department) in doing faceless assessment.

The High Court ruled that the Taxpayer has established a prima facie case of violation of the 'principles of natural justice' by observing that: the Assessment Order was passed without considering the response filed by the Taxpayer on 12 March 2021; and the request for personal hearing was not granted by the Tax Department.

The High Court also granted an interim stay on the Assessment Order till further orders. The matter has been now posted for hearing on 2 June 2021.

The Hon'ble Telangana High Court in Axis Wind Farms (Anantapur) Private Limited v Union of India and Others (Writ Petition No. 11812 of 2021), has granted an interim stay on an assessment order passed under the faceless assessment regime involving similar facts.

The Hon'ble Madras High Court in M/s Magick Wood Exports Private Limited v National e-Assessment Centre, Delhi (Writ Petition No. 10693 of 2021) also set aside an assessment order passed under the faceless assessment regime without considering the adjournment request filed by the taxpayer. In that case, the Hon'ble Madras High Court directed the Tax Department to consider the taxpayer's submission and complete the assessment proceedings in accordance with the law.

The Hon'ble Bombay High Court in Shelf Drilling Offshore Services (India) Private Limited v Deputy Commissioner of Income Tax, Mumbai and Others (Writ Petition No. 10949 of 2021) granted an interim stay on an assessment order passed under the faceless assessment regime by observing that the taxpayer's submissions were not heard at all in respect of the new additions made in the assessment order. The Hon'ble Bombay High Court further remarked that 'there are a lot of glitches in operation of faceless assessment scheme'.

This Order and the aforesaid orders of the Hon'bleTelangana High Court, the Hon'ble Madras High Court and the Hon'ble Bombay High Court are important orders as the taxpayers in whose case assessment orders have been passed on similar lines under the faceless assessment regime may evaluate the merits/facts of their cases and evaluate the further course of action. These orders of the High Courts are a testimony to an important principle that a taxpayer must be given full opportunity to present and establish its case and that its submissions/arguments must be duly taken into consideration by the tax authorities in making an assessment order in accordance with law.

**My Conclusions**

A fair hearing in the courts must be guided by the "equality of arms" principle, giving each party an equal opportunity to present his/her own case and respond to the case of the other.

Here in this Faceless Tax Regime the law makers have made an assumption that technology speeds up processes (which is true), but little regard is given the fact that technology also increases information overload (which slows down information processing

A different aspect is the question of open, public hearings (where virtual hearings in the courts replace a court hearing), which is essentially a question of transparency. This is not a real problem as a platform may in fact allow access to virtual hearings and information in a controlled manner without the observers having to physically go to a courtroom. This is more a question of designing technology in a particular way. Thus digital courts may be open courts, if not more so than physical court buildings.

If some litigants do not have access to, or the ability to use, technology and the internet then do we presume that these litigants will be excluded from the administration of justice?More so, when majority population in India lives in rural areas where such high tech lawyers or law firms do not exist. Therefore, if ODR or Online Dispute Resolution schemes that Faceless Assessment Scheme is, is implemented, there should

(a) either be an alternative paper-based traditional means of having a dispute resolved for parties who do not have this access to technology and the internet or

(b) a comprehensive system of legal representation made affordable.

It does appear that at some stage of this process tax payers must have the opportunity to have an oral hearing. Thus, for compulsory ODR, there

must be the opportunity to appeal the ODR decision which must be oral. Or, the ODR processes must have an oral element to it.

This raises the interesting question of whether "oral" hearing is to be equated with "face-to-face" hearing? While there is no direct authority on this it would make sense to argue that video-conferencing where the communicators can hear and see each other in real time (and where provision is made that, for example witnesses are not coached from behind the screen and that witnesses' identity is properly authenticated) is functionally equivalent to an "oral" hearing (provided the technology works on both ends of the transmission and this can be protocolled.) I am of the view such faceless schemes especially in Indian tax scenario must have such provisions and by default.

In particular, if hearings were conducted entirely online in a fully digitalized court it would be important that the public can access the hearing- subject to specific exceptions, court hearings must be open to members of the public (in the sense that members of the public can follow proceedings from a public gallery in the court building). Functionally equivalent access would have to be provided technically in a fully online court, allowing interested members of the public to follow the course of proceedings

Generally speaking, like in other areas of digitization, ODR may have a negative impact on data protection and privacy in that online justice is likely to generate a much greater wealth of data (including metadata, for example who accessed a particular court record when and from where), increases the possibilities of data processing, searching, data mining and the use of artificial intelligence (which is the other side of the coin of increased access to justice) and online data (including court data) may be more mobile (easy online transfer), sticky (in the sense that data remains on storage devices until erased) and vulnerable to unauthorised, remote access (computer hacking from anywhere in the world)Cyber security has to be a priority and needs to be properly resourced in addition to just developing the systems and technology for ODR. Inadequate cyber security may mean that access to the courts is effectively denied and court users' privacy is seriously threatened.

It is of fundamental importance to any ODR system that information and data that is uploaded, exchanged, transferred and stored in an ODR system is kept secure. All court documents and any evidence that is uploaded onto an ODR system must be kept free from manipulation and attack to ensure its integrity. The system requires protection to prevent external parties from

hacking the system and obtaining non-public information. Regarding the authority to access information, there should be internal limitations that are put in place to ensure that parties to disputes cannot access information that they are not allowed to view. This requires secure authentication.

Every litigant must have the right to an effective participation in the proceedings. This would mean that those participants who are computer illiterate, who have no access to an online computer system, who are otherwise disabled or previously disadvantaged must be given the chance to effectively participate in ODR proceedings. In one suggested system, while the backbone of the system is the use of technology online, persons who would otherwise be side-lined from accessing the system are given the necessary attention by the availability of alternative means to having the dispute resolved online. Such persons may access the ODR platform by attending the Income Tax Official service centres which are located across India and not to be privatised. Here, the litigants can appear in person at the relevant centre and have an assistant help them with accessing and using the ODR system.

There may be a divide between legal representatives and their knowledge of and access to technology in ODR proceedings. Large law firms may have the financial ability to use and understand technology in a way that will assist their clients. This may include law firms developing and using systems that analyse data, information and evidence in preparation for a case, which might place a great advantage on the party who has access to such a system. This should be compared to a legal representative who does not have access to such technology and as a result of which his/her client may be left disadvantaged. Large law firms may also have the ability to develop specialist ODR practices wherein certain lawyers specialise in ODR proceedings. This, again, would create a divide between specialist ODR legal representatives and legal representatives who do not have the knowledge of or access to such technology. This in turn would create a divide between the litigants.

Given the pressure of high case loads and insufficient resources from which most justice systems suffer, there is a danger that support systems based on artificial intelligence are inappropriately used by judges to “delegate” decisions to technological systems that were not developed for that purpose and are perceived as being more ‘objective’ even when this is not the case. Great care should therefore be taken to assess whether such systems can deliver and under what conditions that may be used in order not to jeopardise the right to a fair trial.

What about compliance of the provisions of the Information Technology Act? Who will face the wrath of the law if the data of a citizen is leaked and he suffers irreparable financial injury consequent to such leakage?

And above all the High Courts and the Supreme Court should not be burdened with very heavy load of writ petitions or appeals or SLPs; if that happens then the whole objective will be defeated.

I for one would not favour such a system; this system can be followed for a limited purpose i.e. the tax payers below a specified quantum liability as we have today; but if even a rupee addition has to be and tax has to be exacted from the citizens, then oral hearing and production of all evidence collected by each team of the faceless tax regime must be furnished to the citizen to have his objective explanation; and this has to be heard at each stage by the person who takes a decision.

What if the higher Courts accept the plea of the tax payer and remand the case back to the authorities who created liability with the direction that the case be assessed de novo after providing complete opportunity of being heard along with the evidences collected against the tax payer at each state of faceless assessment? Even then the remand assessment shall be faceless?

Before I conclude, the question moral fabric of Indian tax payers also needs to be kept in mind; the law enforcement; the knowledge of tax laws on the part of the tax payers; and on the part of tax authorities and the infrastructure associated with such knowledge spread is quite different from the developed nations say USA – hence, such technologically driven and morality based schemes perhaps are too early for a country like India. Forensic Audits are happening in our country but the whole concept is critically short of desired level because the data base is very sketchy.

For me and to my limited knowledge such a scheme will take years before it stabilises; it is not TDS data; or Section 143(1) orders; or PF collection data; it is a levy of tax that has to be exacted per law from the citizens and if High Court or the Supreme Court are to be approached then it will be question of law only and not question of fact: and the principal question of law will be " Could the authorities below levy tax without following the due process of law at each stage where issues were framed and whether those officers who framed the issues should not have heard the citizen?

Let us debate all across.

Fiat justitiaruatcoelum – “Let Justice be done though the heavens fall. Let justice be done though the heavens fall seems to tell the judge that his or her task is to do justice and not to worry too much about the wider consequences

Let justice be done though the heavens fall- Supreme Court explains the ambit of Article 142 of the Constitution viz-a-viz powers of the Apex Court- we all know.

Fiat justitiaruatcaelum (let justice be done though the heavens fall) is the fundamental basis of administration of justice by courts. But, if justice is not done or if there is miscarriage of justice, heavens will certainly fall when tax is exacted from the citizens without following the well settled due process of law in tax regime involving very intricate accounting issues that flow from SAP; ERP Systems; Transfer Pricing, entries in the books of third parties etc. etc.

There is no doubt the judgments of the Supreme Court and those of various High Courts sway the pendulum on both sides; but the Courts have now to deal with a different scheme and under a very different tax regime i.e. direct tax and not indirect tax. And the discussion will be only one substantial or say very substantial question of law: Can the oral hearing and representation be excluded at each state where an adverse view is taken against the tax payer or an adverse evidence is considered without written notice and consequential explanation of the tax payer?

Certainly, there are graver issues involving substantial questions of law as to the interpretation of the Constitution of India, when we dwell deep into this Scheme and only the Supreme Court will answer in the spirit attempted to explained in this Article.

# Retrospective Legislation – An Unending Torture For Tax Payers?

*Sushil Verma, Advocate*

*Coke Maxim: "A new law ought to be prospective, not retrospective in its operation."*

> "Every government has a right to levy taxes. But no government has the right, in the process of extracting tax, to cause misery and harassment to the taxpayer and the gnawing feeling that he is made a victim of palpable injustice."
>
> Nani Palkhivala

The two kinds of amendments that can be carried out on legislation or a statute are,

**Prospective amendments**: Prospective amendments are those amendments which are mostly preferred by the parliament for any kind of statute. This amendment is supposed to take either on the day of its promulgation or in any other future date as will be mentioned in the statute

**Retrospective amendments**: Whereas retrospective amendment refers to those amendments which take effect on a past date and not in the future. The term retrospective signifies looking backwards

All amendments that are made should be in accordance with the Constitution of India, 1950 for any amendment which violates the provisions of the Indian Constitution, stands void by itself. The Indian Constitution gives a green signal for the retrospective amendment to apply in some fields whereas some fields oppose the same.

A taxing statute is usually prospective i.e. levying the tax on the income to be earned or transactions which will take place in future. This is for the reason that, at the time of entering into a transaction, the tax payers must have knowledge of the tax which he is expected to pay. It also provides an opportunity to the taxpayer of carrying out cost-benefit analysis of the proposed transaction and to decide whether or not to enter into such a transaction.57 This is the generally accepted system that transcends all systems of taxation across the world.

Various Supreme Court judgments have clarified that the Parliament has the power to legislate retrospectively and a law can never be invalidated simply on the ground that it is retrospective in operation. A statute that is retrospective is generally presumed to be unjust and oppressive unless such retrospective effect is provided in the statute expressly or impliedly. Tax statutes may be retrospective if the legislature clearly so intends but the reasonableness of each retroactive tax statute will depend on the circumstances of each case and if the retrospective feature of a law is arbitrary and burdensome, the statute will not be sustained. In testing whether a retrospective imposition of tax is so harsh so as to violate Art. 19(1)(g), the relevant factors include the period of retrospectively and the degree of any unforeseen financial burden imposed for the past period. It is also the established position of law that a mechanical test based on the length of time covered by the retrospective operation of an Act cannot be applied in determining its validity.

The position of law regarding retrospective amendments is that a statutory provision that is not expressly made retrospective but is nevertheless of an explanatory, declaratory, curative or clarificatory nature must be judicially construed as retrospective. Allied Motors (P) Ltd. v. CIT, (1997) 3 SCC 472: 224 ITR 677; CIT v. India Steamship, 196 ITR 917.

An explanation brought on the statute book is usually clarificatory in nature and is given retrospective effect since in the eyes of the law; a new explanation brought to a provision in the statute simply explains the law as it has always been in the main provision. Laxmi Industries Ltd. v. ITO, 231 ITR 514; CIT v. Sri Jagannath, 191 ITR 676; ITO v. Manoharlal, 236 ITR 357

In the Maxwell's Interpretation of Statutes, 12th Edn; the statement of law relating to its operation is stated as:

> **"***Perhaps no rule of construction is more firmly established than thus - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. The rule has, in fact, two aspects, for it, "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary***."**

In Francis Bennion's Statutory Interpretation, 2nd Edn, the statement of law is stated as follows:

> *"The essential idea of legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex-post facto law is enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that lex prospicit non respicit (law looks forward not back). As Willes, J. said retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transaction carried on upon the faith of the then existing law."*

The retrospective operation of an enactment may mean one thing and its affecting the rights of parties another. Normally, an enactment is prospective in nature. It does not affect that which has gone, or completed and closed up already. Ordinarily, the presumption with respect to an enactment is that, unless there is something in it to show that it means otherwise, it deals with future contingencies, and does not annul or affect existing rights and liabilities or vested rights, or obligations already acquired under some provisions of law although its effect is that it does not affect an existing right as well. If an enactment expressly provides that it should be deemed to have come into effect from a past date, it is retrospective in nature. It then operates to affect existing rights and obligations, and is construed to take away, impair or curtail, a vested right which had been acquired under some existing law. If an enactment is intended to be retrospective in operation, and also in effect, the legislature must expressly, and in clear and unequivocal language, say so, in the enactment itself. A retrospective operation is not given to a statute, so as to impair an existing right or obligation, otherwise than as regards matters of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is capable of either interpretation, it ought to be construed prospectively.

The word retrospective signifies looking back at, thus retrospective effect of law means giving effect to the amendment in the existing law before the date in which the changes/amendment was brought in.

In the matter of Hitendra Vishnu Thakur v. State of Maharashtra [TS-5034-SC-1994-O], the Hon'ble Supreme Court laid down the ambit and scope of an amending Act and its retrospective operation as follows:

> "(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.
>
> (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.
>
> (iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.
>
> (iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished:
>
> (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication."

The Supreme Court held in Mohd. Rashid Ahmad v. State of U.P., [(1979) 1 SCC 596],

> "Perhaps no rule of construction is more firmly established than this — that retrospective operation is not to be given to a statute so as to impair an existing right or obligation other than as regards the matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. But where, as here, it is expressly stated that an enactment shall be retrospective, the courts will give it such an operation. It is obviously competent for the legislature in its wisdom, to make the provisions of an Act of Parliament retrospective."

In Garikapati Veeraya v. N. Subbiah Choudhry, the SC stated that

> "The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

The Supreme Court of India in the case of *Commissioner Of Income Tax vs M/S. Essar Teleholdings Ltd.* made it clear that the legislature cannot scrap out any judgment of the court by giving a retrospective amendment of the concerned law as this will confer excessive power on the hands of a particular organ of the government suppressing the other two.

If an enactment by itself declares or mentions that it is supposed to be in effect from a past date then that enactment acquires a retrospective operation. It is then that the amendment starts affecting the rights and obligations that currently existed under some law or statute. For a legislation to have a retrospective operation there must be a clear mention of the same in the unequivocal language in the enactment itself.

While deciding the case of *Kesavananda Bharati v. Union of India,* Justice Khanna said that any amending body which has been given a shape by a statutory scheme and has been conferred with unlimited powers, cannot change the fundamental pillars that support the concerned Constitutional authority because its very structure prohibits it from doing so. He further was with the opinion that amendments can bring about an alternative form of the Constitution but not a new Constitution altogether.

The Cardinal Principle of construction of a statute is that every statute was prima facie a prospective "unless it is expressly or by necessary implication made to have retrospective operation". When a procedural law is considered it is always retroactive i.e. came into effect from past date so the question of retrospective operation shall arise in substantive laws only. Also a criminal law shall always have retroactive operation whereas the civil law may have retrospective or retroactive operation. So by observing the different opinions of jurists and experts in India on retrospective and retroactive laws, a conclusion may be drawn in such a way that only substantive civil laws can be operated retrospectively if the statute specifically prescribes it or there exists large interest of the public as whole otherwise all statutes shall be operated retroactively.

1. Article 368 of the Constitution of India confers power on the parliament to amend the Constitution. Therefore, what can be inferred

from the power that has been conferred is that after amendment there will be a change in the existing Constitution but the change will not result in a new Constitution. After such an amendment also, the Constitution will remain functioning the way it used to previously. Taking into consideration retrospective amendments, the fact that after this amendment as well the Constitution will function as it is will remain intact. Therefore, the question as to whether retrospective amendments are constitutionally legitimate or not arise.

In the case of *Smt Dayawati v. Inderjit*, it was held that an ordinary court of law cannot consider the application of a new law brought about after the judgment of the appeal handled by the court has been rendered for the rights provided to the litigant in the concerned appeal have been decided according to the law in force on that date when the suit was filed. Taking this into concern the court also observed that the laws affecting the procedure always acquire a retrospective nature. But this does not make way to eliminate the existing rights and obligation conferred to the litigant. The court will, therefore, inspect the new law on grounds that whatever it speaks should be clear and the same will help in solving pending matters as well, only then will the court of appeal give preference to the law even after the judgment has been passed by the court.

Therefore, in order to be constitutionally legitimate, retrospective amendments are supposed to be aligning with the following conditions:

- The statute provides it clearly through language that it will have a retrospective operation.
- Previous matters that are pending in the court can be cleared by the application of the existing law. Only then can it receive a retrospective operation.
- The law is not unjust and is not in contravention with the Constitution of India.

## 2. Tax Laws and Retrospectivity

The retrospective amendment can be brought in taxation laws in two ways:

- Introducing new legislation overruling an argument of the taxpayers that was legitimate which can be supported by any legal interpretation or judgments of the courts which will act as a precedent?

- Bringing in addition to the existing legislation declaring the same to be a medium of understanding the legal intent of the same.

In the famous case of *CIT v. Vatika Township Private Limited*, the Supreme Court of India provides clarification on the prospective and retrospective operation of the amendments brought in the tax system.

The court said that it is not supposed to be intended whether the legislation asks for a retrospective or a prospective operation.

While saying this the apex court referred to the judgment passed by itself in the case of Govind Das v. Income Tax Officer. The principle which was followed in this case was, “lex prospicit non respicit”. This means that the law in hand always looks forward and not towards the back. The essence of this principle is to subject current activities under the current laws only. Further, the legislation which modified the existing rights were supposed to be considered as of prospective nature and not of retrospective unless the legislation was clearly removing the one which was in existence. The doctrine of fairness was another observation that was upheld by the court while deciding on retrospective amendments. To conclude about the taxation laws, what can be said is that no government of any nation has been provided with the authority to seek taxes from its citizens through harassment and force.

If also retrospective amendment is adopted in taxation laws, the burden as to provide a proper system for paying off the tax falls upon the nation’s government. In order to promote economic stability, the government must regulate the taxation laws in such a way that injustice is not caused to any citizen of the nation. Also, the government must resort to retrospective amendments only in rare cases and not in all cases so as to avoid chaos in the working of the organs of the government.

**Some Important Path Breatking Judgments on the Subject.**

The Supreme Court repeatedly made it clear that in order to give effect to an amendment retrospectively, it should be clearly mentioned in the enactment that the Act is supposed to have retrospective operation.

In the case of *P. Mahendran and Others v. State of Karnataka and others*, the apex court observed that the amended set of Recruitment Rules, 1987 was not of a retrospective nature and was instead of a prospective one. Therefore, the Karnataka Public Service Commission was not supposed to make any kind of regulation or determination of selection of

members on the basis of the rules after the commencement of the same. If such selection was made, the same would be declared as illegal. The court made its judgment on the grounds that there were no provisions for making a retrospective effect in the Rules, 1987.

In the absence of similar provision, the Rules were to prospective effect only. In the recognised case of *CIT Mumbai v. M/s Essar Teleholdings Ltd,* the Supreme Court mentioned that the legislature wing of the government has been vested with plenary powers to decorate whether an amendment is to operate prospectively or retrospectively. Further, in general observation, the legislature considers any statute prima facie to be prospective only unless the statute has been expressly by necessary implication made to operate retrospectively.

The element of fairness is necessary to be accompanying retrospective amendments. This was taken into concern by the court in the case of *Mc Donald's India Pvt Ltd vs CST.* It was held that the principle to ascertain whether an amendment will have a retrospect effect is the fairness principle. Therefore, unless there is a clear indication as to the statute having a retrospective effect, the existing rights and obligations will continue to operate and remain valid.

In *National Agricultural Cooperative Marketing Federation of India v Union of India,* the Supreme Court was of the opinion that retrospective amendments will amount to be unconstitutional if there is less clarification on the part of the enactment which intends to overturn the previous decisions of the court or bring in a change in the existing law.

In the case of *Rohtas Bhankhar and Others v. Union of India and Another,* the court declared that whenever a retrospective amendment is to be made, it should be taken into concern that the amendment does not have an adverse effect on the public at large. In this case, a relaxation was provided to the candidates belonging to the category of Scheduled Caste and Scheduled Tribe for a competitive exam giving a retrospective effect to an existing statute.

In *Avani Exports v Commissioner of Income Tax,* a writ petition was filed under the Gujarat High Court to challenge the constitutional validity of Section 80HHC(3) of the Income Tax Act 1961 which was inserted by a retrospective amendment of the Income Tax Act, 1961. Article 14 of the Constitution was held to be in violation. The court further held that no substantive law could be amended by adding a retrospective effect to it. The same can only be applied if it benefits the assessee to some extent.

This judgment of the Gujarat High Court challenged the retrospective amendment in a way that it is restrictive in several aspects. Thus, the judgments which have been mentioned above provide that the courts failed to agree with the retrospective amendments most of the time and have preferred prospective amendments for majority times.

The scope of the power of a legislature to make a law validating the levy of a tax or a duty retrospectively was considered by the Supreme Court in Chhotabhi Jethabhai Patel & Co. v. Union of India [(1962) Suppl. 2 SCR 1; AIR 1962 SC 1006]. The court held that Parliament acting within its legislative field had the power and could by law both prospectively and retrospectively levy excise duty under the Central Excise and Salt Act, 1944, even where it was established that by reason of the retrospective effect being given to the law, the assessees were incapable of passing on the excise duty to the buyers. In the case of J. K. Jute Mills Co. Ltd. v. State of Uttar Pradesh [(1961) 12 STC 429 (SC)], the Supreme Court has held that the power to make retrospective legislation in cases relating to tax on sale of goods is the same as in the income tax.

In the case of Asstt. CIT of Urban Land Tax v. Buckingham & Carnatic Co. Ltd. [TS-5028-SC-1969-O], the Supreme Court observed that it is not right to say as a general proposition that the imposition of tax with retrospective effect per se renders that law unconstitutional, but in applying the test of reasonableness to a taxing statute, it is of course a relevant consideration that the tax is being enforced with retrospective effect but that is not conclusive in itself. Thus, a competent legislature's power to enact retrospective legislation cannot be curtailed or challenged. However, as the Supreme Court explained, "while there could not be any dispute that the legislature in India had the power to make retrospective legislation, it would be open to a party affected by such laws to contend that the retrospective operation creates a situation which could be described as an unreasonable restriction which violates the right to carry on business or the right to hold and dispose property".

Bombay High Court in, New Shorrock Spinning & Manufacturing Co. Ltd. Vs. N. V. Raval [ITO [TS-5141-HC-1958(Bombay)-O], held that a statue which deals with matter of substantive law and taxation is matter of substantive law-would not be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary implication. It is well settled rule of interpretation allowed by time and sanctified by judicial decisions that, unless the terms of a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure.

It was observed by the Andhra Pradesh High Court, in Kanumarlapudi L. Chetty v. First Addl. ITO [TS-5149-HC-1955(Andhra pradesh)-O], that a statute affecting vested rights is prima facie prospective unless the statute expressly or by necessary implication indicated to the contrary. Thus, as per general rule, procedural amendments are applied retrospectively whereas substantive amendments are applied prospectively. Nevertheless, the legislature has plenary power and can make even substantive amendments retrospectively. If an enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only as held in Govinddas v. ITO [TS-5067-SC-1975-O]. In CIT v. Mrs. Ayodhyakumari [TS-5093-HC-1984(Rajasthan)-O], the High Court held that all laws are considered to be prospective except when made retrospective by express words or by necessary implication.

When taxes were raised with retrospective effect, the Supreme Court held in D. Cawasji and Co. v. State of Mysore [TS-5011-SC-1984-O],

> "In our opinion, the enhancement of the rate of duty from 6 per cent to 45 per cent with retrospective effect is in the facts and circumstances of the case clearly arbitrary and unreasonable. The defect or lacuna is not even sought to be remedied and the only justification for the steep rise in the rate of duty by the amended provision is to nullify the effect of the binding judgment. The vice of illegal collection in the absence of the removal of the illegality which led to the invalidation of the earlier assessments on the basis of illegal levy, continues to taint the earlier levy. In our opinion, this is not a proper ground for imposing the levy at the higher rate with retrospective effect. It may be open to the Legislature to impose the levy at the higher rate with prospective operation but levy of taxation at higher rate which really amounts to imposition of tax with retrospective operation has to be justified on proper and cogent grounds."

Doctrine of Mutuality and Levy of GST on Supply of Goods or Services by Associations and Body of Persons to its Members-

Agenda and Minutes of Meeting of 39th GST Council and Decision by Hon'ble Apex Court in State of West Bengal vs. Calcutta Club vis-à-vis approval of retrospective amendment to Section 7 of CGST Act, 2017 in view of the Judgement of Hon'ble Apex Court.

In a significant amendment to the Central Goods and Services Tax (CGST) Act, the government has introduced a new clause in sub-section 1 of Section 7 — which is being inserted with retrospective effect from July 2017 — which makes it mandatory for entities to "ensure levy of tax on activities or transactions involving supply of goods or services by any

person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration".

This change effectively rips the cloak of immunity that the social clubs had after a three-judge bench of the Supreme Court ruled in October 2019 that all "show cause notices, demand notices and other action taken to levy and collect service tax from incorporated members' clubs are declared to be void and of no effect in law".

The latest controversial tax amendment is a blow back to the infamous decision of then finance minister Shri Pranab Mukherjee to amend the Income Tax act with a 50-year retroactive effect and undermine a verdict of the Supreme Court that held that Vodafone Plc was not obliged to withhold tax while sealing its deal with Hutchison Whampoa group when it acquired a telecom entity in India for over $11 billion in 2007.

That case drags on with the government having decided to challenge an adverse verdict handed down by a court in Singapore. Another arbitration case involving Cairn Energy Plc has also gone against the Centre.

The genesis of the case against social clubs arose from a notice that the assistant commissioner of commercial taxes sent to the Calcutta Club saying that it had "failed to make payment of sales tax on sale of food and drinks to the permanent members during the quarter ending 30th June 2002." A similar notice was sent by the Chief Commissioner of Central Excise and Service to the Ranchi Club.

In their order the Supreme Court bench comprising judges R.F. Nariman, Surya Kant and V. Ramasubramanian said the Calcutta Club, which is an incorporated entity under the Companies Act 1956, charged and paid sales tax whenever it sold products to non-members or guests accompanying permanent members.

But when the invoices were raised in respect of supply made in favour of the permanent members, no sales tax was collected.

The club had argued that the transactions with its permanent members could not amount to a sale as the doctrine of mutuality would come into play.

The doctrine basically states that permanent members form a club and, therefore, there can be no sale transaction between a club and itself (represented by the members).

The club had argued that it was not a "dealer" within the meaning of the Act as there was no "sale" of goods in the form of food, refreshments

or drinks by the club to its permanent members. The club also contended that it was acting as an agent of its members while supplying food and beverages to its members.

The Supreme Court upheld this view — the rationale for the decision founded on the principle that if there are no members, there is no club and vice-versa. As a result, the clubs felt they were safe from the axe of the taxman.

The case against the Calcutta Club had been initiated by the Bengal government under the West Bengal Sales Tax Act 1994. The state government's counsel had argued that the doctrine of mutuality had been blown away by the 46th amendment of the Constitution which inserted Article 266 (29A).

The revenue authorities had argued that the doctrine of mutuality was not applicable after the amendment to Article 366(29-A), wherein a deeming fiction was created, holding that the supply of goods by clubs to its members would be treated as a sale for the purpose of levy of sales tax. It argued that the doctrine of mutuality, as applicable to sales tax, was not applicable to service tax, after the introduction of negative list (in 2012) came into force. The apex court refused to accept the proposition put forth by the revenue authorities.

The levy of sales tax has since been subsumed under the Goods and Services Act which came into force from July 2017 — which is why the latest Finance Bill has made the retrospective amendment from that date.

The Finance Bill 2021 now explicitly says:

> "For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall so be deemed to take place from one such person to the other."

The move to treat the permanent member and the club as "two separate persons" cleaves the doctrine of mutuality argument and effectively undermines the apex court order of 2019.

My take:

This amendment may be quashed by the High Courts or by the Supreme Court as it is palpably arbitrary.

# "Interpreting GST TAX SCHDULES and HSN's Primacy"

*Sushil Verma, Advocate*

Dear Friends,

Raj Batra, Editor-in-Chief of our Bar Magazine instructed me to write a piece on HSN interpretation and then start sector specific HSN classification and its interpretation for the common good of all of us. Difficult to write on this subject but an attempt has been made to bring this article for you to appraise its utility.

Proper classification of goods (or services ) is a matter of great caution and concern and is and shall remain a matter of dispute between the tax payers and tax collectors. One will observe from the various rates approved by the GST Council that the tax rate may be 18% or 28%. The difference of 10% in tax rate can always result in area of dispute where the taxable person proposes to classify the product under the head which attracts 18% and the department classifies the product which attracts 28%. The certainty in tax rate in such a case is very difficult. In such circumstances, more particularly when the recipient is unable to get any of the credit of taxes paid, the dispute will be very long drawn.

A reference to para 18 of the judgment of the Hon'ble High Court of Andhra Pradesh in the case of Reckitt and Colman of India Limited [1994 (72) E.L.T. 263] will explain us the importance of HSN system.

"As mentioned earlier, the new Tariff Act was based on the Harmonised Coding System. This system was evolved by the International convention to which India became a party at Brussels on 14-6-1983. The convention agreed to the introduction of headings, sub-headings, Notes and the Harmonised Coding System and also to the incorporation of the General Interpretative Rules. In fact, it constitutes an international economic language and code for identifying and describing goods which should considerably reduce the difficulties in redescribing and recording the goods as they pass from one country to another in international trade, as stated in the objects and reasons. When both the Excise Tariff and Customs Tariff Bills were introduced in 1985. One of the obligations of the contracting parties stated in Article 3 of the Convention was that each contracting party should use headings and subheadings of the

Harmonised System without addition or modification and shall apply the general rules for the interpretation and follow the numerical sequence of the Harmonised System. The developing countries were allowed to omit the sub-headings, that is the last two digits of the six digit headings. Since the Government of India has declared the adoption of that system, it is binding on the department. Even otherwise, unless there is any conflict, the interpretation consistent with the international convention and treaties has to be adopted, as pointed out by the Supreme Court in Gramophone Co. of India Limited v. Birendra Bahadur Pandey - AIR 1984 Supreme Court 667. 'This is currently of a great significance at a time when India seeks globalisation of its markets. Unless the classification of goods is in accord with international system and is clear and certain to the trade, the very purpose of adopting the international standards would be defeated'.

The Harmonized Commodity Description and Coding System generally referred to as "Harmonized System" or simply "HS" is a multipurpose international product nomenclature developed by the World Customs Organization (WCO).

It comprises more than 5,000 commodity groups; each identified by a six digit code, arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification.

The system is used by more than 200 countries and economies as a basis for their Customs tariffs and for the collection of international trade statistics. Over 98% of the merchandise in international trade is classified in terms of the HS.

The HS contributes to the harmonization of Customs and trade procedures, and the non-documentary trade data interchange in connection with such procedures, thus reducing the costs related to international trade.

It is also extensively used by governments, international organizations and the private sector for many other purposes such as internal taxes, trade policies, monitoring of controlled goods, rules of origin, freight tariffs, transport statistics, price monitoring, quota controls, compilation of national accounts, and economic research and analysis. The HS is thus a universal economic language and code for goods, and an indispensable tool for international trade.

We all have read and applied Principles of Classification in our day to day professional life and these are summarized below.

(a) Commercial/Trade Parlance

(b) Definition given in statute or chapter note/section note etc.

(c) Description in HSN has persuasive value

(d) Most specific description to be preferred over general description

(e) Functional use of the product

(f) Essential characteristics of goods or service

(g) Importance of expert opinion and other evidentiary value

(h) Importance of ISI specification

(i) Importance of Finance Ministers speech

(j) Importance of trade notice, circulars etc.

(k) Chemical examination only provides content and not classification

(l) Provision of relevant time

(m) Burden to prove classification on department

(n) Exemption notification cannot interpret tariff heading or sub heading

(o) Beneficial classification

(p) Jurisdiction to decide classification

Under the General Agreement for Trade and Tariff, commonly known as GATT agreement, World Trade Organization (WTO) has been formed. The Customs Coordination Council (CCCN) working under WTO has published Harmonized System Nomenclature (HSN) which is normally adopted by all countries who have signed the GATT Agreement for the purpose of classification of the products for Customs. In India, classification under Central Excise and in various state VAT is also basedon HSN. The classification made in GST is also based on HSN. Harmonized System Nomenclature published by CCCN gives a detailed description of various products which are covered under a particular heading or sub-heading. The description in HSN is very helpful in deciding the classification of the product.

The Hon. Supreme Court in the case of *Wood Crafts Products Ltd., 1995 (77) ELT 23 (SC)* has held that the description in HSN Explanatory Note has persuasive value.The Supreme Court has observed in paras 12 and 18 as follows:

*"12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.*

*18. We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention.*

The same principle is repeated in the case of *Business Forms Ltd.,* **2002-142-ELT-18 (***SC*). Thus, description given in HSN is very useful in determining classification of the product.

The scheme of each of the notifications is such that they set out the rate schedule and against such rate they further set out the "chapter/heading/ sub-heading/tariff item" and "description

The Supreme Court has elaborately explained the role HSN - , *the commodities mentioned in the schedules have been allotted code numbers*

*developed by International Customs Organization, which is known as Harmonised System of Nomenclature (HSN). The same has been adopted in the Customs Tariff Act, 1975. Where the commodities have been given HSN numbers, the same meaning would be given for classification under the Customs Tariff Act, 1975. The rules accept that for certain entries, HSN numbers are not given. Where commodities are not ascribed any HSN number, they would be interpreted as understood in common or commercial parlance. In case of inconsistency between meaning of a commodity without HSN number and a commodity with HSN number, the commodity without HSN number should be interpreted by including the commodity in that entry, which has been given HSN number. Thus, primacy is given to HSN number classification and adoption/interpretation of HSN classification under the Customs Tariff Act, 1975 and any inconsistency or debate would be decided with the commodity being categorized against the HSN number. As is seen, general guidelines have been given on interpretation of four digit, six digit and eight digit HSN numbers. The rules also provided for resolution and conflict between the commodities with four digit, six digit and eight digit HSN number, when they overlap. It can be emphatically stated that the word «other» used in sub-entries or sub-sub-entries have to be construed by adopting the doctrine of ejusdem generis.*

In the pre-GST era, all of us noted that wherever there was a dispute regarding classification of any commodity, either under the Sales Tax laws or under the Customs Act or under the Central Excise Act, authorities or the Courts have always taken the explanation provided in the HSN for the correct classification of commodities. AND NOW in the post-GST regime, not only the Act directs to refer to HSN, but also, the Advance Ruling authorities have taken the General Explanations or the internal explanations to each Chapter of the HSN while deciding the issue till date. Therefore, one has to be thorough at least to understand the General Explanations provided in the HSN.

In 1983, under the auspices of the World Customs Organization (WCO), most of the major trading countries of the world agreed to a single numbering system, which became the | Classification of Goods and Services – Principles & Interpretation | Harmonized System (HS). This system was brought to effect from January 1, 1988.

The Customs Tariff is aligned with HSN and now GST is also aligned with HSN Codes. Therefore, the Explanation provided in the HSN plays a vital role in interpreting the Tariff Entries. Hon'ble Supreme Court, in the matter of 'Reckitt Benckiser (India) Ltd. vs. Commissioner, Commercial Taxes and Ors (2008) 15 VST 10 (SC)', recognizes the importance of the

Explanation in HSN, wherein it was held that, "Kerala Value, Added Tax Act, 2003 was aligned with The Customs Tariff Act, 1975 which in turn was aligned with the Harmonized System of Nomenclature (HSN) and consequently each product in question had to be seen in the context of the HSN code and the judgment based thereon."

The Hon'ble Supreme Court in, 'Commissioner of Customs & Central Excise, Goa vs. Phil Corporation Ltd. (2005) 12 SCC 333' held that,

> "We have heard the learned counsel for the parties at length and carefully analyzed the judgments cited at the Bar. The Central Excise Tariff Act is broadly based on the system of classification from the International Convention called the Brussels' Convention on the Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature) with necessary modifications. HSN contains a list of all the possible goods that are traded (including animals, human hair, etc.) and as such the mention of an item has got nothing to do whether it is manufactured and taxable or not." It was also held that, "In a number of cases, this Court has clearly enunciated that the HSN is a safe guide for the purpose of deciding issues of classification. In the present case, the HSN explanatory notes to Chapter 20 categorically state that the products in question are so included in Chapter 20. The HSN explanatory notes to Chapter 20 also categorically state that its products are excluded from Chapter 8 as they fall in Chapter 20. In this view of the matter, the classification of the products in question have to be made under Chapter 20."

In 'Collector of Central Excise, Shillong vs. Wood Craft Products Ltd.' it was held that,

> "As expressly stated in the | 7 | Classification of Goods and Services – Principles & Interpretation | Statement of Objects and Reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on Harmonized System of Nomenclature (HSN) and the internationally accepted nomenclature was taken into account to 'reduce disputes on account of tariff classification.' Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. The ISI Glossary of Terms has a different purpose and therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in the HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be

preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI."

The GST Council has fixed four broad tax slabs, i.e., 5%, 12%, 18% and 28%. On the top of the highest slab, there is a cess on luxurious and demerit goods to compensate the States for revenue loss in the first five years of GST implementation. Most of the goods and services have been listed in four slabs but goods like gold and rough diamond have exclusive tax rates. Some goods have also been exempted from taxation. The essential items have been kept in the lowest tax bracket whereas; luxury goods and tobacco products are subject matter of higher tax rates.

As per Section 9 of the CGST Act, 2017 and the SGST Act, 2017, tax shall be levied on intra-State supply of goods and services or both at such rate as may be recommended by the Council.

The rate notifications stated above in terms of supply of goods provide an Explanation for the purpose of the notification.

Note (iii) & (iv) to the said Explanation reads as under: (iii) "Tariff item", "sub-Heading" "Heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). (iv) 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.

First Schedule to the Customs Tariff Act, 1975 provides certain principles for interpretation of the tariff entries.

General rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification. Classification of Goods and Services – Principles & Interpretation | shall be determined according to the terms of the headings and any relative Section or chapter notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

   (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

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

   (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable. Classification of Goods and Services – Principles & Interpretation |

   (c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

   (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

   (b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use. 6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those sub headings and any related sub headings notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and chapter notes also apply, unless the context otherwise requires.

According to the rules of interpretation for the First Schedule to the Tariff Act, mentioned in Section 2 of the Tariff Act, classification of an excisable good shall be determined according to the terms of the headings and any corresponding chapter or section notes. Where these are not clearly determinative of classification, the same shall be effected according to Rules 3, 4 and 5 of the general rules of interpretation. However, it is also a well known principle that in the absence of any statutory definitions, excisable goods mentioned in tariff entries are construed according to the common parlance understanding of such goods.

Coming to the Rules of Interpretation of Schedules, it is well established that the question of classification of goods under the HSN cannot be decided by implications, when there are Rules of Interpretation which are specially framed to aid and assist the classification of goods under appropriate Headings.

If we observe the Rules of Interpretation of Schedules, it is clear that the commodities in the Schedules are allotted with Code Numbers, which

are developed by the International Customs Organisation as Harmonised System of Nomenclature (HSN) and adopted by the Customs Tariff Act, 1975. At the very threshold it is mandated:

> "However, there are certain entries in the schedules for which HSN Numbers are not given. Those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act, 1975. Those commodities, which are not given with HSN Number, should be interpreted, as the case may be, in common parlance or commercial parlance. While interpreting a commodity, if any inconsistency is observed between the meaning of a commodity without HSN Number and the meaning of a commodity with HSN Number, the commodity should be interpreted by including it in that entry which is having the HSN Number.

Considering the effect of Harmonised System of Nomenclature (HSN) classification the Supreme Court laid down and golden principle in CCE v. Wood Craft Products Ltd. ((1995) 3 SCC 454) and held that when the Central Excise Tariffs are based on internationally accepted nomenclature found in HSN, any dispute relating to tariff classification must so far as possible be resolved with reference to the nomenclature indicated by HSN unless there be an express different intention indicated by the very Central Excise Tariff Act, 1985. It is also further held that when the Central Excise Tariff Act is enacted on the basis and pattern of HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in HSN when there is no indication in the Indian tariff of a different intention.

That is why GST based on HSN classification has to be interpreted accordingly and all the judgments passed by the Courts in excise regime shall become automatically applicable to GST matters as well.

And it is to be understood those Rules must have precedence over other aids of interpretation. (Ref. Khandelwal Metal and Engg. Works v. Union of India ((1985) 3 SCC 620)

In Dunlop India Ltd. v. Union of India and Others ((1976) 2 SCC 241). While holding that VP Latex was to be classified as 'raw rubber' under Item 39 of the Indian Tariff Act, 1934, the Court observed:

> "34. We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people

> in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."

In Oswal Agro Mills Ltd. v. CCE ((1993) Supp. 3 SCC 716 (at p.720)), the Hon'ble Supreme Court has dealt with the General Rules of Interpretation of Taxing Statues in the following words:

> "4. The provisions of the tariff do not determine the relevant entity of the goods. They deal whether and under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub-heading under which the identified goods/products would be classified. To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules of interpretation put up thereon. For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence it must be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor can we delete anything but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or rules. There is no room for assumption or presumptions. The object of Parliament has to be gathered from the language used in the statute. ... Therefore, one has to gather its meaning in the legal setting to discover the object which the Act seeks to serve and the purpose of the amendment brought about.

The task of interpretation of the statute is not a mechanical one. It is more than mere reading of mathematical formula. It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. Therefore, court would endeavor to eschew literal construction if it produces manifest absurdity or unjust result..."

In Connaught Plaza, (Connaught Plaza Restaurant (P) ... vs Commr. Of C. Ex.) after exhaustively examining the case law holding the field, theirLordships have come to a conclusion in the following words in paragraph 35 thereof:

> "Neither the headings nor the chapter notes/section notes explicitly define the entries in a scientific or technical sense.
>
> Further, there is no mention of any specifications in respect of either of the entries. Hence, we are unable to accept the argument that since 'soft serve' is distinct from "ice-cream" due to a difference in its milk fat content, the same must be construed in the scientific sense for the purpose of classification. The statutory context of these entries is clear and does not demand a scientific interpretation of any of the headings. Therefore, in the absence of any statutory definition or technical description, we see no reason to deviate from the application of the common parlance principle in construing whether the term "ice-cream" under heading 21.05 is broad enough to include 'soft serve' within its import."

Wherever the GST Schedule is aligned directly to the Customs Tariff entries, then there is no other alternate rather than to adopt the meaning assigned in the Customs Tariff Act and interpretation given by various authorities and courts for the said purpose. But, wherever the GST Schedule is not directly |aligned to the Customs Tariff Act, but some of the goods have been picked or chosen from the Customs Tariff have been placed in the GST Tariff, then the interpretation given in the Customs Tariff entries may not hold good.

We all know and what are the principles of interpretation; common parlance test; population common understanding or simply popular meaning test; end user test or so to say dominant user test; production literature and product description as contained in catalogues of the product.

We also know the settled principles of law that In construing the provisions of a Statute, it is always imperative and indeed essential at the first instance to give effect to the natural meaning to the words used or written therein, and in our opinion or in the opinion of the Court if these words convey and clear legislative intent and are clear enough. Conversely we also know that it is only in the case of an ambiguity, that the court is legally empowered to ascertain the intention of the legislature by construing the provisions of the statute as a whole and taking into consideration the other matters and circumstances, which leads to the enactment of the statute. In such circumstances, the court adopts these tests.

Hon'ble Supreme Court while applying the common parlance test in the matter of 'Collector of Central Excise vs. Parle Export Pvt. Ltd. 75 STC 105' has laid down that,

> "Words used in a provision imposing tax or granting exemption should be understood in the same way in which they are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them."

Of course it is more than clear that if the words used are technical and technical meaning is to be used then common parlance test may not be the exclusive and the reliable test for interpretation of words used in an entry. Courts have held in such circumstances technical meaning would be more relevant for interpretation of the words used in a tax entry. Hon'ble Supreme Court in the matter of, 'B.P.L. Pharmaceuticals Ltd. vs. Collector of Central Excise Vadodara 104 STC 164 (SC)' adapted the scientific and technical meaning in order to classify if Vicco toothpaste, tooth powder and cream items were drugs or cosmetics.

As held in the matter of Commissioner of Central Excise, Cochin vs. Mannampalakkal Rubber Latex Works (2015) (7 SCC 124), it was held that,

> "Excise-classification of goods- 'composition test' and 'end user test'- application of- classification of goods to be made in accordance with 'composition test' unless relevant Entry specifically states that classification shall be made by applying 'end user test'- Note 5 (b) to Ch. 40 of 1985 Act- Applicability- Revenue declaring latex (rubber) based adhesive as falling under Heading 35.06 since same is sold to leather footwear manufacturers as adhesive."

Sometimes if the goods are falling in two entries, which are subject to tax at two different rates, the theory of specific entry will prevail over general entry. For example a carpet which may fit into the car floor as per the specifications and design given by the car manufacturer has been held to be an accessory of cars by the Courts and hence shall fall under the specific entry of accessories of cars rather than being classified under the general entry of carpets. However we need to appreciate and need to look into the interpretation given in the General or Specific Explanatory notes to the HSN under a particular Chapter Heading or in the Rules of interpretation to seek further clarity.

Now let us dwell this issue further. We may have and in fact have

situations where we find that some goods are not specified in GST Schedules even though such goods are mentioned in Customs Tariff Act. Hon'ble Supreme Court in the matter of 'M.P. Agencies vs. State of Kerala (2015) (7 SCC 102)' has held that,

> "As per the said Rules of Interpretation, where the commodities have been given HSN numbers, the same meaning would be given for classification under the Customs Tariff Act, 1975 and | 28 | | judgments applicable to corresponding entries in Customs Tariff Act- Where commodities are not assigned with any HSN number, they are to be interpreted as understood in common or commercial parlance- In case of inconsistency between meaning of commodity without HSN number and commodity with HSN number, commodity without HSN number should be interpreted by including commodity in that entry, which has been given HSN number."

What is deducible from the above judgments is that if we are clear about the HSN No. then adopt the meaning for deciding the tax rate or otherwise interpret the commodity as per other tests mentioned and explained hereinabove.

In GST Regime circulars lay down the and not the Act in most cases. For example take the example of the meaning of Agriculture Product ; notwithstanding the interpretation by the Courts of this product, the CBEC has issued a circular No. F. No. 354/173/2017 dated 15th November, 2017 and has interpreted and laid down that the processed items are not agriculture product. Not for one second I agree with this CIRCULAR but for revenue authorities these are binding and hence the tax payers may have to knock the doors of the High Courts in India to see relief from taxation.

Sometimes tariff entries refer to two words, i.e., 'types and forms'. Such words do not have the same meaning.

In this context, Hon'ble Supreme Court in the matter of 'State of Jharkhand & Ors. vs. LA Opala R G. Ltd. (2014) (70 VST 342) (SC)' has held that,

> "In common parlance, the two words 'type' and 'form' are not of the same import. 'Types' are based on the broad nature of the item intended to be classified and in terms of 'forms', the distinguishable | feature is the particular way in which the item exists. An example would be the item 'wax.' The types of wax would include animal, vegetable, petroleum, mineral or synthetic wax whereas the form of

> wax would be candles, lubricant wax, sealing wax, etc. Therefore it cannot be said that the expression 'types of glass' will refer to or include 'forms of glass'."

We should always remember the gold principle of interpreting the commodities in tax laws that "The common parlance test", "marketability test", "popular meaning test" etc. are all tools for interpretation to arrive at a decision on proper classification of a tariff entry. These tests, however, would be required to be applied if a particular tariff entry is capable of being classified in more than one heads.

**Unclassified goods and residuary entry – Do we all know this**?

Serial No. 453 under Schedule III of Notification No. 1/2017 (Central Tax Rate) dated 28.06.2017 has incorporated a Residuary Entry which is subject matter of levy at 18% and reads as under:

Any Chapter Goods which are not specified in schedules I, II, IV, V or VI

Supreme Court in 'Indian Metals & Ferro Alloys Ltd. vs. Collector of Central Excise (1991) 51 ELT 165 (SC)' has held that,

> "One more aspect of the issue should be adverted to before we conclude. The assessee is relying upon a specific entry in the tariff schedule while the department seeks to bring the goods to charge under the Residuary Item No. 68. It is a settled principle that unless the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the specific items mentioned in the tariff, resort cannot be had to the residuary item. ."

In the matter of 'Mayuri Yeast India Pvt. Ltd. vs. State of UP and Another (2008) 14 VST 259 (SC)' it was held that,

> "If there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred."

While taxing manufacturing of goods in the indirect tax regime in India, the rate of duty varies depending on the type of good. Such goods are classified through chapter-headings and tariff item numbers or entries which provide a description of the type explaining its inherent character

along with rate of duty. In the erstwhile regime, such classifications were laid down in Schedule 1 to the Central Excise Tariff Act, 1985 and a similar modified list has also been laid down to determine GST rates. These classifications also contain certain notes in the legislation to provide for better interpretation to determine the right entry under the right heading for a particular good. Although such statutory classifications exist, confusion in classifying a particular good still arises at times due to the possibility of one good coming under multiple headings or entries. Disputes arise due to this between assessees and the revenue as the rate of duty changes with a heading. To overcome such situations, the jurisprudence of this classification has developed different tests. All in all, these tests and the chapter notes usually form the basis of classification in cases of such disputes.

The Supreme Court, in the recent case of Commissioner of Central Excise v. Uni Products India Ltd. has adjudicated on one such dispute (erstwhile excise regime) to determine the correct chapter heading of the good “car matting”. It has notably favored the assessee by preferring statutory interpretation and clarifications over jurisprudential tests in this issue.

In Collector, Central Excise, Shillong vs. Wood Crafts Products Limited [1995(77) E.L.T. 23] as follows :-

> “We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act,1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN , block board is included within the meaning of the expression „similar‟ laminated wood‟ in the same context of classification of block board. Since the Central Excise Tariff Act,1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention.”

**Concluding therefore,**

**The GIR is a set of 6 rules for classification of goods in the Tariff Schedule.**

**These rules have to be applied sequentially.**

Rule 1 gives precedence to the Section notes/Chapter notes while classifying a product. Rule 2(a) applies to goods imported in incomplete / finished condition and assembled / unassembled condition. Rule 2(b) is applicable to 'mixtures' and 'composite goods'. Goods which cannot be classified by application of Rule 2(b), will be classified by application of Rule 3 i.e. by application of "most specific description" as per Rule 3(a) or by ascertaining the "essential character" of the article as per Rule 3(b) or by taking into consideration the heading that occurs last in the numerical order as per Rule 3(c). Rule 4 states that goods which cannot be classified by application of the preceding rules may be classified under the heading appropriate to the goods to which they are most akin. Rule 5 applies to packing materials / articles in which the goods are carried. Rule 6 is applied to arrive at the appropriate subheading within a heading and for that purpose the provisions of Rule 1 to 5 apply mutatis mutandis on the understanding that subheadings at the same levels are comparable. For the purpose of Rule 6, the relative Section and Chapter Notes also apply unless the context otherwise requires.

While classifying goods, the foremost consideration is the "statutory definition" and any guideline provided by HS Explanatory Notes. In their absence, the cardinal principle would be the way goods are known in "common parlance". Many times statutes contain definitions and meanings of only a restricted number of words, expressions or phrases. Therefore, while interpreting the common words used in the statute, giving more than due importance to common dictionary meanings may be misleading, as therein all shades of meaning of a particular word are given. Similarly, meanings assigned in technical dictionaries will have limited application.

For purposes of classification the "trade meaning" is given due importance unless the Tariff itself requires the terms to be interpreted in a strict technical sense in which case technical dictionaries should be used. If any scientific test is to be performed, the same must be carried out as prescribed to arrive at the classification of goods. The common dictionary meaning of technical words should not be accepted in such cases since normally, the common parlance understanding is indicative of the functional character of the goods. Further, in matters of classification

the quality of goods, whether prime or defective is not material. There is no prohibition on revising the classification once decided. However, revision should be only done for good and sufficient reasons. In case of difficulty in understanding the scope of the headings / subheadings, reference should invariably be made to supplementary texts like the Explanatory Notes to the HS.

The rate of duty specified in the Tariff Schedule is called "Tariff rate of duty". Goods which are not levied concessional rate of duty or exempted from duty by an exemption notification issued under the Customs Act, 1962 are levied the Tariff rate of duty. The Export Tariff Schedule mentions only the commodities on which export tariff is levied. Likewise, the Central Excise Tariff prescribed Excise duties against each subheading, which is relevant for the purpose of computing the Additional Duty of Customs. Goods which are prescribed 'nil' rates of duty in the Tariff are those goods which are levied to 'free' rates of duty. The rates of Integrated GST, which is to be levied on the imported goods, are also aligned at 4 digit level of Tariff Schedule.

Board issues Tariff Advices in the form of circulars/instructions to ensure uniformity in classification of goods at an All India level. Such issues also get discussed and resolved in the periodic Conferences of Chief Commissioners/Commissioners of Customs on Tariffs and Allied Matters. An Advance Ruling Authority gives binding tariff advice to applicants.

Permissibility of import and export of goods is governed by the DGFT's ITC (HS) Classification of Import and Export Goods. This nomenclature arranges goods as in the HS to regulate the Foreign Trade Policy and collating the statistical analysis of the imports and exports of the country.

***Latest Supreme Court Judgment that has changed drastically the rules of interpretation of HSN:***

***Westinghouse Saxby Farmer Ltd. v. CCE, Calcutta, 2021-VIL-33-SC-CE, the Apex Court held that 'Relays' used in railway signaling equipment will be classified under Heading 8608 as per their predominant or sole or principal use.***

*Based on their exclusive use in the railways, the assessee in Westinghouse* sought to classify these relays under Heading 8607 as parts of railway locomotives. This claim was grounded in Note 3 to Section XVII which restricts the terms "parts" and "accessories" to parts and accessories suitable for use solely or principally with the articles classifiable under Chapter 86 to 88. The assessee argued that the relays

are principally designed for use with railway locomotives and therefore are classifiable as part of railway *locomotives under Heading 8607.*

*On the other hand, the Department sought to classify the relays independently under Heading 8536 as electric equipment on the ground that Note 2(f) to Section XVII specifically excluded "electric equipment" from being classified under Section XVII, whether or not it is identifiable as being for the goods of that Section.*

*The Supreme Court eventually agreed with the assessee and held that the relays are classifiable as part of locomotives under Heading 8607. In so holding, the SC applied the "sole or principal use" test of Section Note 3 to the exclusion of the embargo in Note 2. Can we summaries this decision thus: "if an item is solely or principally used with the articles of Section XVII (which includes railway locomotives and motor vehicles), then it is classifiable thereunder**, notwithstanding specific exclusions to the contrary**."*

**It is impossible to write more in this ARTICLE but shall try to bring in Part II to conclude this Article by letting us appreciate more nuances of HSN and its primacy in interpretation of GST tax schedules. Hope all of you enjoyed reading this Article**.

**SUSHIL V.**

The following judgments helped in drafting the above Article… Readers may read these judgments further.

1) (1976) 2 SCC 241,Dunlop India Ltd. vs. Union of India and Others.
2) 1994(72) ELT 669, Jyoti Laboratories Vs. CCE, Cochin.
3) 2002 (142) ELT 18, Collector of Customs, Bomday vs. Business Forces Ltd THR.OL.
4) 2007(78) RLT 276(T), Jyothi Laboratories Ltd. & Nnr. Vs. CCE, Calicut.
5) 2007(82) RLT 927(S.C), CCE, Mumbai vs. Laijee Goodhoo & Co.
6) 2007(210) ELT 171(S.C), Crane Betel Nut Powder Works vs. Commissioner of Customs & Central Excixe, Tirupathi.
7) 2007(217) ELT 161(SC), CCE, Cochin vs. Mannampalakkal Rubber Latex Works.
8) [2008 15 VST 10(SC)]Reckitt Benckiser (India) Ltd. vs. Commissioner of Commercial Taxes and Others

# Supreme Court Judgments on Extension of Limitation – Ramifications For Lawyers and for the Revenue.

*Sushil Verma, Advocate*

*(Rajesh Jain, Advocate, Delhi: Thank you for your valuable inputs, time and suggestions; your inputs as usual make the final outcome a good effort)*

Let's always remember that the law of limitation bars the remedy; but not the right.

Rules of limitation are not meant to destroy or foreclose the rights of the parties. It is always fair and appropriate that matters be heard on merits rather than shutting the doors of justice at the threshold. The main purpose for which Section 5 of the Limitation Act, 1963 was enacted is to enable the Court to do substantial justice and that is the precise reason why very elastic expression sufficient cause is employed therein, so as to sub-serve the ends of justice Section 5 Expression sufficient cause employed therein is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice No hard and fast rule can be laid down in dealing with the applications for condonation of delay. See. Oriental Aroma Chemical Industries Ltd. Vs Gujarat Industrial Development Corporation and another – 2010 (2) SCJ 973 ( D.B. ). See also. Agolapu Raju Vs Agolapu Gangaram – 2016 (3) ALT 429. Section 5 of the Limitation Act, 1963, expression 'sufficient cause' must receive a liberal construction so as to advance substantial justice, as was held in State of Karnataka Vs Y. Moideen Kunhi (dead) by Lrs. and others – 2009 (5) SCJ 606 ( D.B. ). For condonation of delay, sufficient cause be shown Court must not be pedantic in deciding delay condonation petition It should not be dismissed on the mere ground of long delay the explanation offered is bona fide In the present case.

The Supreme Court in Assam Urban Water Supply and Sewerage Board v. Sub ash Projects and Marketing Ltd., held that the words "prescribed period means the period of limitation computed in accordance with the provisions of this Act. However, an extension in the period of limitation, under a proviso that follows the clause, shall not be computed as 'period of limitation' and therefore, cannot be considered as 'prescribed period' under the said Act. Let us bear this in mind when we read this Article and this Judgment was quoted by Supreme Court in Saguffa Ahmed case

discussed below.

The Apex Court held that the expression "prescribed period" appearing in Section 4 of the Limitation Act cannot be construed to mean anything other than the period of limitation. It explicitly, elegantly and effectively held that the appellant cannot claim the benefit of the order for enlarging even the period up to which delay can be condoned

The issue of extension limitation during pandemic time was first addressed by the High Court of Delhi in the office order dated March 23, 2020 wherein the following directions were passed:

> "Lockdown/Suspension of work of Courts shall be treated as "closure" within the meaning of the Explanation appended to Section 4 of the Limitation Act, 1963 and other enabling provisions of the Act and other Statutes, as may be applied to court proceedings. Thus, the limitation for any court proceeding shall not run w.e.f. 23.03.2020 to 04.04.2020 subject to further orders."

However, "courts being closed" under Section 4 of the Limitation Act is very narrow in scope in as much as in order to give the benefit of this section, it takes into account only courts beings closed. It does not take into account a situation of a lockdown of the whole country due to a pandemic when everything including courts is closed and people are prohibited from moving out of their houses.

2. A three Judge Bench of the Apex Court headed by the CJI, on 23rd March 2020, in a suo moto writ jurisdiction took cognizance of the challenges that the *litigants could face in filing suits/petitions/appeals/ applications/and all other proceedings* with the limitation period prescribed under a general or special law ( both of the Centre and State). The Court was pleased to exercise its powers under Article 142 read with Article 141 of the Constitution and passed an order ("Order") stating that:

> "[the] period of limitation in all such proceedings [before courts / tribunals including the Supreme Court], irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

3. What is Article 142 and what are the precedents set by the Apex Court – let us briefly understand.

Article 142 of the Constitution of India reads: "142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself." The object of Article 142(1) is that the Supreme Court must not be obliged to depend on the executive for the enforcement of its decrees and orders. Such dependence would violate the principles of independence of the judiciary and separation of powers, both of which were held to constitute the basic structure of the Constitution. The interpretation of complete justice by the Apex Court has given it a different dimension which was not intended by the founding fathers.

Article 142 "provide(s) a unique power to the Supreme Court, to do "complete justice" between the parties, i.e., where at times law or statute may not provide a remedy, the Court can extend itself to put a quietus to a dispute in a manner which would befit the facts of the case.

Article 142 provides that

> "the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it…"

Ordinarily, people would not recognize this provision as a potent tool in the hands of the Supreme Court to bring about changes in significant policy issues to affect the public at large.

*Article 141 of the COI mandates: that the law declared by the Supreme Court shall be binding on all courts within the territory of India.*

Article 142 of the Constitution of India provides a special and extraordinary power to the Supreme Court to pass an order or decree to

do complete justice to the litigants who have traversed through multitude of proceedings tainted with palpable illegality or injustice. This provision, as envisioned by the framers of the Constitution, is of utmost significance to those people who are petrified about the delay in getting their necessary reliefs due to the putrefied condition of reach of law and the disadvantaged position of the judicial system.

It can pass any order which it deems fit in the facts and circumstances of the case. However it must not only be consistent with the fundamental rights guaranteed under the Constitution, but also with the substantive provisions of relevant statutes

The Supreme Court's use of its vast powers under the Article has done tremendous good to many deprived sections

We have, for example, the cleansing of the Taj Mahal, whose marble was yellowing on account of sulphur fumes from the surrounding industries. Today, on account of the court's efforts over a period of years, we have had our heritage restored to its original beauty. Similarly, undertrials were rotting in jails for greater periods than the maximum punishment which could have been inflicted on them, as their very existence was forgotten by the criminal justice system. With a single stroke of the pen, thousands of them were released. Stories of miraculous changes brought about to the lives of ordinary people — especially those who, on account of poverty, illiteracy, and ignorance were unable to seek remedies from the courts — were innumerable.

One of the important instances of application by the Supreme Court of Article 142 was in the Union Carbide case — relating to the victims of the Bhopal gas tragedy — where the Court felt a need to deviate from existing law to bring relief to the thousands of persons affected by the gas leak. In this judgment, the Supreme Court, while awarding compensation of $470 million to the victims, went to the extent of saying that to do complete justice, it could even override the laws made by Parliament by holding that, "prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142." By this statement the Supreme Court of India placed itself above the laws made by Parliament or the legislatures of the States.

Article 142 was adopted without debate by the Constituent Assembly on May 27, 1949. Thereafter, the following Constitution Bench decisions have attempted to answer the vexed question surrounding the scope and extent of the Supreme Court's power under Article 142 – Prem Chand

Garg v. Excise Commissioner, U.P., Allahabad(1962), A.R. Antulay v. R.S. Nayak (1988), Union Carbide Corpn. v. Union of India (1991) and Supreme Court Bar Assn. v. Union of India(1998). All except *Antulay* (seven judge bench) were decisions by five judge benches. The readers can read these judgments if they want to appreciate this law in a better perspective.

In *Prem Chand Garg*, a majority of four judges of the Supreme Court held that the powers under Article 142(1) were indeed wide, but an order to do 'complete justice' under this provision, "must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws." These observations were made while holding that a rule, requiring furnishing of security for costs by the petitioner in a petition under Article 32 of the Constitution, was invalid.

However, in *Union Carbide*, ( Union Carbide Corpn. v. Union of India (1991) the bench of five unanimously observed (with Ahmadi, J. dissenting on a separate issue) that it was

> "necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution", and proceeded to hold that observations in both *Prem Chand Garg* and *Antulay* on the effect of inconsistency with statutory provisions were "unnecessary" as these cases ultimately turned on breach of constitutional rights. Deviating from existing law and upholding the compensation of US $470 million payable by Union Carbide to the Union of India to settle claims and liabilities of those affected by the Bhopal gas leak, the bench held that:
>
> > "The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy." (emphasis added)

And further, that it would be:

> "… wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly."

**Preconditions to Invoke Article 142**

The Supreme Court's powers under Article 142 are vastly broad based. That power in its exercise is circumscribed only by two conditions:

(1) that it can be exercised only when the Supreme Court otherwise exercises its jurisdiction, and

(2) that the order which the Supreme Court passes must be necessary for doing complete justice in the cause or matter pending before it. But the power should not be exercised frequently, but sparingly.

It is a pertinent question to ask what is meaning of the words "complete justice" and this has been discussed at length in various judgments.

In K. Veeraswami v. Union of India ,(1991) 3 SCC 655) the Supreme Court held that it

> "has always been a law maker and its role travels beyond merely dispute settling. It is a 'problem solver in the nebulous areas".

More recently, in Nidhi Kaim & Anr vs State Of MP And Others AIR 2017 SC 986, the Supreme Court opined that

> "there cannot be any defined parameters, within the framework whereof, this Court would exercise jurisdiction under Article 142 of the Constitution. The complexity of administration, and of human affairs, would give room for the exercise of the power vested in this Court under Article 142, in a situation where clear injustice appears to have been caused, to any party to a lis. In the absence of any legislation to the contrary, it would be open to this Court, to remedy the situation".

*Therefore, considering the exceptional circumstances which the people of the country are presently facing, the Supreme Court deemed it*

*was appropriate exercise its plenary powers, under Articles 141 and 142 and effectively pause the clock of limitation which ticks for every litigant, for the period starting from March 15, 2020, until further orders are passed, for the purpose of achieving complete justice.*

*In the case of Bonkya v. State of Maharashtra 1996 AIR 257it was held that the amplitude of powers available to the Supreme Court under Article 142(1) of the Constitution of India is not conditioned by any statutory provision but it cannot be lost sight of that the Court exercises jurisdiction under Article 142 of the Constitution with a view to do justice between the parties but not in disregard of the relevant statutory provisions.*

*Further, the unbridled nature of the power was reiterated in the case of Keshabhai Malabhai Vankar v. State of Gujarat 1995 Supp (3) SCC 704 wherein the Apex Court held that undoubtedly it has the power untrammelled by any statutory limits.*

In this Article let us not get into controversies surrounding the powers that the apex Court may draw under Article 142 of the COI, there are a catena of SC judgments on this issue; it will suffice for us to appreciate that the apex court uses this Article to pass or clarify the for the general good of the public as stated in few cases hereinabove.

3. **A Order of dated March 23,2020 (FIRST ORDER AS I CALL IT)**

On March 23, 2020 took *suo-moto* cognizance of a petition for extension of limitation and passed an order extending the limitation prescribed either under general law or special laws, whether condonable or not, for filing any petitions, applications, suits, appeals and all other proceedings in all courts and tribunals from March 15, 2020, until passing of further orders ) ( including Authorities as clarified in the later part of the Order).

The Supreme Court observed that the Order was being passed to

> "*obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country*".

(Further clarifications were issued by the Supreme Court *vide* their orders dated May 6, 2020 and July 10, 2020 that extended the order dated March 23, 2020 to Section 138 of the Negotiable Instruments Act, 1881 ("NI Act"), Section 29A and 23(4) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") and Section 12A of the Commercial Courts Act, 2015 ("Commercial Courts Act").

*In effect, if the limitation period as prescribed in a general or special law for filing of any proceeding, be it a petition, application, suit, appeal or any other proceeding, expired on or after 15 March 2020, the same stands extended. The date till which limitation would stand extended will be notified by the Supreme Court in its subsequent orders.*

*The order, having been passed under Articles 141 and 142 of the Constitution of India, has the effect of law and is binding on all courts, tribunals and authorities.*

*The prescribed period of limitation shall be extended w.e.f. 15.03.2020 till further orders are passed by the Supreme Court once the lockdown is lifted.*

*In case the prescribed period of limitation to file any petition/application/ appeal had expired during the period mentioned in the Supreme Court order, the same would be required to be filed on the day when the court reopens after the "lockdown" has been lifted.*

As per Article 142, the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. It must be noted that any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament. Article 141 prescribes that the law declared by the Supreme Court shall be binding on all courts within the territory of India. *Articles 141 and 142, read together, therefore vest power in the Supreme Court to inter alia fill the lacunae in existing laws, in the interests of justice, which the legislature is not able to fill.*

The situation resulting from the corona virus pandemic is indeed unprecedented. Most courts and tribunals across the country continue to remain closed for physical conduction of business, or have adopted diminished modes of functioning. The Order passed by the Supreme Court extending limitation is well-intended.

*Through this Order, the Supreme Court has attempted to extend the limitation in all legal proceedings under general or special law, and this is stated to be irrespective of the period prescribed under these laws and without regard to the same being condonable.*

*Practically, the Order ensures that the period from March 15, 2020 will not be counted for the purpose of calculating the time limit prescribed for filing an action (through filing of suits/appeals/petitions/applications/and*

*all other proceedings) in a court or a tribunal or before authorities either under a general law such as the Limitation Act, 1963 or under any special law where the period of limitation is prescribed like VAT Acts, CST Act, Customs Act, Excise Act, GST Acts etc.*

*There is a school of thought amongst experts that the above order is contrary to the law declared by the Supreme Court in a few cases. Though, the SC has dismissed such controversies in their subsequent orders on the same issue.*

This would imply that the order is not merely restricted to just judicial bodies but also included quasi-judicial bodies and other authorities such as Commissioners or Tax Officers etc.

*For example a few experts hold that the Order is contrary to another three judge bench decision of the Supreme Court in* ONGC v. Gujarat Energy Transmission Corpn. Ltd.*(2017), where the Court followed Supreme Court Bar Assn. and concluded with reference to Section 125 of the Electricity Act, 2003 and Article 142 that,*

> "… when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case … the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."

*What is the meaning of suits/appeals/petitions/applications/and all proceedings before the High Court/Court/Tribunal and Authorities?*

The Apex Court exercised its extraordinary powers under Article 142 read with Article 141 of the Constitution of India and thereby, had extended the period of limitation w.e.f. March 15, 2020, for filing petitions/ applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

There is a school of thought advocated in the legal circles about the applicability of the above order with regard to activities mentioned as above that the same may not be applicable to tax laws and before the tax

authorities who are not Courts*. But I do not think there is any such embargo – order clear states that limitation would be extended w.e.f. March 15,2020 if the limitation is prescribed under the general law of limitation or under special laws ( both Central and /or States). Once the order is applicable to authorities as well then in my view such a beneficial order to do complete justice should be applicable to tax laws provided the filing by the litigants falls within the purposes allowed i.e. filing of petitions, applications, suits, appeals and all other proceedings*.

It is therefore apparent that the relief under the Order extends to all proceedings under Special laws viz. Income- tax Act, 1961, GST Act, 2017, Companies Act 2013 etc. being Central-Special laws.

Important Supreme Court Judgments after the order of March 23,2020 – lend more clarify to the order.

A three-judge bench in S Kassi v The State June 19, 2020, that the Court's Order dated March 23, 2020, wherein the period of limitation had been extended for filing petitions, applications, suits, appeals on account of COVID-19 pandemic cannot be interpreted in a manner so as to amount to an extension of the period for filing charge-sheet under Section 167(2) of the Code of Criminal Procedure.

The argument of the State was:

> "6. Learned counsel for the State supports the impugned judgment and submits that due to enormous difficulties in carrying out the investigation, charge sheet could not be filed in the present case and the appellant is not entitled to take benefit of Section 167(2) in precarious situation which has occurred on account of pandemic of Covid-19."

The question before the SC was framed in the following para:

> 8. The only issue which need to be decided in this appeal is as to whether the appellant due to non- submission of charge sheet within the prescribed period by the prosecution was entitled for grant of bail as per section 167(2) of the Code of Criminal Procedure. Before we notice the order of this Court dated 23.03.2020 passed in Suo Motu W.P.(C) No. 3 of 2020 which has been applied by the High Court on the provisions of Section 167(2) Cr.P.C., we need to notice object and purpose of enactment of Section 167 of the Code of Criminal Procedure.

Xx

15. After noticing the purpose and object of Section 167, we now come to the judgment of this Court dated 23.03.2020 which has been relied and referred by learned Single Judge in the impugned judgment for holding that the time period in Section 167(2) is eclipsed by judgement of this Court dated 23.03.2020. The Order dated 23.03.2020 was passed by this Court in Suo Motu W.P.(C) No.3 of 2020….."

Xx

17. The limitation for filing petitions/ applications/ suits/ appeals/ all other proceedings was extended to obviate lawyers/litigants to come physically to file such proceedings in respective Courts/ Tribunals. The order was passed to protect the litigants/lawyers whose petitions/ applications/ suits/ appeals/all other proceedings would become time barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/ applications/ suits/ appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. *The order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period of filing charge sheet by police as contemplated under* Section 167(2) of the Code of Criminal Procedure. The Investigating Officer could have submitted/filed the charge sheet before the (Incharge) Magistrate. Therefore, even during the lockdown and as has been done in so many cases the charge-sheet could have been filed/ submitted before the Magistrate (Incharge) and the Investigating Officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate (Incharge).

Xx

*The order of this Court dated 23.03.2020 never meant to curtail any provision* of Code of Criminal Procedure or any other statute which was enacted to protect the Personal Liberty of a person. The right of prosecution to file a charge sheet even after a period of 60 days/ 90 days is not barred. The prosecution can very well file a charge sheet after 60 days/90 days but without filing a charge sheet they cannot detain an accused beyond a said period when the accused

prays to the court to set him at liberty due to non-filing of the charge sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167, Cr.P.C. *Following observations of Madras High Court in the impugned judgment are clearly contrary to the order dated 23.03.2020 of this Court: -*

> *"...The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed under* Section 167(2) of the Code of Criminal Procedure also..."

*Paara 25…….The view of the learned Single Judge that the restrictions, which have been imposed during period of lockdown by the Government of India should not give right to an accused to pray for grant of default bail even though charge sheet has not been filed within the time prescribed under* Section 167(2) of the Code of Criminal Procedure, is clearly erroneous and not in accordance with law.

*26. We, thus, are of the view that neither this Court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under* Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23.03.2020.

In another recent case Sagufa Ahmed & ors. V. Upper Assam Plywood Products Pvt. Ltd. & ors. the Three Judge Bench of the Hon'ble Supreme Court headed by Chief Justice S.A. Bobde has clarified the implication of the Court's March 23, 2020 order on an application filed for condonation of delay and stated that claims cannot be made to benefit from the order passed by the Court on March 23, 2020 (extending period of limitation), for also enlarging the period upto which delay can be condoned.

SC Bench then enunciated in para 19 that, *"But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion*

*conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them*."

The three-judge bench has explicitly concluded that the order extending limitation period shall not include any such period up to which delay can be condoned under any statutory provision.

Though the appellants admittedly received the certified copy of the order on 19.12.2019, they chose to file the statutory appeal before NCLAT on 20.07.2020. The appeal was filed along with an application for condonation of delay.

By an order dated 04.08.2020, the Appellate Tribunal dismissed the application for condonation of delay on the ground that the Tribunal has no power to condone the delay beyond a period of 45 days. Consequently the appeal was also dismissed. It is against the dismissal of both the application for condonation of delay as well as the appeal, that the appellants have come up with the present appeals.

– The Court clarified that vide its March 23 order, the Court only extended "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the Statute.

– The Apex Court also observed that the order extending period of limitation was passed to benefit vigilant litigants who were who could not file appeal or initiate proceedings owing to the pandemic and lockdown within the period of limitation prescribed by general or special law. While emphasizing on the principles governing the Law of Limitation, the Apex Court also noted that the law is based on the legal maxim- Vigilantibus Non Dormientibus Jura Subveniunt i.e. law will assist only those who are vigilant about their rights and not those who sleep over their rights.

SC Observed:

What was extended by the above order of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute.

If the "time limit" was over prior to the COVID-19 lockdown and extension of limitation order passed on 23.03.2020 and the "further period" fell during the lockdown, would the lockdown period stand excluded for the purpose of calculating the "further period"?

In the context of the COVID-19 lockdown extension of limitation order passed on 23.03.2020, by the Hon'ble Supreme Court of India, the Hon'ble Court has clarified that the said order would only benefit cases where the "time period" prescribed under the Act has not expired and would not apply to cases where time period had expired prior to the COVID-19 lockdown. In other words, if the 45th day falls after 23rd March, 2020, i.e. after the extension of limitation order, then the right of such persons to file an appeal is protected by the order in Suo Moto Writ Petition (Civil) No. 3 of 2020. However, where the 45 day period was over before 23rd March, 2020 and the further period extends during the lockdown period, i.e. extends beyond 23.03.2020, the order does not benefit persons seeking to file their appeals during the extended period and if the clock would tick for them, for the purpose of determining "delay" in filing the appeal. Thus, as a result of this order of the Hon'ble Supreme Court, all persons, whose 45-day or 30-day period to file appeals before the NCLAT had expired prior to 23rd March, 2020, would lose their right to file an appeal, altogether, if they have not filed their appeals within the further period 45-days or 15-days. The rationale behind this order of the Hon'ble Supreme Court is that such persons, by failing to file appeals within the "time period" had failed to act with vigilance in respect of their rights.

**C. March 2021 Order of the Supreme Court (Call it second order )**

The Apex Court on March 8, 2021, revisited their earlier order dated March 23, 2020.

The Apex Court observed that although the pandemic had not ended, there was significant improvement in the situation basis which the lockdowns had been lifted in most places and the country was returning to normalcy. The Apex Court also noted that majority Courts and Tribunals had already started functioning either physically or virtually. Accordingly, the Supreme Court lifted the extension that had been granted on the limitation period, with the following directions:

1. For any suit, appeal, application or proceeding, the period between March 15, 2020 and March 14, 2021 would be excluded for the purpose of calculating the limitation period. It would be considered that the limitation period had stopped running from March 15, 2020

till March 14, 2021 and would resume from March 15, 2021 with the remaining balance period of limitation as on March 15, 2020.

2. In cases where the limitation would have expired during the period between March 15, 2020 and March 14, 2021, irrespective of the remaining balance period of limitation, litigants would be allowed a period of 90 days from March 15, 2021. In the event the actual balance period of limitation remaining is greater than 90 days, that longer period would apply with effect from March 15, 2021.

3. The period from March 15, 2020 till March 14, 2021 would also be excluded in computing the limitation periods prescribed under specials laws such as Sections 23(4) and 29A of the Arbitration Act, Section 12A of the Commercial Courts Act and provisos (b) and (c) of Section 138 of the NI Act, that prescribe periods of limitation for instituting proceedings, outer limits within which the court or tribunal can condone delay and termination of proceedings.

In view of the aforesaid, the period between March 15, 2020 till March 14, 2021 shall be excluded from calculating the period of limitation in all cases i.e. suits/appeals/petitions/all other proceedings in all Courts/ Tribunals/Authorities. A further time period of 90 days from March 15, 2021 till June 12, 2021 shall be provided to all persons where limitation would have expired during the period between March 15, 2020 till March 14, 2021. However, in cases where the balance period of limitation is more than 90 days from March 15, 2021, then the longer period of limitation will be applicable.

While lifting the extension of limitation on March 8 this year, the Supreme Court said that the period from 15.03.2021 to 14.03.2021 will stand excluded

**Order of 27th April 21 (I call it Third Order)**

The bench initially suggested extending the limitation period till July 15, 2021, but the Attorney General of India KK Venugopal urged it to grant extension until further orders.

Meanwhile, Solicitor General Tushar Mehta appealed to the SC bench to include in the order that the time duration for doing any act under any law also be extended, which the bench accepted.

The bench extended all periods of limitation ending on 14.03.2021 until further orders, by restoring the order passed on March 23, 2020, which had extended the limitation period prescribed.

At the beginning of a second and deadlier wave in April 2021, the Supreme Court Advocate on Record Association filed an interlocutory application highlighting the daily surge in Covid-19 cases in Delhi and the difficulties faced by the advocates and the litigants in instituting cases in Delhi. Accordingly, they prayed for the restoration of the order of the Supreme Court dated March 23, 2020.

Acting on this interlocutory application, a bench comprising of Chief Justice N. V. Ramana, Justice Surya Kant and Justice A.S. Bopanna, took judicial notice of the fact that the dire situation due to a rise in Covid 19 cases was not just limited to Delhi, but could be felt across the country.

Accordingly, the Apex Court once again invoked their powers under Article 142 read with Article 141 of the Constitution of India and restored their earlier order dated March 23, 2020, to be read in consonance with their order dated March 8, 2021.

The Court directed that the period of limitation, *as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not*, would stand extended till further orders.

The Supreme Court has also clarified that, in continuation of their order dated March 8, 2021, the period from March 14, 2021 ( the date for end of limitation mentioned in the order of March 8,2021) till further orders, would also be excluded in calculating the limitation periods prescribed under Sections 23 (4) and 29A of the Arbitration Act, Section 12A of the Commercial Courts Act, provisos (b) and (c) of Section 138 of the NI Act and any other laws, which prescribe periods of limitation for instituting proceedings, outer limits within which the court or tribunal can condone delay and termination of proceedings.

The order dated March 23, 2020 has been restored until further orders and the next date of hearing in the matter is July 19, 2021.

**D. What are the implications of all the three orders on tax laws and litigation for the litigants and for the revenue?**

The general law of limitation in India is clearly provided in Section 3 of the Limitation Act, 1963 (“Limitation Act”) which states that every suit, appeal and application shall be filed within the prescribed period of time, failing which the suit, appeal and application shall be dismissed. However, Section 4 of the Limitation Act provides that when the prescribed period

for any suit, appeal and application expires on a day when the court is closed, the said suit, appeal and application may be filed on the day when the court re-opens. As per the Explanation appended to Section 4, the court shall be deemed to be closed on any day within the meaning of the Section, if during any part of its normal working hours it remains closed on that day.

The Supreme Court took account of the situation and the difficulties faced by the litigants across the country in filing their petitions/ application/ suits/ appeals /all other proceedings within the period of limitation prescribed under general law of limitation or under any special Law (both Central and/ or State). In order to preclude the above difficulties and to ensure that lawyers and/or litigants do not have to come physically to file their petitions/ application/ suits/ appeals in respective courts/ tribunals/ forums across the country, the Supreme Court *suo motu* exercising its power, under Article 142 read with Article 141 of the Constitution of India, passed an order dated 23rd March, 2020 in *Suo motu Writ Petition (Civil) No. 3 of 2020* and extended the limitation in all kind of matters w.e.f. 15th March, 2020 till further orders. In the said order the Supreme Court observed as under:

> *"To obviate such difficulties and to ensure that the lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further orders to be passed by this Court in present proceedings.*"

The aforementioned Supreme Court order clearly overrides the earlier Delhi High Court order which treated the lock-down period as a "closure" under Section 4 of the Limitation Act. In our view, the aforementioned order of the Supreme Court may be interpreted to mean that the clock of limitation stops ticking with effect from 15th March, 2020 till further orders and will resume only once the Supreme Court notifies so, i.e. the period between 15th March, 2020 till further orders of the Supreme Court in this matter shall be excluded while computing the period of limitation.

The Hon'ble Supreme Court passed an order dated 8.03.2021 in the case of *"*In Re: Cognizance for extension of limitation", Suo Motu Writ Petition (Civil) No. 3 of 2020 lifting the extension of limitation granted through its order dated 23.03.2020 and held that period from 15.03.2020

to 14.03.2021 is excluded from limitation period in order to file any Petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (Both Central or State).

A bench headed by Chief Justice N V Ramana said the extraordinary situation caused by the sudden, second outburst of coronavirus requires extraordinary measures to minimise the hardship of litigant-public in all the states.

> "We, therefore, restore the order dated March 23, 2020 and in continuation of the order dated March 8, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders," the top court said.

When order of 23rd March 2020 is restored then the order dated 8th March 2021 where the limitation period was determined in terms of order dated 23rd March 2020, then it should mean that order of 8th March 21 is otiose now and the latest order passed by the Supreme Court will refer the limitations mentioned in order of March 23, 2020.

The latest order as quoted herein above is quite different and is clarificatory in nature in so far as the apex court has perhaps enhanced the scope of the order dated 23rd March 2020 or clarified, so to say, to direct that the limitation period in respect of all judicial or quasi-judicial proceedings shall stand extended…….

**Proceedings – what it means?**

Legal proceeding is an activity that seeks to invoke the power of a tribunal in order to enforce a law. Although the term may be defined more broadly or more narrowly as circumstances require, it has been noted that the term *legal proceedings* includes proceedings brought by or at the instigation of a public authority, and an appeal against the decision of a court or tribunal. Legal proceedings are generally characterized by an orderly process in which participants or their representatives are able to present evidence in support of their claims, and to argue in favor of particular interpretations of the law, after which a judge, jury, or other fact finder makes a determination of the factual and legal issue.

The question is whether filing of return is a proceeding? In my view NO and hence order of the Supreme Court does not cover filing of returns and payment of taxes – as such activities are not covered within the definition

of proceeding unless a notice to determine the correctness or otherwise of the returns had been issued prior to March 15,2020 and that had a limitation prescribed – for example notice under Section 148 of the Income Tax asking a person to file the return and filing of the period is 30 days; then if the thirty days had not expired before 15th March 20; then the limitation continues to be available.

ALSO all notifications or circulars or clarifications issued by the Central Government or State Governments or Public authorities etc. that are in contravention of the judgment of the Supreme shall be subject to the limitation as mentioned in the Supreme Court Judgment dated 23rd March 2020 that still continues.

The net effect of all the three judgments is that if the limitation as prescribed in the General law or the Special Law ( Centre/State) had not expired before 15th March 2020 (First Order dated 23.3.20) then in my view we can still file suits / appeals / petitions / applications and all other proceedings in respect of all judicial or quasi-judicial proceedings notwithstanding the fact whether the delay was condonable or not: provided the limitation prescribed, and not the period for which the delay could be condoned, had not expired before 15th March 2020? In computing the period of limitation for any suit, appeal, application or proceeding irrespective of the limitation prescribed under the General law or Special Laws, whether condonable or not, the period from 15.03.2020 to till further order shall stand excluded.

Cases where Limitation Expires between March 15, 2020 and March 14, 2021: Where the actual limitation period has expired during the Exemption Period, it will be extended by the higher of (i) the balance number of days remaining in the limitation period from March 15, 2020; and (ii) 90 days, regardless of the actual balance period of limitation from March 15, 2021

**Does the Judgment of the Supreme Court also apply to Revenue?**

Further, the Hon'ble Supreme Court in the case of Arjun Khiamal Makhijani v. Jamnadas C. Tuliani(1989) 4 SCC 612 held that, Article 142 does not contemplate doing justice to one party by ignoring mandatory statutory provisions and thereby doing complete injustice to the other party by depriving such party of the benefit of the mandatory statutory provisions. Therefore, the implications of the Order of the will safeguard the interest of the taxpayers and the Department, equally.

If this was to be made applicable only to courts and tribunals, the words 'all other proceedings' and 'authorities' would not be used. The words used

in the order and indicative and not exhaustive and therefore need to be construed with enough latitude so as to confer the benefit that is sought to be given.

The Honourable Supreme Court in the case of *Sun Engineering works v UOI (1992) 198 ITR 297 (SC)* has held that it is neither desirable nor permissible to pick out a word or a sentence from the judgement of this court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this court. The judgement must be read as a whole and observations from judgement have to be considered in the light of the questions which were before this Court. A decision of this court takes its colour from the questions involved in the case in which it rendered.

Supreme Court in Delhi Judicial Service Assn. v. State of Gujarat7 wherein K.N. Singh, J. (as he then was) for a three-Member Bench observed:

"This Court's power under Article 142(1) to do 'complete justice' is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court."

These observations were approved by the Constitution Bench which decided Union Carbide Corpn. v. Union of India 9. Venkatachaliah, J. (as he then was) held that prohibitions or limitations or provisions contained in ordinary law cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142.

**Is CGST Notification No 14/2021 dated 1st May 2021, in partial contradiction of SC Orders on Extension of Limitation?**

The CBIC/Finance Ministry, issued CGST Notfication dated 1st May 2021, extending certain due dates and deadlines for CGST proceeding till 31st May 2021 . It maybe noted that the SC order referred supra, preceded the CGST notification, hence the CBIC would be well aware of the SC orders.

The SC orders are passed under Article 142/141. Article 141 states that the law declared by SC to be binding on all courts and lower judicial and quasi-judicial authorities.

Thus, for example, if the time limit of filing a refund application expires on 10th April 2021, (without being filed) the CBEC notification will treat it

as time barred as it precedes 15th April 2021, though this is well within the extension granted by the SC order . Similarly, even if the due date for such a transaction expires, say, on 1st May 2021, it will be extended vide the GST notfn, only till 31st May 2021, even if the SC does not pass its further orders by 31st May 2021.

Further, the said GST Notification also specifically excludes the following from the scope of its limited extension till 31st May 2021 , probably because it has construed these to be mere compliance transactions , not falling within the scope of " judicial and quasi/judicial proceedings":

- **Chapter IV of CGST Act: Time and Value of Supply Section 10(3):**
- **Composition Scheme option lapsing upon exceeding the threshold Section 25:**
- **Procedure for Registration Section 27:**
- **Special provisions for casual taxable person, non-resident taxable person Section 31:**
- **Tax Invoice Section 37:**
- **Furnishing details of outward supplies –GSTR-1 Section 47:**
- **Levy of Late fee**
- **Section 50: Interest**
- Section 69: Power to Arrest
- **Section 90: Liabilities of Partner of firm to pay tax**
- **Section 122: Penalty of certain offences**
- **Section 129: Detention, seizure and release of goods and conveyances in transit**
- **Section 39 except (3),(4) & (5): Furnishing of Returns (except GSTR-5,6,7)**
- **Section 68: Inspection of goods in movement in so far as e-way bill is concerned**

When a higher court has rendered a particular decision, said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. If litigants or lawyers are permitted to argue that something that was correct, but was not argued earlier before a higher court, and on that ground if courts below are permitted to take a different

view in a matter, possibly the entire law in relation to precedents and ratio decidendi will have to be rewritten and there would be total chaos. Moreover, by not following law laid down by Supreme Court, High Court or subordinate courts would also be violating provisions of Art. 141.(2015) 2 SCC 727

The Supreme Court is said to be the Guardian and Custodian of the Constitution and is vested with the magnificent task of interpreting and implementing the provisions of the Constitution to the best of the public interest and welfare. Hence in interpreting Article 141 of the Constitution of India the Supreme Court in the case Bengal Immunity Co. V State of Bihar (AIR 1955 SC 661)laid down that there is nothing in the Constitution of India which stops or prevents the Supreme Court in digressing from its previous decision if it is convinced of its error and its toxic effect on the general interest of the public. In addition to it the Court held that it is compulsory for the judicial conscience to rectify its error.

It can be judged that the Supreme Court in giving such an interpretation to Article 141 has given the utmost significance to the interest of the society and people at large and has demonstrated a mark of heroism in showing the courage and valour to accept and rectify its mistakes rather than allowing it to perpetuate into the country's polity and the legal set-up of the judiciary.

Justice Bronson in Pierce v. Delameter (AIR 2011 SC 1989) dealing with the similar view held that a judge ought to be wise enough to know that he is fallible and, there, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors.

Thus it can be well concluded that by not including the Supreme Court under the expression all courts under Article 141 of the Indian Constitution the Judiciary has given a purposive interpretation to this article thereby upholding the importance and significance of interpretation of statutes.

In accordance with Article 141 of the Constitution, the Supreme Court of India is enjoined to declare the procedural law as well as the substantive law. The term 'declared' is said to be wider than the term 'made' or 'found' for that matter. It has been specified that to declare means to announce a particular opinion. Indeed, the term "made" involves a process, while the term "declare" expresses a result. The law declared by the Supreme Court is the law of the land. It is a precedent for itself and for all courts/authorities in India.

The apex court in the case of Paramjit Kaur v. The State of Punjab went a step forward in order to expand the powers laid down under Article 141 of the Constitution. In order to enquire about the extrajudicial killings in the State of Punjab, the Supreme Court issued direction to the National Human Rights Commission.

Therefore, the jurisdiction of such a Commission came into question in reference to the statutory limitations and obligations of the respective Commission. The apex court accordingly held that by its orders and directions it can confer jurisdiction on a particular body beyond the purview of the Jurisdiction.

Moreover, in the case of ICICI Bank v. Municipal Corporation of Greater Bombay stated that the decision given by the apex court must be read in accordance with the context of the statutory provisions which have been interpreted by the competent court.

However, in context of the aforesaid decisions, particularly in, it may be noted that various special statutes provide for filing of pleadings or initiation of proceedings within specified periods of limitation, and not beyond. For example limitation and condonation for filing of appeals, refund applications etc.

The situation resulting from the coronavirus pandemic is indeed unprecedented. Most courts and tribunals across the country continue to remain closed for physical conduction of business, or have adopted diminished modes of functioning. The Order passed by the Supreme Court extending limitation is well-intended, but significant questions surrounding its validity and the bounds of Article 142 remain to be answered.

**Remember Ayodhya Dispute case**

“The judgment shows a classic application of Article 141 read with Article 142 of the Constitution of India, 1950. In a civil suit where title to the property was not the only governing factor, Honble Supreme Court pronounces a verdict favoring the interests of both the parties,”

It is now settled that Article 142 is a provision of procedure and therefore the interpretation put on “complete justice” to the effect that statutory provisions may be overridden, is clearly erroneous.

Then a question may arise as to what for the complete justice provision is inserted in Article 142. This was answered by

Gajendragadkar, J. (as he then was) in Prem Chand Garg v. Excise Commr., U.P., Allahabad1 in the following words: (AIR p. 1003, para 13)

> "It may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties."

These observations signify that the complete justice provision can be invoked for procedural purposes only. Therefore Article 142 does not confer substantive power on the Supreme Court to do "complete justice

**Stare decisis and Art. 141, Constitution of India**

The principle of stare decisis is embedded in latin Maxim 'stare decisis et non quieta movere', firmly entrenched in British system of doctrine of binding precedent and embodied in Article 141 of the Constitution of India, in short 'Constitution' if provides that the law declared by Supreme Court shall be binding on all courts within the territory of India. The expressions 'binding' and 'on all courts' catch our eyes. It is to be discerned as to what is binding and determined whether the Supreme Court is bound by its own decisions.

**Meaning of Stare decisis**

'Stare decisis' means 'to stand by decided cases'. We have hierarchy of courts. The Supreme Court is at the top of pyramid. It decides cases with a seal of finality. The decision is an authority for what it actually decides. What is of essence in a decision is it ratio, and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent

All Courts in this country are bound by the judgment of the Apex Court. By not following the law laid down by the SC, HCs and Subordinate Courts would also be violating the provisions of Article 141 of the Constitution of India.

*YES THERE ARE CONTROVERSIES SURROUNDING SUCH ORDERS OF THE SUPREME COURT AND THERE ARE JUDGMENTS*

*OF THE SUPREME COURT THAT LAY DOWN THAT SUBSTANTIVE LAWS AS PRESCRIBED UNDER STATUTORY PROVISIONS CANNOT BE EXTENDED BEYOND THE WILL OF THE LAWKMAKERS.*

*BUT MY VIEW IS THAT THROUGH THESE THREE ORDERS THE SUPREME COURT HAS NOT AMENDED ANY SUBSTANTIVE PROVISIONS BUT EXTENDED ONLY PROCEDURAL LIMITATIONS AND HENCE BY DECLARING THEIR ORDERS UNDER ARTICLE 142 AS BINDING UNDER ARTICLE 141 OF THE CONSTITUTION ON ALL HIGH COURTS, TRIBUNALS AND AUTHORITIES THEY HAVE MADE IT ABUNDANTLY CLEAR THAT LIMITATIONS AS PRESCRIBED UNDER ANY GENERAL OF SPECIAL LAW, OF THE CENTRE OR THE STATES, SHALL STAND EXTENDED AND THE PERIOD FROM 15.3.20 TILL FURTHER ORDERS SHOULD BE DEEMED TO HAVE BEEN EXCLUDED. THIS IS MY TAKE.*

The notifications issued by CBEC in my view will be definitely subject to law declared by the Supreme Court and there is not doubt about it; otherwise all the law makers will start issuing Notifications as per powers given in the Statute to nullify the Supreme Court orders under Article 142 read with Article 141 of the Constitution and this perhaps is not even envisaged as per scheme of the Constitution of India; except that only Supreme Court can review their orders under Article 137 of the Constitution.

The Hon'ble Supreme Court has passed the Order by invoking its plenary powers envisaged under Article 142 read with Article 141 of the Constitution of India (**"Constitution"**).

Article 142 of the Constitution empowers Supreme Court, in the exercise of its jurisdiction, to pass any decree or order as is necessary for doing complete justice in any cause or matter pending before it. Such decree or order shall be enforceable throughout the territory of India in the prescribed manner[4].

The powers of the Supreme Court to make laws have been discussed in a multitude of judgments. In the matter of Vineet Narain & Others vs Union Of India & Another the Supreme Court has held that by Article 142, the Supreme Court is vested with powers to issue necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. The Supreme Court may make orders which have the effect of law by virtue of Article 141 of Constitution.

Further, under Article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all courts within the territory of India.

From the bare perusal of the above-mentioned article 142 it is amply clear that the power conferred by this Article on Hon'ble Supreme Court is plenary, untrammeled and unbridled power not inhibited by any constraints or limitations so much so that it can get its order enforced without depending on the executive for the implementation of its order. It can also be considered a panacea for the public at large to have justice done in any cause' or 'matter' pending before it. The Article clothes the Hon'ble Court to pass orders that holds the field as a law, until the Legislature acts upon the same.

Hence, legislative power exercised by the Supreme Court through the Order is compulsorily binding on all the Courts (including Tribunals and other judicial Authorities) across India

**SC DECLARED THAT**

> "We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/ Tribunals a authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/ Tribunals within their respective jurisdiction. Issue notice to all the Registrars General of the High Courts, returnable in four weeks"

M/S. SS Group Pvt. Ltd. v. Aaditya J. Garg & Anr., CA No. 4085 of 2020

The Supreme Court observed that its order of 23rd March 2020 extending limitation for filing in courts and tribunals is still operative.

It set aside an order passed by National Consumer Disputes Redressal Commission which declined to take a written statement on the ground that it has no power to extend the time for filing the response to the complaint beyond 45 days.

The court noted that, in this case, the period of 30 days to file written statement expired on 12.08.2020 and extended period of 15 days expired on 27.08.2020 and the same was filed only thereafter.

The court observed that it is true that the decision of the Constitution Bench of this Court in New India Assurance Co. Ltd. Hilli Multipurpose Cold Storage clearly provides that no written statement is to be allowed to be filed beyond the period of 45 days as per Section 38 of the Consumer Protection Act, 2019, the bench noted, however, the same shall be superseded with the Supreme Court extension order of March 2020.

That the present lockdown cannot be treated as a routine court vacation, which is why the Hon'ble Supreme Court has made a conscious decision of invoking its inherent powers under Article 142 read with Article 141 of the Constitution of India and not Section 4 of the Limitation Act, 1963. The Hon'ble Supreme Court was well aware of the fact that such "extension of limitation" is not stipulated within the scope of Section 4 or any other provision of the Act. The SC Order has sought to go beyond the benefit of Section 4 of the Act, and in effect, "suspended" the period of limitation for all filings and accordingly used the word "extended". The SC Order has indeed provided immense relief to litigants across the country who are due to make filings in various courts / tribunals and are unable to be physically present in court, or undertake any travel for these filings on account of the 'lockdown' measures. 3 Conclusion: However, those cases where the prescribed limitation period has expired before 15th March 2020, are not covered by the SC Order and such cases will be dealt with by the respective Courts/Tribunals on a case by case basis as per the applicable law.

Therefore, in view of the above detailed legal discussions, my take is that limitations for filing all applications; appeals, petitions and all other proceedings if prescribed in any special law including GST, CUSTOMS, VAT OR CST shall stand extended automatically provided while completing such acts we file an application seeking exclusion of such time as per the Supreme Court Judgments; subject to the only rider that the limitation as prescribed under any special las, sans the condonation provision, should not have expired prior to 15.3.20 and in that case only period available further is the period for which delay could be condoned. If there is no restraint on the period for condoning the delay, then the Supreme Court judgment can be taken shelter for moving application for condonation of delay.

Also keep in mind all extensions may be applicable for the revenue as well if the limitation periods for the proceedings had expired between the exemption period.

SV

***"LET'S LEARN TOGETHER"***

# Section 83 – A Draconion Provision Of CGST Act

*Sushil Verma, Advocate*

Please note that before the aforesaid amendment, the provisions of Section 83 of the CGST Act, 2017 may be read as under:

> *"(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.*
>
> *(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1)."*

It is stated that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under section *62 or section 63 or section 64 or section 67 or section 73 or section 74* till the expiry of a period of one year from the date of order made thereunder. However, **and** after the proposed amendment provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under **Chapter XII, Chapter XIV or Chapter XV** till the expiry of a period of one year from the date of order made thereunder.

In section 83 of the Central Goods and Services Tax Act, for sub-section (1), the following sub-section has been substituted, namely:—

> "(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.".

It has been proposed to increase the ambit of provisional attachment by permitting attachments in proceedings in the nature of

**Assessment (Chapter XII) [Section 59 to 64];**
**Inspection, Search, Seizure and Arrest (Chapter XIV) [Section 67 to 72] and Demands & Recovery (Chapter XV) [Section 73 to 84]**

It is also pertinent to note that before the aforesaid amendment, attachment of Property was limited to the taxable person. However, after the amendment, provisional attachment can also be made to the person specified in sub-section (1A) of Section 122 of CGST Act, 2017. Section 1A of Section 122 CGST Act, 2017 refers to those persons who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of section 122(1) of CGST Act,2017 and at whose instance such transaction is conducted.

The provisions covered for Section 83 are now all pervasive and in all 14 sections and hence 14 proceedings are covered and for a full period of one year and not only during the pendency of the proceedings as was the case earlier.

That does not mean the judgments rendered in the unamended provision go away – the principles remain the same and all the judgments, more than 60 High Court judgments, remain very relevant and we should all follow the principles laid down therein.

The DB of Gujarat High Court in **Pranit Hem Desai vs Additional Director General on 28th August, 2019** observed that power u/s 83 **should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.**

The DB of Gujarat High Court in the above matter observed as follows:

> "Section 83 of the State GST Act empowers the Assessing Authority to make a provisional attachment of any property of the assessee during the pendency of any proceeding for the assessment or reassessment of any turnover, even though there is no demand outstanding against the assessee, if he is of the opinion that it is necessary to do so to protect the interest of the revenue. This provision has been made, in our opinion, in order to protect the interest of the revenue in cases where the raising of demand is likely to take time because of the investigations and there is apprehension that the assessee may default the ultimate collection of the demand. In other words, Section 83 gives a power to be exercised during the pendency of any proceeding for assessment or reassessment, so that the assessee may not fritter away or secrete his resources out of the reach of the Commercial Tax department when the assessment or reassessment is completed.

> The expression ***"for the purpose of protecting the interest of the revenue"*** occurring in Section 83 of the Act is very wide in its meaning. Further, the orders of provisional attachment must be in writing. There must be some material on record to indicate that the Assessing Authority had formed an opinion on the basis thereof that it was necessary to attach the property in order to protect the interest of the revenue. The provisional attachment provided under section 83 is more like an attachment before judgment under the Code of Civil Procedure. It is a liability on the property. However, **the power conferred upon the Assessing Authority under Section 83 is very drastic, far reaching power and that power has to be used sparingly and only on substantive weighty grounds and for valid reasons**. To ensure that this power is not misused, no safeguards have been provided in the Section 83. One thing is clear that this power should be exercised by the Authority only if there is a **reasonable apprehension that the assessee may default** the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and circumspection. It should not be exercised unless there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of the whole or any part of his property with a view to thwarting the ultimate collection of the demand. Moreover, attachment should be made of the properties and to the extent it is required to achieve the above object. **It should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee."**

The Bombay High Court in **Gandhi Trading v. Asst. CIT Bom.** has opined that the attachment should be made, as far as possible, of the immovable properties if that can protect the Revenue. The attachment of bank accounts and trading assets should be resorted to only as a last resort because, the attachment of the bank accounts of the assessee would paralyse the functions and business of the assessee. The Authority, therefore, should exercise the power conferred upon him under Section 83 of the Act with circumspection and fairly and reasonably. No hard and fast rule can be laid down as to how and under what circumstances the power under Section 83 can be invoked by the Authority. The discretion conferred on the Authority shall be brought to bear having regard to the facts and circumstances of each case. It is not permissible for the Authority to equate the provisional attachment envisaged under Section 83 of the Act with attachment in the course of the recovery proceedings.

The DB of Punjab & High Court, in a very latest judgment, in the case of Bindal Smelting Pvt. Ltd. vs. explained as to how the words“ is of the opinion” would be interpreted as appearing in Section 83 of the CGST Act, 2017.

> “The expression ‘is of the opinion‘ or ‘has reason to believe‘ are of the same connotation and are indicative of subjective satisfaction of Commissioner. It is settled law that ‘opinion‘ must have a rational connection with or relevant bearing on the formation of the opinion. Rational connection postulates that there must be a direct nexus or live link between the protection of interest and available property which might not be available at the time of recovery of taxes after final adjudication of the dispute. The opinion must be formed in good faith and should not be a mere pretense. Courts are entitled to determine whether the formation of opinion is arbitrary, capricious, or whimsical.”

**Who Can Exercise Powers**

The DB of Gujarat High Court in Valerius Industries vs. Union of India observed that it is only the opinion of the Commissioner which is condition precedent for taking action under Section 83 for provisional attachment of any property. However, any exercise of powers by any other officers (other than Commissioner) shall be in violation of the mandate of Section 83 and consequently, the provisional attachment shall be illegal. In other words, the formation of the opinion cannot be by any officer junior to the Commissioner.

In the most recnet judgment dealing with Section 83 under the provisions of HP GST Act the Supreme Court through DB has observed as follows and these observations attach the basic root of the GST enforcement through such terrorising tactics and all kind of officers includign officers of DGGEI start exercising these powers.

**SC: GST is a draconian law. It needs to be structure**

**Parliament Intended GST as Citizen-Friendly Tax Structure, But Its Purpose Lost by the Manner In which It Is Enforced: Supreme Court**

**Facts and Issue of the case**

In the instant case, on 19 January 2019, a provisional attachment was levied under Section 83 of the Himachal Pradesh Goods and Services Tax Act 2017. On 30 January 2019, the provisional attachment was lifted after the petitioner had submitted a representation under Rule 159(5). Yet on 28 October 2020, a fresh order of provisional attachment was passed based

on allegations pertaining to the same period and cause of action. The petitioner M/s Radha Krishna Industries submitted a representation on 4 November 2020 specifically seeking an opportunity of being heard; and an order was passed on 6 November 2020 rejecting the representation and confirming the provisional attachment without dealing with the issues which have been raised by the petitioner and without furnishing an opportunity of being heard.

**The substantial legal issue before the SC**

It has been submitted before the Supreme Court that the power to order a provisional attachment under Section 83 is a draconian power and strict compliance with the provisions of the statute is necessary.

**Observations of the Supreme Court**

**Justice D. Y Chandrachud has observed that the Parliament had intended the GST to be a citizen-friendly tax structure. The purpose of the Act is lost by the manner in which tax law is enforced in the country**

The bench of Justices Chandrachud and M. R. Shah were dealing with contours of the power of provisional attachment of property, including bank accounts, to protect revenue, under the Himachal Pradesh GST Act, 2017. Section 83 of the Act provides that where during the pendency of any proceedings under the Act, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person.

The bench had expressed that, the earlier view was that the 'opinion' should be a subjective opinion. Now, the position is that there should be some tangible material to form the opinion. Although 'order in writing' does not mean that the order should be like a judgement, but it must show an application of mind. A balance has to be maintained between protecting the interests of revenue and protecting genuine business.

Justice Chandrachud made remarks that; the country needs to come out of this tax culture that 'businesses are all fraudulent'! Even where 12 crore tax has been paid, just because some tax is still due, the department can't start attaching property! If there is any alienation of assets or the assessee is winding up or going into liquidation, it is understandable, but just because the department is having the account numbers, it can't start attaching and even block the receivables!"

Justice Chandrachud spoke of introducing a mechanism of assessment of the tax officers with a view to inculcate accountability- "Tax officers raise

huge demands after assessment – of 10,000 crores! If this is reduced to 1000 crores by the Appellate Tribunal or the Supreme Court, it must go into the assessment of the tax officer! There is no accountability at all"

Justice Chandrachud has continued in his judgement that, the problem is in the fine print. In order to make the GST Act workable, the message must percolate to the actual authorities- Why the legislation has made certain provisions, what is the purpose behind them? For example, the Act provides for filing of an appeal from any order on a deposit of that tax, interest and penalty which is undisputed, plus 10% of the balance

Justice Chandrachud also criticised the exercise of the power of provisional attachment as a "pre-emptive strike"- "The law is that when it is necessary to protect the interest of revenue, because there is a likelihood that revenue will not be able to enforce the assessment order, there may be an order for provisional attachment. The department cannot just go on attaching only because there is to be an assessment order! It cannot be be a pre-emptive strike!"

The bench also pulled up the respondent-authorities in the instant case over the stand that providing an opportunity for hearing in connection with an order of attachment was a discretion-"How can department file such a counter-affidavit? The rules say that the assessee will be given an opportunity for filing objections and of a hearing!"

Justice Chandrachud said that, GST is a draconian law. It needs to be structured. The tax authorities have to abide by the mandate of the law, the letter and the spirit of the law. This is a very important issue. That is why we are taking this up, because once we laid down the law, it applies to the entire country"

**Finally the Court concluded that :**

In the present case, it has been submitted that the petitioner has paid as much as Rs 12 crores towards revenue demands of the State in the assessment year and there was no question of the provisional attachment being necessitated to protect the interest of the revenue.

- (M/s Radha Krishna Industris Vs State of Himachal Pradhesh)

Well this brief Article is only for apprecieating the import of unamended and the amended Section 83 and hence has not been loaded with judgments on various aspects and ramifications of Section 83.

# "Understanding the Latest Amendments in Goods and Service Tax Law"

*Sushil Verma, Advocate*

The Union Budget saw major steps in indirect tax regime and its rationalization. Mandatory requirement of getting annual accounts audited removed as also the reconciliation statement to be submitted by the specified professional. Indeed a major step towards reducing compliance and eradicating the duplicating audits.

To allow ITC only if the supplier has furnished details of invoice or debit note in its return, and on the other hand it is indeed a welcome step to see the budget finally effectuating GST Council's decision to retrospectively amend the law so as to charge interest only on net cash liability in terms of Section 50 of the CGST Act ; of course without any provision to refund the interest amount if already paid by the tax payers- a question that is left to lawyers and professionals to fight over in courts.

**Major Amendments**

***1. Change in Scope of Supply:***

The term 'Supply' has been expanded to include the coverage of activities or transactions that involve the supply of goods by any person, other than an individual, for its members or constitutes or vice-versa, for cash, deferred payment or any other valuable consideration. This amendment will apply to private clubs and associations, and their members.

**Section 7(1) (aa): Scope of Supply (Insertion of new sub-section): Irrespective of supply made by unincorporated clubs or association to its members or vice versa, it will be considered a supply in the GST regime. It would be liable for tax on cash collected from members. This change will have a retrospective effect from the date of GST implementation, i.e., 01.07.2021.**

The term scope of supply has been expanded **with retrospective effect from 01.07.2017** to include all activities or transactions between a person other than individual and its members or constituents for cash, deferred payments or other valuable consideration by undertaking suitable amendments.

Already definitions of Supply of goods by an unincorporated association or body of persons to its member for cash, deferred payment or other valuable consideration were considered as supply. The said entry however did not include supply of services. The above amendment has been brought to make all activities including supply of services under the ambit of GST.

The retrospective amendment nullifies the ratio of the Supreme Court judgment in Calcutta Club case. A separately article penned by me is appearing in this part and hence no further comments being made there.

How will this amendment help Government garner tax from clubs etc. is a million dollar question and I for one will despise such amendments in tax laws where the supplier who supplied services will not be able to collect tax effective 1.7.2017 from the recipients of the services and if the supplier is unable to so collect then from where he is going to pay? Let us wait and watch the developments and whether the High Courts or the Supreme Court quash these retrospective amendments made specifically to nullify the ratio of the Supreme Court judgment in Calcutta Club?

***2. Input Tax Credit.***

**An amendment to Section 16 of the Central Goods and Services Tax (CGST) Act has added an eligibility criterion for determination of Input Tax Credit (ITC). Now, ITC will only be available to the buyer or recipient, if the invoice or debit note provided by them has not been provided by the supplier through the GSTR-1 or by using IFF/GSTR-2B**

Section 16(2) (aa): Eligibility and conditions for taking input tax credit: Considering this effect, now Input tax credit (ITC) will be available to the recipient only for those invoices which the supplier has duly uploaded in its return (GSTR-1). It means the invoice reflecting in the recipient's auto-populated Form GSTR-2A. For those invoices, only the recipient will be eligible to avail the ITC. This is now mandatory mapping of inwards in GSTR 2A:

Now in addition to four key parameters specified in Section 16(2) for availing input tax credit (as if those were not sufficient to torture the tax payers and the Courts) an additional criteria is being prescribed by way of an amendment to state that ITC of a particular invoice/debit note is available only when the same is furnished by the supplier in his statement of outward supply i.e. FORM GSTR-1 and it has been communicated to the recipient in the prescribed manner i.e. in FORM GSTR-2A.

### *3. GST AUDIT*

Another amendment under the Finance Bill, 2021, has resulted in the GST Audit being abolished. Section 35 (5) of the CGST Law is seeing the sub Section 5 being omitted to remove the previously mandatory requirements of annual accounts audits and submission of reconciliation statements by professionals.

Section 44 of the CGST Act is aimed at enabling people to self-certify now, with the requirement of audits by professionals being removed

Any person having turnover exceeding Rs. 5 Crore is mandated to get his accounts audited and file the annual return[6] (i.e. Form GSTR-9) along with reconciliation statement (i.e. Form GSTR-9C) certified by Chartered Accountant or Cost Accountant. The requirement for audit has been omitted and accordingly all the registered person would only be required to file annual return along with self-certified reconciliation statement.

Is it a revolution as claimed, I do not think so. The tax payers, going forward, would have to prepare annual return along with the reconciliation statement on their own. Accordingly, the burden of certifying the transaction executed by registered tax payers from the perspective of GST would solely lie on the tax payers themself. Thus, maybe a chartered accountant is absolved from the liability of certification but in my view this is not a good move for tax payers; they would commit more mistakes and face the wrath of the tax authorities when audits or inspections or seizers or raids happen.
1.5. Interest on delayed payment of liability

### *4. Interest*

**Section 50(1): Interest on delayed payment of tax: Interest will be liable to pay on the net cash tax liability, which means cash balance which is available in electronic cash ledger (ECL) will be deducted from the actual tax liability, and on the remaining portion to off-set, the tax liability will be liable for the interest as mentioned in Section 50(1) of CGST Act, 2017. This is in line with the 39th GST council meeting. This change will affect retrospectively from 01.07.2017.**

A further amendment in this year's Union Budget has made the seizure and confiscation of goods and conveyances, while in transit, a separate proceeding from those related to recovery of taxes.

The provision of interest has been retrospectively amended[8] from 01.07.2017 so as to state that interest is calculated on unpaid net liability (Net Liability = Gross Liability (-) Input Tax Credit Utilized).

Finance Act, 2019 had introduced this amendment but its application was kept prospective . Further, as per press release dated 26.08.2020, it was assured that there shall be no recovery of interest on delayed payment of tax through input tax credit for past period by the GST department. The present proviso addresses to the situation by making retrospective changes however **it also categorically states that if** any returns are filed after issuance of Show Cause Notice u/s 73 or 74 of the CGST Act, 2017 then interest has to be calculated on gross liability.

***5. Assessments:***

Section 75 of the CGST Act will now bear an explanation to Sub-Section (12), which clarifies the scope of 'Self-assessed tax'. It should include all the tax payable in respect of outward supplies, details of which have been included under Section 37 ( outward supplies GSTR 1) , but not included in the return furnished under Section 39 ( 3B). This amendment will cause problems for tax payers as they need to be doubly sure before supplies are reflected in GSTR 1 especially for FMCG companies who show huge suppliers to complete targets and then reverse such supplies. Now tax has to be paid without fail and then they can follow the route envisaged in Section 34 to issue credit notes strictly in terms of provisions of Section 34 of the CGST Act. This proposed amendment is a big sigh of relief as it clarifies that no penalty is payable for any liability arising on account difference between FORM GSTR-1 vs. FORM GSTR-3B

Appropriate amendmentshave been proposed to make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.

***6. Power to attach properties:***

**Section 83(1): Provisional attachment to protect revenue in certain cases:** If the Commissioner thinks fit, he/she can order in writing to attach the provisionally any property, including bank account and belonging even after the initiation of the proceedings rather than pendency of any proceedings. This attachment shall remain valid till one year from the date of order given in Section 83(1) of CGST Act, 2017

Section 83 of the CGST Act, which deals with the validity period of the attachment has been amended. Provisional attachment shall now be valid for the entire time period, starting at the time of initiation of proceedings

under Chapter XII, Chapter XIV or Chapter XV, till the expiry of the period of one year from the date. Further, the scope of attachment is expanded so as to state that the commissioner can provisionally attach property, including bank account, of not only of the taxable person but also of the person who retains benefits of the transaction and at whose instance the transaction is conducted.

Clearly the proposed amendment plans to attach properties of even such persons who avails and/or utilizes ITC pertaining to fake invoices.

A separate brief article penned by me appears separately on this issue including the SC judgment delivered recently.

### *7. Appeals*

Sub-Section (6) under Section 107 of the CGST Act now stands amended, wherein, tax payers cannot file an appeal against an order made under Sub-Section (3) of Section 129, unless a sum equivalent to 25% of the penalty has already been paid by the appellant.

We all know that yhe tax payer being aggrieved by an order or a decision made under the Act is required to pay 10% as pre-deposit of the disputed tax liability subject to maximum of Rs 25 cr before filing any appeal before the appellate authority/ Now with this amendment the taxpayer is required to pay 25% of the penalty as pre-deposit in cases where an appeal is filed for cases pertaining to detention or seizure of goods or conveyance.

Perhaps a thoughtless provision as the law is not clear where shall be the appeal be filed and if the tax payer wins (perhaps) the appeal how will the refund be given.

Proceedings with respect to detention, seizure and release

Another amendment facilitates the delinking of proceedings relating to detention, seizure and release of goods and conveyances in transit, from the proceedings related to the confiscation of goods or conveyances and the levying of penalties.

Appropriate amendments[15] have been proposed to delink the proceedings pertaining to detention, seizure and release of goods and conveyances in transit from proceedings relating to confiscation of goods or conveyances and levy of penalty.

***8. Power to collect information***

Appropriate amendments[1]have been made so as to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

The jurisdictional commissioner's powers and range are being expanded through substitution of Section 151 of the CGST Act, which now empowers the jurisdictional commissioner to call upon any person for information relating to any matter being dealt with in connection to the CGST Act.

***1. Bar on disclosure of Information***

No information shall be published without obtaining a previous written consent by the concerned officer or his authorized officer. This information shall not be used for the purpose of any proceedings under this Act without giving an opportunity to such person.

Section 152 of the Act is being amended through the Finance Bill, 2021, to ensure that the information obtained under relevant sections of the Act, shall not be used for any proceedings, without there being an opportunity for the person concerned to hear it.

***2. Provisions relating to Zero Rated Supply:***

Considering this amendment in Section 16 of IGST Act, 2017, now supplies of goods and services to only special economic zone developers or special economic zone units for authorized operations will enjoy the benefit of the zero ratings.

In the current scenario as per section 16(3) of IGST Act, 2017 there is two way of claiming refund of accumulated input tax credit (ITC):

1. Making supplies with payment of integrated tax and claiming refund thereof;

2. Making supplies without payment of integrated tax and claiming accumulated ITC based on formula mentioned in Rule 89(3) of CGST Act, 2017.

**Considering the above amendment, it restricts the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services.**

The Integrated Goods and Services Tax (IGST) law, meanwhile, has been amended in connection to provisions relating to Special Economic Zones (SEZs). The supply of goods or services to a SEZ developer or a SEZ unit will now only see a zero rate when the supply is for authorised operations. The zero-rated supply on the payment of integrated taxes will be restricted to only a notified class of taxpayers or for notified supplies of goods and services.

The term zero-rated supply[18] has been amended to state that zero rated supply of goods or services or both means such supplies provided for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.

The mechanism for claiming refund of zero-rated supplies of goods has been amended to state that refund claimed u/r 89 of the CGST Rules, 2017 is linked to the time limit prescribed under FEMA Act, 1999. In case of non-realization of export proceeds the said refund should be deposited along with applicable interest.

The Government may notify such class of taxpayers who may make zero rated supply on payment of integrated tax and claim refund of tax.

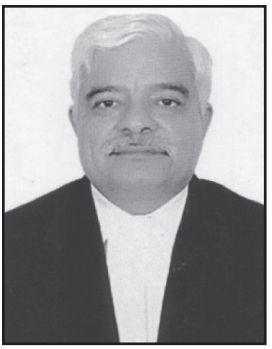
The Government may notify such goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim refund of tax so paid.

Supply provided by way of goods or services to SEZ would qualify as zerorated supplies provided that the same is being supplied towards authorized operations of SEZ which was not a pre-condition earlier. Accordingly, not all supplies provided to SEZ units would be considered as zero-rated supplies. Accordingly, all the circulars, notification and instructions issued in the past would be subject to verification in light of the concept of provision of supplies towards authorized operation.

The facility for refund of ITC by opting the option of exporting goods with payment of integrated tax towards zero-rated supply of goods or services would be restricted to a notified class of taxpayers and the same would not be applicable to all.

In case of zero rated supply of goods or services or both under LUT or bond without payment of tax, the supplier will be mandated to recover the export proceeds from the foreign customers. In case of any non-recovery

of sale proceeds in convertible foreign currency within time limit prescribed under FEMA Act, 1999 the tax payer will be required to deposit the refund with applicable interest within 30 days of the expiry of such time limit. The said provisions strengthen the very foundation of Rule 96B of the CGST Rules, 2017 which prescribes the same.



# INSOLVENCY AND BANKRUPTCY CODE 2016 – BASICS OF

*Sushil K Verma, Advocate*

This is an area where most of our members can easily practice – time bound legal provisions; not very complicated law for most of the cases and quick disposals of cases not involving big corporates. Here is a brief article, written on the advice of Raj Batra, our Editor-in-Chief of DSTC Cases. Hope you like this. Do send your observations to me; it will be a help. SV

The enactment of the Insolvency and Bankruptcy Code, 2016 ('Code'), is considered the biggest economic reform next only to the GST. Prior to its enactment, the legal and institutional mechanisms for dealing with debt default were not very effective and out of alignment with global best practices. The recovery actions initiated by the creditors, utilising available statutes, were time consuming and did not yield the desired outcomes. Adequate and timely availability of credit is important for the growth of any economy. Secured credit extended by banks is the largest component of credit markets in India, specifically in the absence of a mature capital debt market. The Code promotes entrepreneurship and availability of adequate credit, balances the interests of all stakeholders in a time-bound manner and maximises the value of the assets of debtors. The paradigm shift brought in by the Code ensures that when a firm defaults on its debt-servicing obligations, its control shifts from the promoters to a Committee of Creditors (CoC), i.e. transformation from the 'debtor in control' model to 'creditor in possession' one. Further, the process being time bound, the CoC has to either evaluate resolution proposals for resuscitating the company or take it to liquidation. Taking decisions at an early stage of financial stress in a time-bound manner gives a better chance to save a stressed firm as a going concern and the scarce resources of the economy can be put to best use

The Code provides creditors with a mechanism to initiate an insolvency resolution process in the event a debtor is unable to pay its debts.

On 28th May, 2016, the Code was published in the official gazette after its passage in Parliament. The Code provides for designating the NCLT and the Debts Recovery Tribunal (DRT) as the Adjudicating Authorities

for corporate persons, firms and individuals for resolution of insolvency, liquidation and bankruptcy. The Code was published in the Gazette of India dated 28.05.2016. Provisions of the Code were however brought into effect from different dates in terms of the proviso to Section 1(3) of the Code. In a notification dated 1st June, 2016, the Central Government had constituted 11 benches of the National Company Law Tribunal (NCLT) in different states. Under Part II, Chapter VI of the Code, National Company Law Tribunal (NCLT) would be adjudicating authority for insolvency resolution and liquidation of Companies, Limited Liability Partnerships (LLPs), any entity with limited liability under any law and bankruptcy of personal guarantors thereof.

**Procedure**

A plea for insolvency is submitted to the adjudicating authority (NCLT in case of corporate debtors) by financial or operation creditors or the corporate debtor itself. The maximum time allowed to either accept or reject the plea is 14 days. If the plea is accepted, the tribunal has to appoint an Interim Resolution Professional (IRP) to draft a resolution plan within 180 days (extendable by 90 days). following which the Corporate Insolvency Resolution process is initiated by the court. For the said period, the board of directors of the company stands suspended, and the promoters do not have a say in the management of the company. The IRP, if required, can seek the support of the company's management for day-to-day operations. If the CIRP fails in reviving the company the liquidation process is initiated. (discussed below further)

The Insolvency and Bankruptcy Code, 2016 ('Code') reconceptualised the framework for insolvency resolution in India. It provides a mechanism for the insolvency resolution of debtors in a time bound manner to enable maximisation of the value of their assets, with a view to promote entrepreneurship, availability of credit and balance the interests of all the stakeholder. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects and empowers and facilitates the stakeholders and Adjudicating Authority to decide matters within their respective domain expeditiously. It envisages a market mechanism to rescue firms in financial distress and to facilitate closure of firms in economic distress, in accordance with the processes under the Code and rules and regulations made thereunder.

2. The provisions of the Code pertaining to initiation of the corporate insolvency resolution process, voting in the committee of creditors, distribution in liquidation, withdrawal of the corporate insolvency resolution

process, disqualification from submitting a resolution plan, information utilities and powers of the resolution professional have been held valid. ( Being discussed here-in-below).

3. Repugnancy of State Laws with the Code. The question of inconsistencies of other legislation with the Code is to be evaluated on a case-by-case basis, keeping in mind the provisions of the legislations. Given that the Code is a special law that is intended to be a complete code dealing with insolvency and bankruptcy, and has an overriding provision; it is likely that the provisions of the Code will prevail over previously enacted inconsistent State law. Article 254 of Constitution of India clearly provides this law and based on pith and substance interpretation rule, it is clear that any State law on the subject ( this subject being in concurrent list ) if found inconsistent with the provisions of Central Law, it is the Central law that will prevail.

Where an issue of repugnancy between the Maharashtra Relief Undertakings (Special Provisions) Act, 1958, which is a state law, and the Code arose, the Supreme Court in its judgment of Innoventive Industries v. ICICI Bank (Civil Appeal Nos. 8337-8338 of 2017). Decision date-31.08.2017 laid down key principles to evaluate repugnancy of a state law with that of a union law. Specifically, the Court laid down that first, the doctrine of pith and substance should be applied to determine if a Parliamentary law and State law both refer to the Concurrent List. Only if both fall within this list, the principles of repugnancy under Article 254 will be applicable. Secondly, every effort should be made to reconcile the competing statutes to avoid repugnancy. Thirdly, repugnancy must exist in fact and not depend upon a mere possibility. Fourthly, repugnancy must be clear and typically of a nature to bring both statutes in direct conflict with each other, such that it would be impossible to obey one without disobeying the other. Fifthly, if Parliamentary law is intended to be a complete, exhaustive or exclusive code on a matter, State law may be inoperative even if there is no direct conflict. This may be the case where application of the State law hinders or obstructs the scheme of the Parliamentary law. Sixthly, a conflict may also arise where both Parliamentary and State law seek to exercise powers over the same subject matter even if there is no direct conflict. Here the doctrine of implied repeal would be applied such that “if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

4. It is of utmost important to appreciate the crucial distinction between various kinds of creditors. In India, this Code recognises three different types of creditors: financial creditors, operational creditors and other creditors. Each of these have been given different rights and powers. Accordingly, it becomes relevant to determine which types of debt would be classified as financial, operational or other debt.

The key criteria to determine if a debt is a financial debt are if it was extended for time value of money. On the other hand, a debt would be operational debt only if it relates to the four categories: goods, services, and employment and Government dues. Debts other than these would be classified as other debts. The rights and powers of relevant creditors of each of these different categories of debts are different and thus classification of debts is key in the corporate insolvency resolution process.

A. **Financial Creditors.** The term financial debt has been defined in section 5(8) of Code "to mean a debt, alongwith interest, if any, which is disbursed against the consideration for the time value of money." An illustrative list of transactions that would fall under this definition has also been included. Typically financial creditors are those "whose relationship with the entity is a pure financial contract, such as a loan or a debt security. Operational creditors are those whose liability from the entity comes from a transaction on operations." However, following the recommendations of the Insolvency Law Committee, homebuyers have also been deemed to be financial creditors under the Code.

   What we need to understand and appreciate is that If a creditor is a financial creditor, it has the ability to initiate the insolvency resolution process, the ability to make claims in this process, and the right to be a voting member of the committee of creditors that accepts or rejects a resolution plan.

B. Section 5(20) of the Code defines an operational debt as "a claim in respect of the provisions of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority". Operational creditors are those whose claims arise "from a transaction on operations. Thus, the wholesale vendor of spare parts whose spark plugs are kept in inventory by car mechanics and who gets paid only after the spark plugs are sold is an operational creditor. Similarly, the lessor that the entity rents out space from is an operational creditor

to whom the entity owes monthly rent on a three-year lease." An operational creditor has the right to file an application to initiate the insolvency resolution process of a corporate debtor, to file a claim in the insolvency resolution process and to participate, without voting rights, in a committee of creditors through their representatives.

In Swiss Ribbons Ltd. v. Union of India,( Writ Petition (Civil) No. 99 of 2018. Decision date- 25.01.2019.) the Court laid down the distinction between 'Financial Debt' and 'Operational Debt' in the following terms, "A perusal of the definition of 'financial creditor'' and 'financial debt' makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an 'operational debt' would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority." The Court also commented on the distinction between the nature of the agreement with a financial creditor and the nature of the agreement with an operational creditor by observing that the "financial creditors generally lend finance on a term loan or for working capital that enables the corporate debtor to either set up and/or operate its business. On the other hand, contracts with operational creditors are relatable to supply of goods and services in the operation of business. Financial contracts generally involve large sums of money. By way of contrast, operational contracts have dues whose quantum is generally less."

C. Other debts: Those debts that are neither operational nor financial are considered other debts. While there were no specific provisions in the Code guaranteeing rights to such creditors to initiate or control the insolvency resolution process, the Insolvency and Bankruptcy Board of India, through an amendment to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has enabled 'other creditors' to file claims in the process.

5. As lawyers we need to very clearly understand the time lines or limitation periods we call these involved in the Code. The times line are either directive or mandatory and those that are mandatory must be followed within those time lines or else the action may become time barred and benefits of this Code will not be available to the litigant.

The Preamble of the Code states that it is "An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner…" To enable this, detailed timelines have been prescribed in the Code

A. At the stage of admission of an application for initiating insolvency proceedings, the Code provides 14 days' time to the NCLT to make a decision regarding admission or rejection. Before rejecting an application, the NCLT is required to provide 7 days' time to the applicant to rectify defects, if any, in the application.

   On a question whether these time lines are mandatory or directory the Supreme Court in Surendra Trading Company v. Juggilal Kamlapat Jute Mills Company Limited &Ors.,(Civil Appeal No. 8400 of 2017. Decision date19.09.2017) clearly held that the fourteen day period would be directory and also set aside part of this order by holding that the 7 days' period would also be directory in nature, given that "it is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory." Hence NCLT could also take time to issue notice and the notice also could file reply beyond 7 days with an appropriate application for condonation of delay if the adjudicating authority so requires.

B. The Insolvency Resolution Process has to be completed within a period of 180 days from the date of admission of the application to initiate such a process. Section 12 of the Code mandates it. However this time can be further extended by a maximum of 90 days if an application under section12(2) of the Code is received and the Adjudicating Authority is satisfied that the time to complete the insolvency resolution process has to be extended and this extension can be a onetime extension and that for a maximum 90 days. After the expiry of 180 days (or 270 days (as the case may be), in the event a resolution plan has not been submitted, or if submitted, and rejected under section 31 of the Code or even after the dismissal of an appeal filed under section 61 contesting rejection of a plan, the Code directs that the debtor initiate a liquidation process.

   In other words the scheme is time bound and provisions of Section 12 are not directory but mandatory except and to the extent exclusion of periods that may be allowed as per law. However,

the Supreme Court in Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta C.A. Nos. 9402-9405 of 2017. Decision date- 04.10.2018 unequivocally held that the entire time period within which the corporate insolvency resolution process ought to be completed is strictly mandatory in nature, and cannot be extended. It relied on the primary objective of the Code, which is to ensure a timely resolution process for a corporate debtor, and principles of statutory interpretation to hold that the literal language of section 12 mandates strict adherence to the time frame it lays down.

Even where the statutory outer time limit cannot be extended, questions arise as to whether certain periods can be excluded from the calculation of the maximum time.

The NCLAT in Quinn Logistics v. Mack Soft Tech Company Appeal (AT) (Insolvency) No. 185 of 2018. Decision Date- 08.05.2018 gave an illustrative list of the time-gaps that may be excluded: “From the decisions aforesaid, it is clear that if an application is filed by the ‘Resolution Professional’ or the ‘Committee of Creditors’ or ‘any aggrieved person’ for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to ‘exclude certain period’ for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances. 10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:- (i) If the corporate insolvency resolution process is stayed by ‘a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon’ble Supreme Court. (ii) If no ‘Resolution Professional’ is functioning for one or other reason during the corporate insolvency resolution process, such as removal. (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the ‘Resolution Professional’ takes charge for completing the corporate insolvency resolution process. (iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon’ble Supreme Court and finally pass order enabling the ‘Resolution Professional’ to complete the corporate insolvency resolution process. (v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon’ble Supreme Court and corporate insolvency resolution process is restored. (vi) Any other circumstances which justifies exclusion

of certain period. However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code."

6. Decoding "Dispute" under the Corporate Insolvency Resolution Process. The decision to put a company through insolvency should be taken only when there is genuine distress that needs resolution, and not when there are deep disputes about the existence of that distress.

As per section 9 of the Code, an operational creditor who wishes to file an application to initiate the corporate insolvency resolution process against the corporate debtor before the Adjudicating Authority must comply with section 8(1) of the Code. As per section 8(1),

"An operational creditor may deliver a demand notice of unpaid operational debt or a copy of an invoice demanding payment of an amount involved in the default to the corporate debtor…"

In response to the demand notice or invoice,

"the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor— (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;" (Section 8(2))…" Section 5(6) of the Code, provides that the term 'dispute' "includes a suit or arbitration proceedings relating to – (a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty"

Vis-à-vis operational creditors, therefore, the Code provides a mechanism for the corporate debtor to specifically raise a dispute. This can be used to prevent the admission of a petition to initiate an insolvency resolution process. However, there has been a lack of clarity on the scope of the term dispute, and on the point at which a dispute should have been raised.

The Supreme Court in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd Civil Appeal No. 9405 of 2017. Decision date- 21.09.2017 held that the definition of dispute is an inclusive one and also held that it would not be necessary for the dispute to be pending before the filing of the application since "a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an arbitral tribunal or a court."

To determine if the dispute exists, the court held that “all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence…

The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application. However, the Supreme Court in Innoventive Industries v. ICICI Bank, held that “at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact.” Accordingly, a corporate debtor could also dispute the existence of a financial debt. This was also relied on by the Supreme Court in Mobilox, where the court held that while the scheme for disputing financial debts and operational debts was different, a dispute could be raised in respect of a financial debt as well. A corporate debtor could show that the debt was a disputed claim, the debt was not due or there was no default. It is relevant to note, however, that this takes place when the Adjudicating Authority is making an order admitting the application. This is distinct from the scheme of raising a dispute for operational debts which has been designed keeping in mind that “operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts.”

The Supreme Court has held that corporate debtors can dispute the initiation of insolvency proceedings against them both in respect of operational debts and financial debts. In respect of operational debts, the Code specifically defines the term “dispute” and gives corporate debtors a chance to raise a dispute. These disputes need not be restricted to a disputes raised in suits or arbitration proceedings. In addition, these disputes need not be raised prior to the filing of the application, but may be raised thereafter as well. The Adjudicating Authority, while assessing if there is a dispute must only analyse if the dispute exists in fact, and is not illusory.

I have devoted more space of interpreting dispute as If we do not clearly understand the meaning of dispute based on which insolvency resolution process is based, our conclusions may be wrong and the ensuing litigation may be lost. Hence, it is critical for all of us to appreciate the judgments of

the Supreme Court regarding existence of a dispute and if the adjudicating authority finds the dispute to be legal, the legal action is jeopardy.

7. At the time of admitting an application to initiate the corporate insolvency resolution process, the Adjudicating Authority must provide a right of hearing to the corporate debtor in consonance with the principles of natural justice.

At the start of the corporate insolvency resolution process, the Adjudicating Authority admits an application for initiating the corporate insolvency resolution process. Sections 7, 9 and 10 of the Code prescribe the procedure for initiation of the corporate insolvency resolution process. While these sections do not explicitly provide a right of hearing, the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 stipulate that the applicant dispatch a copy of the application to the corporate debtor. he observance of this rule has been held to be mandatory in nature and not discretionary in a plethora of cases. The Adjudicating Authority is bound to issue a limited notice to the corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by the corporate debtor.

We should appreciate the insolvency resolution process would affect the rights of persons since the initiation of the process the Board of Directors stands suspended and its powers vest with the interim resolution professional, and other persons are affected due to the moratorium, and consequently, “the ‘adjudicating authority’ is duty bound to give a notice to the corporate debtor before admission of a petition under Section 7 or Section 9. The Supreme Court in Swiss Ribbons ( supra ) where the court has clarified that for the admission of an application to initiate an insolvency resolution process, the Adjudicating Authority has to satisfy itself that there is default or non-payment of operational debt. For this, the Adjudicating Authority has to “issue notice to the corporate debtor, hear the corporate debtor, and then adjudicate upon the same.”

8. Supply of Critical Goods and Services during the Corporate Insolvency Resolution Process. The Code enables the continuation of critical supplies to businesses during the insolvency resolution process. It enables the resolution professional to negotiate for the continuation of other critical supplies during the corporate resolution process and mandates the supply of the enumerated ‘essential goods and services’. Payments for such supplies have priority of payment over other claims in the resolution plan.

9. Provision for Mutual Settlement after the Admission of a Case under the Code.

Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides that "The Adjudicating Authority may permit withdrawal of the application made under rules 4, 6 or 7, as the case may be, on a request made by the applicant before its admission." This provision allows for the withdrawal of the application before it is admitted. . However, there was originally no provision allowing for withdrawal due to mutual settlement once the insolvency resolution process was admitted. Consequently, there was a lack of clarity on the ability of an applicant to withdraw their application for initiation of the insolvency resolution process.

The issue was settled by the Supreme Court in Lokhandwala Kataria Construction Private Limited v. Nisus Finance and Investment Managers LLP Civil Appeal No. 9279 of 2017. Decision date- 24.07.2017. In this case the court held that the NCLAT had been correct in deciding that the inherent power of the NCLAT and NCLT cannot be exercised to allow for withdrawal of an application after its admission. However, it exercised its powers under Article 142 of the Constitution of India to allow for withdrawal of the application by consent. Thereafter, in Uttara Foods v. Mona Parachem, Civil Appeal No. 18520 of 2017. Decision date- 13.11.2017 the Supreme Court recommended that the Rules be amended to allow for compromise and withdrawal. This recommendation was then adopted as section 12A in the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, which allows post-admission withdrawal based on "an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors."

Following the amendment to the Code, section 12A of the Code read with Regulation 30A provides the manner in which the insolvency resolution process can be withdrawn. Since the insolvency resolution process is a proceeding in rem, typically the approval of nearly the entire committee of creditors is required. However, where the committee of creditors is not in existence, an application may be made to the Adjudicating Authority for its directions. Even where the committee of creditors approves the withdrawal of the corporate insolvency resolution process, the Adjudicating Authority may intervene in the case of an illegality or abuse of process.

10. Liability of Guarantors during the Corporate Insolvency Resolution Process.

Under contract law, a guarantor's liability is co-extensive with that of

the principal debtor. In other words, "a surety's liability to pay the debt is not removed by reason of the creditor's omission to sure the principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surety though the principal has not been sued."

The liability of a principal debtor and the liability of a surety are separate and co-extensive liabilities. Notwithstanding the fact that they may stem from the same transaction, the two liabilities are distinct. Accordingly, it is possible to proceed against either the guarantor or the principal debtor in the first instance, or against both. If the claim is successful against the guarantor, the guarantor then steps into the shoes of the creditor and can proceed against the principal debtor, which is known as subrogation.

Section 60(2) of the Code provides that "where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal." Given this, there is legislative clarity that concurrent insolvency proceedings can be maintained in respect of the corporate debtor and a guarantor.

The liability of guarantors is considered to be co-extensive with, as well as distinctive from the liability of the principal corporate debtor under the Code. Accordingly, both the principal corporate debtor and the guarantor can be proceeded against under the Code. The guarantor can also be proceeded against under different fora, when the corporate debtor is being proceeded against under the Code. In the alternate, the guarantor can be proceeded against under the Code, even when a corporate insolvency resolution process has not been initiated against the principal debtor, and even when the principal debtor is not a corporate person. However, two corporate guarantors cannot be proceeded against simultaneously.

**Assignment of Debts of Related Parties under the Corporate Insolvency Resolution Process.**

The insolvency regime is designed to reduce the possibility of allowing some stakeholders to benefit at the expense of the others. The Code excludes those financial creditors who are related parties of the corporate debtor from participating in the committee of creditors. However, where related parties assign their debts, the status of such assignments needs to be explored. The Proviso to section 21(2) of the Code excludes a financial creditor who is a 'related party' to the corporate debtor from having "any

right of representation, participation or voting in a meeting of the committee of creditors". Section 5(24) of the Code provides an extensive definition of a related party. For example, a related party is one who is a director or partner of the corporate debtor or a relative of its director or partner, is a key managerial personnel of the corporate debtor or a relative its key managerial personnel, a person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act, etc. he Code is silent on the status of an assignee within a committee of creditors. Regulation 28 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 only stipulates that in the event of assignment of debt due to one creditor to any other person, during the insolvency resolution process "both parties shall provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee."

It is a settled principle of law that the assignment is the transfer of one's right to recover the debt of another person as a contractual right. Rights of an 'assignee' are no better than those of the 'assignor'. It can be, therefore, held that 'assignor' assigns its debt in favour of the 'assignee' and 'assignee' steps in the shoes of the 'assignor'. The 'assignee' thereby takes over the right as it actually did and also takes over all the disadvantages by virtue of such assignment.

The assignment of related party debts results in the assignee having the same rights and disabilities as those of the related party assignor.

**Treatment of Home Buyers in the Corporate Insolvency Resolution Process**

The Insolvency and Bankruptcy Code, (Second Amendment) Act, 2018 amended the definition of financial debt to reflect that an amount raised from an "allottee" under a real estate project would be deemed to be an amount having the commercial effect of a borrowing, squarely bringing homebuyers within the statutory purview of the term "financial creditor" under the Code.126 Thus, homebuyers are now voting members of the committee of creditors.

Initially, when claims in respect of pre-payments made by home buyers were brought to fore, the NCLT held that homebuyers were neither financial creditors nor operational creditors. However, in cases where home buyers were guaranteed assured returns, they were held to be financial creditors. Given that in most cases, home buyers were not considered either financial creditors or operational creditors, they could not initiate the corporate insolvency resolution process or participate in the committee of creditors.

In Chitra Sharma v. Union of India, Writ Petition(s)(Civil) No(s).744/2017. Decision date 09.08.2018 the Supreme Court required that the interests of the homebuyers be safeguarded by the insolvency resolution professional and passed orders allowing representatives espousing the cause of homebuyers to participate in the meetings of the committee of creditors. Similarly, the Supreme Court in Bikram Chatterji v. Union of India Writ Petition(s)(Civil) No(s).940/2017, Order date- 21.02. 2018 passed orders regarding the construction of homes and also required undertakings to be furnished to protect the interests of homebuyers.

However, it is significant to note that merely being a homebuyer would not automatically bring the homebuyer within the purview of the term 'financial creditor'. There has to be an actual debt that is owed to such homebuyer, payable by the infrastructure/ builder company for the purposes of the Code. In the matter of Ajay Walia v. M/s. Sunworld Residency Private Limited-CP (IB) 11/ALD/2018. Decision date- 30.07.2018- 8 the homebuyer had entered into an apartment purchase agreement with the builder, as well as a supplementary agreement, which gave the homebuyer an option to cancel the purchase of the apartment within twenty four months from the date of disbursement of the home loan by the bank. The homebuyer, the bank and the builder also entered into a tripartite agreement by virtue of which the builder was supposed to pay the EMIs to the bank for the first twenty three months from the date of disbursement of such loans. However, such payment was not to be construed as reducing the liability of the homebuyer in any manner. The tripartite agreement further provided that in the event of occurrence of default under the agreement, which would result in the cancellation of allotment as a consequence, and/or for any reason whatsoever if the allotment is cancelled, any amount payable to the borrower in the event would be paid to the bank instead, and would be construed as a valid discharge of the builder's liabilities towards the homebuyer. When the homebuyer had cancelled the booking, and later on, the builder defaulted in payment of EMIs, the homebuyer approached the NCLT for initiating the corporate insolvency resolution process against the builder company. Here, the NCLT observed that since the homebuyer had subrogated all its rights in favour of the bank, he could not be treated as financial creditor.

**Treatment of Statutory Dues under the Code**

An important set of stakeholders in the insolvency of an entity is governmental authorities, such as tax authorities, and regulators with whom the entity interacts on an ongoing basis. Given this, it is relevant to explore the status of the statutory dues both under the corporate insolvency resolution process and the liquidation process under the Code.

In respect of the corporate insolvency resolution process, section 5(21) of the Code defines the term operational debt as "a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority." While the definition of operational debt includes dues arising and payable to government, there was a lack of clarity on whether this would include statutory dues.

In this regard, the Calcutta High Court in Akshay Jhunjhunwala v. Union of India, Writ Petition 7144 (W) of 2017. Decision date- 07.04.2017, held that the term operational debt "would also include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute." 9 This position was reiterated by the NCLAT in DG of Income Tax v. Synergies Dooray Automotive Ltd. wherein the bench opined that "If the Company ('Corporate Debtor') is operational and remains a going concern, only in such case, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the 'Income Tax', 'Value Added Tax' and other statutory dues arising out of the existing law, arises when the Company is operational, we hold such statutory dues has direct nexus with operation of the Company. For the said reason also, we hold that all statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt'.

**In Liquidation**

Statutory dues are dues owed to the Government. These dues are operational debts, and the statutory creditors would be operational creditors. In liquidation, these dues would fall within section 53(1)(e), and distributions to be made to them would rank equal to debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.

Section 53(1) provides the order of priority for such distribution and any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State in respect of the whole or any part of the period of two years preceding the liquidation commencement date comes fifth in the order of priority under Clause (e) thereof… It is therefore clear that tax dues, being an input to the Consolidated Fund of India and of the States, clearly come within the ambit of Section 53(1)(e) of the Code. If the Legislature, in its wisdom, assigned the fifth position in the order of priority to such dues, it is not for this Court to delve into

or belittle the rationale underlying the same."136 Therefore, even where statutory authorities pass orders for the attachment of properties, the dues to them would not constitute secured debts, and would fall within the scope of section 53(1)(e).

**Dissenting Financial Creditors under the Code**

In the Indian context where non-performing assets on bank balance sheets are rising, there is an even greater need for the law to enable faster and cheaper resolution of insolvency. Consequently, the Code, by statutory enactment, binds all stakeholders to the majority decision. Under Section 30(4) of the Code, a resolution plan needs approval of sixty-six percent of the voting share of the financial creditors, in order to be approved by the Adjudicating Authority.

**Distributions under a Resolution Plan**

The priority of payments to be made pursuant to a resolution plan is not fixed. However, a resolution plan must balance the interests of all stakeholders. In doing this, the plan must deal with all creditors in a fair and equitable manner, including those creditors who do not have the right to vote on the resolution plan since they are not financial creditors. The plan must also not discriminate against equally situated creditor.

Section 30(2) of the Code provides the minimum contents of a resolution plan. A resolution plan must provide for "the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor" and the payment of the minimum liquidation value due to operational creditors. Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2018 also provides that the "amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors" and that a resolution plan "shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor".

Before I conclude I must advise the readers that this Article is only discussing the basic issues and for further studies readers must refer to various SC judgments or NCLT Judgments and the Code and its Rules. This is a good law to practice and not very technical. Just few prescribed forms; drafting of claims and handling of pre-existing disputes; but if all documents are in place with the supplier or the financial or operating

creditor, the recovery process is very quick.

IBC: AN EFFECTIVE LEGISLATION One of the highlights of the process under IBC has been that ever since the law has been enacted, there has been a continuous feedback mechanism put in place for collating valuable information from the various stakeholders. This has enabled the Government and the Insolvency and Bankruptcy Board of India (IBBI/ Board), the regulator of processes and professionals under the IBC, to review the efficiency of systems, processes and dispensations under the law and ensure that there is a constant upgrade to achieve its objectives. As we have seen earlier, one of the key objectives of IBC is to ensure protection of value and capital through enabling successful resolutions. The intent is not only to complete a resolution but to satisfy oneself that a proposed resolution will stand the test of delivery to stakeholders over time through a mechanism of evaluating the strength of the bid over key parameters. Towards achieving such objectives, the IBC has also been subject to several legislative and judicial actions, including amendments in the provisions of the Act and the Rules and Regulations framed under it, enabling faster, better, and efficient resolutions.

**My take:**

I have done some work in this field; it is simple but for all laws we need to study, understand its rationale and then proceed. But for all of us in Sales Tax Bar, Lawyers or CAs, this law is up for grab and we should conduct more and more study circle meetings on this law.

**Let us learn together**

Few Leading Judgments of the Supreme Court for further reading are:

1. Innoventive Industries Limited vs. ICICI Bank and Another (2018) 1 SCC 407.
2. Swiss Ribbons Private Limited vs. Union of India (2019) 4 SCC 17
3. Pioneer Urban Land and Infrastructure Limited vs. Union of India & Ors. (W.P.(C) No.43/2019)
4. Vidya Drolia and Others Vs. Durga Trading Corporation (2021 2 SCC 1)
5. Booz Allen and Hamilton INC. vs. SBI Home Finance Limited and Others (2011) 5 SCC 532

6. Indus Biotech Private Limited Vs Kotak India Venture (Offshore) Fund (Earlier Known As Kotak India Venture Limited) & Ors. (Supreme Court)

**LEADING QUERIES FOR THIS CODE**

1. Qualifying amount for the proceedings under the IB Code can be used?

   The IB Code can be used to recover outstanding amount above Rs.1,00,00,000 (Rupees One Crore) from a corporate (company or LLP).

2. If the customer has raised some objections to quality or quantity of supplies and refused to pay, can the supplier take advantage of IB Code?

   No, in case of any pre-existing dispute about quantity or quality, the supplier cannot take advantage of the IB Code. The dispute should be preexisting before the date of the notice by supplier. However, it is not necessary that the dispute be pending before a court or arbitration tribunal. For example, if there has been exchange of emails between the supplier and the buyer about quality of supplies, this will qualify as pre-existing dispute and the case will need to be decided by a civil court and not under the IB Code.

3. What is the first step to be taken by a supplier to initiate process under the IB Code?

   A notice either under Form 3 or under Form 4 (preferable to send both Form 3 and Form 4) needs to be sent to the buyer. Formats for Form 3 and Form 4 are given in Part B of this Guide. Form 3 is demand for money owed. Form 4 is used when the supplier sends one invoice to the buyer and demands payment for the same. A supplier does not need a lawyer or insolvency professional to send either Form 3 or Form 4. It is advised that the Form 3 / Form 4 is signed by the supplier himself / herself with his / her official rubber stamp duly affixed.

   What are the documents to be enclosed with Form 3?

   Strictly speaking there is no need to attach or enclose any documents with Form 3. However, it is strongly advised that all

documents that can be used to prove the existence of the debt and also to determine the amount of the debt should be enclosed with Form 3. For example, if there is any communication, wherein the buyer has accepted the debt, a copy of the communication should be enclosed. If there is a ledger account which gives a record of the transactions during the past one or two or three years, a copy of the ledger account should be attached. If there are any invoices copies of the same should also be enclosed. Please do not enclose any originals.

4. Is there any time limit within which the Notice to demand payments can be issued under the IB Code?

   A notice demanding payment cannot be issued till the payment falls due as per the terms of the contract. For example, if a supplier agreed to a payment term of two years, he cannot issue a notice under the IB Code before the end of two years from the date of supplies to demand payment. Limitation Act is applicable to all action under the IB Code. Hence, the action under the IB Code ought to be initiated before a period of three (3) years has lapsed from the date of supply of goods or services. If the notice is issued a week before the end of the limitation period, it will not be possible to file application before NCLT since a time of ten days has to be given after the notice for the buyer to either pay or to reply. Hence, it is advised that the notice in Form 3 / Form 4 is issued more than ten days before the end of three-year period from the date of supplies.

5. Does a copy of the Notice need to be sent to NCLT or bank or any government authority?

   No! Copy of the Notice need not be sent to NCLT or bank. A copy of the Notice should be filed with National E-Governance Services Limited (www.nesl.co.in). Filing is online and a small fee (generally less than Rs. 500) has to be paid for the filing.

6. When can one initiate proceedings before NCLT after sending the Demand Notice? How long does one need to wait for a reply after sending the Notice?

   One can move an application to NCLT in Form 5 (given in Part B of this Guide) for initiating corporate insolvency resolution process against the recipient of the Demand Notice after ten (10) days have passed from the expected date of delivery of the Notice.

7. How do I choose the bench of NCLT where I have to file application against the debtor company?

   Choice of NCLT bench is based on the location of registered office of the debtor company.

# TWENTY LEADING SUPREME COURT JUDGMENTS IN GST REGIME SO FAR – BRIEF ANALYSIS

*Sushil K Verma, Advocate*

**1. Falcon Enterprises v State of Gujarat. (1.6.2021)**
**GST - Section 107 & 130 –**

The goods of the tax payer were confiscated by the authorities and the petitioner moved High Court on the ground that appeal is not an efficacious remedy and hence under Article 226 the High Court should hear and grant relief. High Court dismissed on the ground that an order passed under Section 130 is passed by an adjudicating authority as defined in Section 2 and hence should be appealed under Section 107 that has a precondition of depositing minimum of 10 percent of mandatory deposit. Feeling aggrieved the Petitioner then moved Supreme Court by way of an SLP . Supreme Court also held the view that Section 107 of the CGST Act provides that an appeal lies against any decision or order passed by the adjudicating authority - The petitioner was given liberty to raise all issues before the appellate authority. SLP Dismissed.

***Take away:***

This Order will be followed by all the High Court's wherever an order passed by the adjudicating authority is appealable before the first appellate authority subject to perhaps two qualifications in my view "where the order is palpably without jurisdiction or has been passed without following the due process of law.'

**2. Ministry of Finance (Department Of Revenue), Government of India Vs Gurcharan Singh**

We all know Delhi High Court had held as unconstitutional the levy of GST on oxygen concentrators that were imported by the Petitioner Gurcharan Singh for personal use. The Government filed SLP before the Supreme Court and submitted that the judgment of the High Court has interfered with the pure issue of policy that has to be decided by the Government. Supreme Court hearing SG, Tushar Mehta stayed the operation of the Judgment of the High Court till the next date of listing.

***Take Away:***

The Judgments now cannot be taken advantage of by an individual who imports oxygen concentrators for personal use and he must pay tax. But he should pay tax under protest because the Judgment has only been stayed i.e. its fate has been put into jeopardy the SC has not reversed the Judgment of the Delhi High Court.

3. ***Mohit Bathla Vs Central Goods And Service Tax (Judgment Date 13.5.2021)***

It was a case of alleged fake ITC of 18 crores. Supreme Court ordered that let the Petitioner be produced before the trial court who shall grant ad interim bail (next date of hearing is 30.7.2021). The Court granted ad-interim bail subject to deposit of 4 crores within four months – the conditions to be strictly complied with.

***Take Away:***

Another SC Judgment that lays down totally different conditions for ad-interim bail – i.e. deposit a part of the alleged tax evasion and get enlarged on bail. I think this is the correct law – idea of any economic offence is to avoid or evade tax and if the revenue gets a part of such alleged avoidance or evasion of tax; the purpose is served.

4. **Chhaya Devi Vs Union Of India**

This is really one of the best Judgments on bail matters.

(a) The petitioner was arrested on 19.01.2021 and since then has been in custody.

(b) the Charge-sheet was filed on 16.03.2021.

(c) The petitioner is a widow with five daughters and that the business was being looked after by the Manager who was in-charge of the business.

The Petitioner was arrested for supplying finished goods without issuance of invoice and hence without payment of tax. She violated provisions of Section 132 of the CGST Act. High Court rejected the bail of the petitioner and also rejected the contention that without assessment no evasion can be determined. HC rejected these contentions and also rejected the contention of theory of business being managed by the

manager and further held that she is responsible to the company for conduct of business of the company.

Mr Mukuk Rohtagi argued the matter before the SC and offered one crore up front and a charge on properties belonging to the petitioner. SC granted ad interim bail subject to the above conditions and filing of undertaking by the Petitioner that she will not create any encumbrance encumbrance with respect to the properties of the business as well as her personal properties till further orders and will deposit the amount representing the admitted duty element.

***Take Away:***

Another classic judgment by the Supreme Court and bail was granted on different grounds.

5. **M/S Radha Krishan Industries Vs State of Himachal Pradesh**

A very strong interpretation of Section 83 by the Supreme Court, discussing the rationale behind such a provision and its fair use and application and also making strong comments on its misuse. The Supreme Court having noted the difference between "reason to believe" and "formation of an opinion" still invoked the theory of "tangible reasons" based on Order 38 Rule 5 of CPC after discussing the rulings of the apex court and various High Courts on the interpretation of Section 83. The Supreme Court noted that such provisions are to be used very judiciously and carefully so that the assesse and his business survived and the Commissioner must bring on record compelling and tangible reasons before any provisional attachment order could be passed. Also interpreting Rule 159 of CGST Rule the SC clearly held that the opportunity of personal hearing has to be read into such provisions that are based on curative use of such powers and are fundamental to invoke such powerful provision; simply inviting cross objections is not enough; opportunity of personal hearing is a must. Further the SC held that the Commissioner after getting the objections to the proposed action under Section 83 the Commissioner must hear the tax payer in person and after taking his contentions on record must pass a detailed order justifying the use of power given in Section 83 – simply properties of the tax payers including the bank accounts cannot be attached, howsoever laudable the objective could be.

In this Judgment the Supreme Court paved the way that all orders under Section 83; as they are passed for and on behalf of the Commissioner (when Commissioner delegates his power under this provision and this

power was given to him by the Parliament) and hence the Commissioner not being the Adjudicating Authority within the meaning of Section 2; there is no and cannot be any first appeal against the order of the Commissioner and hence there is no way out but to file Writ under Article 226 in the circumstances that are prevailing as of today.

The Supreme clearly laid down the law that the provisions of Section 83 and each variant of this provision must be full satisfied i.e. the property or the bank account must belong to the Tax Payer; proceedings under the six sections mentioned in Section 83 must have been initiated and must be pending on the date when provision attachment order is passed; the Commissioner must form an opinion based on objective and tangible materials and after taking on record the cross objections under Rule 159(5) of the CGST Rules and hearing the Petitioner in person must justify the provisional attachment and then what is being attached must be mentioned. Above all the Supreme Court also laid down that the attachment of any property or bank accounts cannot be more than the alleged evasion of tax on any ground. Further the Supreme Court held that if the tax payer offers an alternative property to satisfy the Commissioner than the bank account or the trading debits; then the Commissioner must ponder over on such a request of he tax payers and take a decision.

The Supreme Court further held, under the facts and circumstances of this case that the final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end; The appellant having filed an appeal against the order under section 74(9), the provisions of sub-Sections 6 and 7 of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal - the impugned judgment of the High Court is set aside

Laying down series of principles of law the Supreme Court allowed the Writ Petition and provisional attachment was quashed.

***Take Away***

The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled;

Above all the High Courts, the Supreme Court has given the verdict and this is binding, by way of Article 141 of the COI, on all the High

Courts, tribunal and the authorities. And if any of such authorities defy the Judgment of the Supreme Court then this will be wilful contempt and we must file contempt petitions before the Supreme Court.

**6. Union Of India Vs M/S Palak Designer Diamond Jewllery**

***From Gujrat High Court.***

During the course of search, the officers seized the excess stock of finished goods under seizure memo dated 11.1.2018 and handed over the seized goods under sealed cover to ShriRajubhai N. Patel, partner of the petitioner, to keep the same in safe custody with a direction not to tamper with the same without the permission of the respondents. The petitioner requested the Additional Commissioner of Anti Evasion, GST and Central Excise, to provisionally release the finished goods which belonged to the principal suppliers and had to be returned at the earliest.

The officers of the third respondent, once again visited the office of the petitioner on 23.1.2018 to ascertain the value of the seized goods along with an approved valuer, who valued the seized goods at Rs.4,10,68,644/- and, thereafter, sealed such goods.

By a letter dated 24.1.2014, the petitioner informed the respondent that they had paid appropriate amounts of CGST and SGST on the seized goods and penalty equal to 15% of CGST and SGST under the provisions of section 74 (5) of the Act and requested the release of the goods in terms of the provisions of section 67 (6) of the CGST Act.

The High Court noted:

> "It is an admitted position that in terms of the show cause notice, the total amount of tax payable on the seized goods, totally valued at Rs.15,58,59,711/- is Rs.46,75,791/-. Adding 50% towards penalty, the total amount would come to approximately Rs.70 lakhs. The petitioner has already deposited Rs.14,16,868/- by way of challan and has reversed credit of SGST to the tune of Rs.7,90,793/-, which comes to approximately Rs.22 lakhs. Under the circumstances, if the petitioner furnishes bank guarantee of Rs.50 lakhs and a bond for the value of the goods in FORM GST INS-04, the interest of justice would be served.:

Appeal by Revenue. SC refused to interfere but kept the question of law open

This was a case where the SC interpreted the interplay of Section 67(2); 74(5) AND 67(6) READ WITH RULE 140 OF CGST RULES – regarding provisional release of finished goods based on provision of Section 67(6). The petitioner had deposited cash tax of Rs. 14.6 lakhs and also reversed ITC of Rs. 7.90 lakhs. The revenue wanted additional bank guarantee. The High Court had held that if the petitioner files an additional bank guarantee of Rs 50 lakhs, the revenue shall release the goods for which they had the power under Section 67(6) of the CGST Act.

7. **Union of India Vs The Quarry Owners Association**

This is a case involving refund and its validity for inverted duty structure on INPUT SERVICES. We all know Gujarat High Court held in favor of the tax payers and Madras High Court against the tax payers.

Explanation to Rule 89(5) of the CGST Rules, 2017 restricts the benefit of such refund only to the extent of the 'goods' procured by the supplier. This means that the refund of input tax paid on 'services' cannot be availed.

In the case of *VKC Footsteps India Pvt. Ltd. v. UOI [2020] 118 taxmann.com 81 (Gujarat),* the Hon'ble Gujarat High Court held that the above Explanation is ultra vires to the provisions of the Act as the CGST Act categorically provides that refund of 'unutilized Input tax credit' and Rules cannot go to disallow a benefit which is granted by the parent legislation.

Contrary to the above decision of the Hon'ble Gujarat High Court, the Hon'ble Madras High Court passed an order in favour of revenue in the case of *Tvl. TranstonnelstroyAfcons Joint Venture v. UOI- [2020] 119 taxmann.com 324 (Madras).* It was held that the benefit of refund can be availed only to the extent of unutilized ITC that accumulates on 'goods', thereby exclusion of unutilized ITC accumulated on 'services' in case of inverted rate structure is valid.

Various other WRIT petitions are filed before the High Courts and owing to the pendency of large number of petitions before the High Courts, the Hon'ble Supreme Court has decided to take up the matter for its final hearing on April 28,' **2021.**

8. **The Deputy Commissioner (St) (Int) Vs**
**M/S Shiridi Sainadh Industries**

***From AP High Court.***

What did High Court Do?

The petitioner offers «services» to APCSC within the meaning of Section 2(102) of the CGST Act and APCSC is called as «recipient» -

petitioner activity is «job work» as per Section 2(68) of the CGST Act - only the custom milling charges of paddy is liable to GST @ 5% on the processing charges and not on the entire value of rice

The HC based on the agreement between Petitioner and the Corporation observed that there was no insinuation that the byproducts shall form part of the consideration.

***Facts:***

a) The Petitioner was a rice miller and as per terms of agreement with the Andhra Pradesh Civil Supplies Corporation, the Rice Millers have to supply rice equivalent to 67% of the paddy given for milling irrespective of the yield.

b) The actual yield was around 61% to 62% only, the balance of 5% to 6% has to be provided by the Petitioner out of its own stock.

c) Therefore, as a compensation/ exchange, the Supplies Corporation allows the Petitioner to retain the broken rice, bran and husk obtained in the course of milling of the paddy.

d) The Petitioner sold the said broken rice, bran and husk. The broken rice and husk are exempt from GST. The Petitioner paid tax on bran at the rate of 5%. e) Revenue issued SCN pursuant to an inspection at the Petitioner's premises, post which the impugned Assessment order was issued imposing GST not only on milling charges but also on value of byproducts which were allowed to be retained by the Petitioner treating the by-products as part of consideration.

***Judgment:***

a) It was held that milling of paddy is not exempt and liable to GST @5%.

b) The agreement between the Petitioner and the Corporation stated that the milling charges will be paid as fixed by the Government and the mill shall retain all the byproducts such as broken rice, bran, husk etc. and that the by-products shall not form part of the consideration.

c) HC agreed with Petitioner's submission that the by-products given to it are towards compensation.

d) HC allowed the writ petition and thus, set aside the impugned order

Revenue Appeal challenging High Court Order - SC: It is submitted by the Revenue that the value of the broken rice, bran and husk is liable to be taken into account in determining the consideration which is payable in terms of Section 2(31) of the CGST Act, 2017 and the High Court has erred in holding that in terms of agreement, the consideration was only the price for milling of paddy, as fixed - Issue notice - Till the next date of listing, no coercive steps shall be taken against the petitioners-assessee

**9. Union Of India & Anr. Vs M/S Mohit Minerals Pvt Ltd**

Gujarat High Court has aside IGST on Ocean Freight.

In all the captioned writ-applications, the writ-applicants have challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the writ-applicants as the importer of the goods. The Central Government has introduced the Notification No.8 of 2017 – I Tax (Rate) dated 28th June 2017, wherein vide Entry No.9, the Central Government has notified that the IGST at the rate of 5% will be leviable on the service of transport of goods in a vessel including the services provided or agreed to be provided by a person located in a non-taxable territory to a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs stations of clearance in India. The Central Government, thereafter, issued the Notification No.10 of 2017 – Integrated Tax (Rate) dated 28th June 2017, by which the Central Government has notified that for the said category of service provided at Serial No.10 to the said Notification, the importer as defined in clause 2(26) of the Customs Act located in the taxable territory shall be the recipient of service.

Operating Paras of the Judgment:

In the case on hand, there is no challenge to the competence of the Legislature in enacting Section 5(3) of the IGST Act which empowers the Government to notify the goods or services upon which tax is liable to be paid by the recipients. The issue in the present case is, when the statutory provision empowers collection of tax from the recipient of goods or services, then whether the delegated legislation by way of notification can stipulate imposition of tax on a person who is neither the supplier nor the recipient of service. Thus, this decision is of no avail to the respondents.

In All India Federation of Tax Practitioners v. Union of India, (2007)7 STR 625 (SC), the Supreme Court heard an appeal filed by the All

India Federation of Tax Practitioners against a Division Bench judgment of the Bombay High Court upholding the legislative competence of the Parliament to levy service tax vide the Finance Act, 1994, and the Finance Act, 1998. The Bombay High Court took the view that the service tax would fall in Entry 97 of List I of the 7th Schedule to the Constitution. The issue before the Supreme Court was one concerning the constitutional status of levy of service tax and the legislative competence of the Parliament to impose service tax under Article 246(1) read with Entry 97 of List I of the 7th Schedule to the Constitution. The issue that arose in the appeal before the Supreme Court questioned the competence of the Parliament to levy service tax on the practicing Chartered Accountants and Architects having regard to Entry 56 of List II of the 7th Schedule to the Constitution and Article 276 of the Constitution of India. The challenge was rejected by the Supreme Court relying upon the aspect theory and it was held that the Parliament has the competence to impose tax on the services rendered by the professionals. The ratio of this decision is also of no avail to the respondents as the pivotal issue in the case on hand is, whether the delegated legislation can travel beyond the scope of the powers conferred by the parent legislation. In Phulchand Exports Limited v. O.O.O. Patriot, (2011)10 SCC 300, the Supreme Court in para 21 has referred to and relied upon the decision in the case of Johnson v. Taylor Brothers and Company Limited, 1920 AC 144 (HL) in the context of determination of rights of the sellers and buyers under the Indian Contract Act, 1872. Johnson (supra) referred to by the Supreme Court explains the nature of a CIF contract. Johnson (supra) lays down the following : (i) To make out an invoice of the goods sold. (ii) To ship at the port of shipment goods of the description contained in the contract. (iii) To procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract. (iv) To arrange for an insurance upon the terms current in the trade. (v) To send forward and tender to the buyer the shipping documents namely the invoice, bill of lading and policy of assurance. The view taken in Johnson (supra) is that in a CIF contract, the seller is obliged to procure a contract of affreightment under which the goods would be delivered at their destination.

*In our opinion, such observations, on the contrary, supports the case of the writ-applicants that in a case of CIF contract, the contract for transportation is entered into by the seller, i.e. the foreign exporter, and not the buyer, i.e. the importer, and the importer is not the recipient of the service of transportation of the goods. In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the IGST Act, 2007, on the ocean freight for the services provided by a person*

*located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.*

*In the result, this writ-application along with all other connected writapplications is allowed. The impugned Notification No.8/2017–Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017–Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the IGST Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of. After the judgment is pronounced, Mr. Nirzar Desai, the learned standing counsel appearing for the Union of India, made a request to stay the operation, implementation and execution of the judgment. Having taken the view that the impugned Notification and the Entry No.10 therein are ultra vires the IGST Act, 2017, we decline to stay the operation of our judgment.*

*Supreme Court has issued Notice in the matter; but there is no stay on the operation of the Judgment as per information available. MukukRohtagi is appearing for the tax payers.*

**10. Devendra Dwivedi Vs Union Of India**

*Mr Mukul Rohtagi and Mr Tushar Mehta argued the matter.*

The matter was involving challenge to Constitutional validity of Sections 69 and 132 of the CGST Act, 2017 for being unconstitutional and ultra vires to Article 21 of the Constitution of India. The Petitioners in their Petition were seeking direction for compliance with the procedure for investigation enunciated in Chapter XII of the Cr.PC 1973 and for declaring the investigations which have been instituted against the petitioner as illegal.

The SC declined to interfere on the ground that the petitioners have an efficacious remedy under Article 226 of the Constitution to challenge the constitutional validity of the provisions of the CGST Act before the jurisdictional High Court.

Though the petition invokes Article 21 and this is a case involving essentially a challenge to revenue legislation. Supreme Court was of the view whether recourse to the jurisdiction under Article 32 should be entertained in a particular case is a matter for the calibrated exercise

of judicial discretion. There is regime of well-established remedies and procedures under the laws of criminal procedure - Revenue legislation also provides its own internal discipline. The apex court observed that short circuiting this should not become a ruse for flooding the court with petitions which can, should and must be addressed before the competent fora and held it would be appropriate to relegate the petitioner to the remedy of a petition under Article 226 so that this Court has the benefit of the considered view of the jurisdictional High Court - the Court is not inclined to entertain the writ petition under Article 32 and the petition is accordingly dismissed as withdrawn with liberty to move jurisdictional High Court.

**11. Union Of India Through Its Secretary Vs Bharti Airtel Ltd & Ors.**

Delhi High Court held that the failure of the Government to operationalise the statutory returns, GSTR 2, 2A and 3 prescribed under the CGST Act, cannot prejudice the assessee. The GSTR 3B which was merely a summary return as an alternative did not have the statutory features of the returns prescribed under the Act. Therefore, if there were errors in capturing ITC on account of which cash was paid for discharging GST liability instead of utilising ITC which could not be captured correctly at that time, the return should be allowed to be rectified in the very month in which the ITC was not recorded and the cash paid should be available as refund. The High Court read down the circular which did not permit such rectification as being contrary to the scheme of the CGST Act.

The Supreme Court stayed the Delhi High Court order allowing the Respondent to claim Rs 923 crore in tax refunds by rectifying its GST Returns for July to September 2017 – As mentioned above the Delhi High Court in its order had read down the para 4 of the Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred and allowed the assessee to rectify Form GSTR-3B for the relevant period to which the error relates, i.e. from July, 2017 to September, 2017 matter listed in the first week of March, 2021

**12. Skill Lotto Solutions Pvt Ltd Vs Union Of India**

The Apex Court was approached by Skill Lotto Solutions Pvt. Ltd. who was an authorized agent of sale and distribution of lottery in Punjab. The writ petition was filed impugning the definition of goods under §2(52) of Central Goods and Services Tax Act, 2017 (CGST) and notifications to the extent they levy tax on lotteries. The writ challenged the practice of levying GST on lottery, betting and gambling on the ground that it is not

only discriminatory but also violative of the Articles 14, 19(1)(g), 301, and 304 of the Constitution of India.

Prior to the introduction of GST, through the One hundred and first Amendment in the Indian constitution, Article 246A was inserted which gave the Central Government or respective states the power to levy GST, in furtherance of which central and state legislations transpired. §2(52) of the Central Goods and Services Tax Act, 2017 defines 'goods' as, every kind of movable property other than money and securities but includes actionable claim. However, it must be noted that the Entry III Schedule 6 of the 2017 CGST Act exempts levy of tax on all actionable claims meanwhile creating an exception for lottery, betting, and gambling. This exception with respect to lottery, betting, and gambling was challenged to be inconsistent with the jurisprudential rule of intelligible differentia under Article 14 of the Indian Constitution. The petitioner primarily contended that the definition of 'Goods' under §2(52) of the (CGST) Act is not inclusive of the lottery. Adjudicating upon the above contention as laid down in the petition, the Apex Court ruled the following.

The petitioner challenged that the definition of 'goods' in the CGST Act 2017 stands in conflict with the definition given in the Constitution of India as under Article 366 (12) to include all materials, commodities and articles. The article thus fails to contain the term actionable claim rendering the levy of GST on actionable claims such as lottery, betting, and gambling unconstitutional.

Reaching for the crumb of the cake, the court held that the power of the legislature to make laws under article 246A of the Constitution is plenary and the definition of goods so made under Section 2(52) of the CGST Act 2017 is 'inclusive' rather than restrictive in nature, making way for the legality of inclusion of lottery in the definition of actionable claims. The court relied on the case of Sri Krishna Das v. Town Area Committee, Chirgaon, which stated that- the legislature or the taxing authority determines the question of need, the policies and selects the goods or services for taxation and Courts do not have the power to review those decisions

The Supreme Court in this regard stated that firstly, the activities of the lottery, betting, and gambling are *res extra commercium* i.e. things outside of commercial intercourse or the things which are not available for ownership, trade, or commerce. In the State of Bombay Vs. R.M.D. Chamarbaugwala and Anr the court said that; "activities of trade, commerce or intercourse doesn't include activities which inherently promote the susceptibility of man towards earning money by chance and steer him towards losing hard-

earned income which further gives rise to a state of indebtedness to be made the subject-matter of a fundamental right guaranteed by Article 19(1)(g)."

Relying on the said judgment the bench in Skill Lotto case held that there is sufficient nexus for the legislature to levy GST on those who carry the activities which are inherently *res extra commercium* and such regulations with regard to levy of tax on gambling activities are primed keeping in mind the welfare of society as a whole. The idea of the makers of the constitution was in no way to promote gambling activities and in doing so, the levy of tax on such activities is clearly not in contravention to the doctrine of equality as laid down in Article 14 of the Constitution.

In the case of State of West Bengal v. Anwar Ali Sarkar case, the court held that the differentia or classification must have a rational nexus with the object sought to be achieved by the statute in question. The reasonable classification of goods on the basis of what falls within the category of trade and commerce; and activities that do not trade and rather pernicious is justifiable. Consequently, it cannot be said that the exemption made for actionable claims from the tax net apart from three actionable claims; lottery, betting, and gambling is discriminatory in nature.

Whether the inclusion of actionable claim in the definition of goods as given in Section 2(52) of CGST Act, 2017 is contrary to the legal meaning of goods in Sale of Goods Act, 1930 and unconstitutional – legal meaning of term 'goods' - whether actionable claim is 'goods' – HELD - Definition of goods as occurring in Article 366(12) is inclusive definition and does not specifically excludes actionable claim from its definition. Whenever inclusive definition is given of an expression it always intended to enlarge the meaning of words or phrases, used in the definition - The Constitution framers were well aware of the definition of goods as occurring in the Sale of Goods Act, 1930 when the Constitution was enforced. By providing an inclusive definition of goods in Article 366(12), the Constitution framers never intended to give any restrictive meaning of goods – CGST Act, 2017 is an Act of Parliament in exercise of power of Parliament as conferred under Article 246A of the Constitution - When the Parliament has been conferred power to make law with respect to goods and services, the legislative power of the Parliament is plenary – there is no force in the submission of the petitioner that Parliament could not have defined the goods in CGST Act, 2017, expanding the definition of goods as existing in Sale of Goods Act, 1930 - definition of goods under Section 2(52) of the CGST Act,2017 does not violate any constitutional provision nor it is in conflict with the definition of goods given under Article 366(12) - the

submission of the petitioner that actionable claims have been artificially included in the definition of goods cannot be accepted – the writ petition is dismissed

**13. Union Of India Vs Brand Equity Treaties Limited**

Supreme Court has stayed Delhi HC decision in case of Brand Equity Treaties Limited Vs Union Of India which permitted the assessee to file Form Tran-1 on or before June 30, 2020.

Hon'ble Delhi High Court has held that period of 90 days for claiming input tax credit in TRAN-1 is directory and therefore, period of limitation of 3 years under the Limitation Act would apply. The Court has directed the Department to allow all assessees to claim input tax credit in TRAN-1 by 30.6.2020. The direction would apply to all those who could not file TRAN-1 and claim input tax credit. The court has further directed that it should be advertised that all taxpayers who have not filed TRAN 1 can do so by 30.6.2020. The judgment has been made applicable to all irrespective of whether the taxpayer has approached the court or not.

Rule 117 of CGST Rules is directory in nature, insofar as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed. This however, does not mean that the availing of CENVAT credit can be in perpetuity. Transitory provisions, as the word indicates, have to be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances is not in the current situation. In absence of any specific provisions under the Act, we would have to hold that in terms of the residuary provisions of the Limitation Act, the period of *three years* **should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing of such credit.**

Accordingly, since all the Petitioners have filed or attempted to file Form TRAN-1 within the aforesaid period of three years they shall be entitled to avail the Input Tax Credit accruing to them. They are thus, permitted to file relevant TRAN-1 Form on or before 30.06.2020. Respondents are directed to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically, or to accept the same manually. Respondents shall thereafter process the claims in accordance with law. We are also of the opinion that other taxpayers who are similarly situated should also be entitled to avail the benefit of this judgment. Therefore,

Respondents are directed to publicise this judgment widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1 till date are permitted to do so on or before 30.06.2020.

**14. Chief Commissioner Of Central Goods And Service Tax Vs M/S Safari Retreats Private Limited**

REVENUE FILED SLP AGAINST ORISSA HIGH COURT JUDGMENT; NOTICE ISSUED: NO SAY BUT.

Orissa HC held that the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted. The very purpose of the credit is to give benefit to the assessee. In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the ITC on the GST, which is required to pay under Section 17(5)(d) of the CGST Act.

**15. Union Of India & Ors. Vs Aap And Co.**

From Gujarat High Court

The Supreme Court in an SLP by Union of India issued notice on the prayer for interim relief; and stayed the operation of the judgment of Gujarat High Court that held as follows:

Moot question before the High Court was , whether the return in Form GSTR-3B **is a return required to be filed under Section 39 of the CGST Act/GGST Act?**

High Court has held that Section 39(1) of the CGST/GGST Act provides that every taxpayer, except a few special categories of persons, shall furnish a monthly return in such form and manner as may be prescribed. Rule 61 of the CGST Rules/GGST Rules prescribes the form and manner of submission of monthly return. Sub-rule 1 of Rule 61 of the CGST Rules/ GGST Rules provides that the return required to be filed in terms of Section 39(1) of the CGST/GGST Act is to be furnished in Form GSTR-3.

High Court further held that It would be apposite to state that initially it was decided to have three returns in a month, i.e. return for outward supplies i.e. GSTR-1 in terms of Section 37, return for inward supplies in terms of Section 38, i.e. GSTR-2 and a combined return in Form GSTR-

3. However, considering technical glitches in the GSTN portal as well as difficulty faced by the tax payers it was decided to keep filing of GSTR-2 and GSTR-3 in abeyance. Therefore, in order to ease the burden of the taxpayer for some time, it was decided in the 18th GST Council meeting to allow filing of a shorter return in Form GSTR-3B for initial period. It was not introduced as a return in lieu of return required to be filed in Form GSTR-3. The return in Form GSTR-3B is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified.

GST - whether GSTR-3B is a return under section 39(1) of CGST/ SGST Act - Time limit for availing Input Tax Credit relating to the invoices issued during the period between July 2017 and March 2018

**16. Pradeep Vs The Commissioner of GST And Central Excise Selam**

GST – arrest for evasion of GST - Section 132 of the CGST Act, 2017 - In that event if 10% of the disputed liability is paid, while filing an appeal, no coercive action ought to be taken and no arrest made - no coercive action be taken against the petitioner in connection with the alleged offence and the interim protection will continue

**17. The State of Uttar Pradesh Vs M/S Kay Pan Fragrance Pvt Ltd**

The events led to the case, now decided by the Hon'ble Apex Court began with an inspection conducted by the GST authorities at the business place of M/s. Kay Pan Fragrance [P] Ltd, Ghaziabad in Uttar Pradesh, who are engaged in the business of tobacco and tobacco products. During the course of inspection the authorities have seized goods from the go down of the assesse/dealer on the basis of certain alleged irregularities found in the documents in exercise of powers under section 67 of the Central Goods & Service Tax, 2017 (CGST Act) **and insisted execution of a bond and furnishing of security for the provisional release of goods as prescribed under section 67(6) of the CGST Act read with Rules, 140 and 141, against which the dealer approached the Hon'ble High Court of Allahabad through writ petition.**

Considering the facts and circumstances of the case, especially reckoning the perishable and hazardous nature of goods seized, the Court allowed the petitioner dealer to get release of the said goods subject to deposit of security other than **cash or bank guarantee or an indemnity bond, equal to the value of tax and penalty, if any, to the satisfaction of seizing authority. This interim order of the Hon'ble High Court of Allahabad was under challenge before the Hon'ble Supreme Court of**

**India**

In this judgment, the Court was dealing with multiple cases where the Proper Officer seized the goods due to improper documentation like E-way bills etc. The Allahabad High Court passed interim orders directing release of goods without payment of any security amount (in cash or any other form).

Section 67 of the Central Goods and Services Tax Act, 2017 ('CGST Act') read with Rule 140 and 141 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') provides the procedure for release of goods seized by a proper officer. As per these provisions, the goods can be provisionally released on furnishing of bond of a prescribed amount and security.

The Supreme Court observed that the CGST Act read with the CGST Rules contains a complete code for release (including provisional release) of seized goods. The Court held that the interim orders passed by the High Court are bad in law and erroneously allowed release of goods in contravention to the relevant provisions. Accordingly, the High Court erred in not asking the taxpayer to comply with the prescribed procedure and instead ordered release of goods.

There is no reason why any other indulgence need be shown to the assessees, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67 (6) of the Act. High Court High Court erroneously extricated the assessees concerned from paying the applicable tax amount in cash, which is contrary to the said provision. Thus, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances.

***Take away***

In the light of the judgment supra of the Hon'ble Supreme Court of India in cases of seizure of goods or things under section 67 of the CGST Act, chances for getting any relief from the High Court by way of writ petitions become meagre but the dealers have to comply with the provisions

prescribed under section 67 read with Rules, 140 or 141 as the case may be. In other words, normally in such cases, for provisional release of the seized goods the dealer has to execute a bond for the value of goods in FORM GST INS-04 and to furnish a security in the form of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable (as per Rule-140). Whereas the goods or things seized are of perishable or hazardous nature, it is required to pay an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty levied or may become payable by such person, whichever is lower (Rule-141). Here, it is very pertinent to note that Rule 140 permits furnishing of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable whereas Rule 141 permits remittance in cash alone wherein a discrimination is discernible but not explained which may result in further litigation regarding constitutional validity of the section.

Further, it is very strange and shocking to note that as per sub -rule (2) of Rule 140 of the CGST/SGST Rules, the tax payer, who got release of the consignment on furnishing bank guarantee towards tax and penalty has to produce the goods seized, whatever it may be, before the adjudicating authority on a future date, failing which the security furnished is liable to be encashed by the authorities. It is well –settled that the rules validly made form part of the Act. The statute must be interpreted reasonably so that it becomes workable. Interpretation must sub serve a constitutional goal. Glaringly, sub -rule (2) of Rule 140 of the CGST/SGST Rules is neither workable nor sub serve any constitutional goal.

**18. Union Of India Vs Sapna Jain**

What bombay high court said:

> "We have perused the said order of the Hon'ble Apex Court. The Hon'ble Apex Court noted it down that different High Courts of the Country have taken divergent views in the matter and made observation that position in law should be clarified by the Apex Court. The Apex Court had taken a note of our order dated 11 th April, 2019 wherein, we granted protection to the petitioners and specifically observed that it was not inclined to interfere with the same. The Apex Court, however made it clear that the High Courts while entertaining such request in future, will keep in mind that the Apex Court by its order dated 27 th May, 2019 passed in SLP (Crl.) No.4430 of 2019 had dismissed the special leave petition filed against the judgment of the Telangana High court in similar matter, wherein the High Court of Telangana had taken a view

contrary to Shubhada S Kadam 2/3 506 wp 1996, 1997 & 1998.19. doc what has been held by the High Court in the present case. The Apex Court listed SLP(Crl.)Nos.4322-4324 of 2019 along with other connected matters before a Bench of three Judges.

4. Since the Apex Court has proposed to decide the issue in question by referring it to the Bench of three Judges, awaiting the decision of Apex Court, we continue the ad-interim relief granted earlier till further orders. Stand over to 26th August, 2019.

5. Liberty to the respondents to move the matters after the decision of the Apex Court in SLP(Crl) Nos.4322-4324 of 2019 and connected matters which are listed before the Bench of three Judges"

Supreme Court held

As different High Courts of the country have taken divergent views in the matter, we are of the view that the position in law should be clarified by this Court - As the accused-respondents have been granted the privilege of pre-arrest bail by the High Court by the impugned orders, at this stage, we are not inclined to interfere with the same. However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.5.2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the Bombay High Court in the present case - The special leave petition is accordingly dismissed

**19. P.v. Ramana Reddy Vs Union Of India**

The Central Goods and Services Act, 2017 **("the Act" or "CGST Act") ushered in a novel tax regime in India. Section 132 of the Act has prescribed certain offences which attract punishment in accordance with the provisions of the Act. Owing to the recent enactment of the Act, there does not exist ample judicial interpretation of the substantive offences prescribed. However, the jurisprudence around granting of anticipatory bail in such offences has been deliberated by the courts at great length, and it is this developing jurisprudence that this article shall essentially concern itself with.**

The offences under the Act are either: (i) cognizable and non-bailable, as defined under clauses (a) to (d) of Section 132(1); or (ii) non-cognizable

and bailable, as defined under rest of the clauses to Section 132(1). Despite there existing a legislative lacuna with respect to the arrest provision in the Act for the latter kind of offences, as noted by the Telangana High Court in case of *P.V. Ramana Reddy v. Union of India*, there has been a bail provision prescribed for such offences under Section 69(3)(b).

he Bench of the Telangana High Court comprising of Justice V. Ramasubramanian and Justice P. KeshavaRao had observed that sub Section (1) of Section 69 of the Act empowers the Commissioner to order the arrest of a person, when such a person is believed to have committed a cognizable and non-bailable offence.

> *"If reasons to believe are recorded in the files, we do not think it is necessary to record those reasons in the authorization for arrest under Section 69(1) of the CGST Act. Since Section 69(1) of the CGST Act, 2017 specifically uses the words 'reasons to believe', in contrast to the words 'reasons to be recorded' appearing in* Section 41A(3) ***of*** Cr.P.C*., we think that it is enough if the reasons are found in the file, though not disclosed in the order authorizing the arrest,"* the Bench had said.

The state had submitted before the High Court that the petitioners before it were allegedly involved in incorporating several partnership firms and had claimed input tax credit on the basis of certain invoices, without there being any actual physical receipt of goods. It had alleged that the fraudulent input tax credit claimed by them was to the tune of Rs 224.05 crore.

The petitioners in the case had contended that there cannot be an arrest even before adjudication or assessment.

However, the High Court rejected the said contention saying that

> "To say that a prosecution can be launched only after the completion of the assessment, goes contrary to Section 132 of the CGST Act, 2017. The list of offences included in sub Section (1) of Section 132 of CGST Act, 2017 have no co relation to assessment. Issue of invoices or bills without supply of goods and the availing of ITC by using such invoices or bills, are made offences under clauses (b) and (c) of sub Section (1) of Section 132 of the CGST Act. The prosecutions for these offences do not depend upon the completion of assessment."

Moreover, the High Court Bench also rejected the petitioner's argument that since all the offences under the Act are compoundable under sub Section (1) of Section 138 of the CGST Act, 2017, subject to the restrictions contained in the proviso thereto and that therefore, there is no necessity to arrest a person for the alleged commission of an offence which is compoundable. The court had also observed that the furthering of enquiry/ investigation is not the only object of arrest.

While a major portion of the bail jurisprudence in cases of offences under the Act has been passed down from the erstwhile tax regime and the pre-existing criminal law jurisprudence around bails, the High Courts have encountered novel issues as well and have taken divergent views, while deliberating upon bail and anticipatory bail applications under the CGST Act. Such issues yet remain to be conclusively settled by the Supreme Court, as noted in *Union of India v. Sapna Jain.*

The Supreme Court on May 27, 2019, in the case of *P.V. Ramana Reddy* v. ***Union of India &Ors.,*** **has dismissed a plea challenging Telangana High Court judgment that held that a person can be arrested by the competent authority in cases of Goods and Service Tax (GST) evasion.**

The Vacation Bench comprising of Chief Justice of India RanjanGogoi and Justice Aniruddha Bose dismissed the Special Leave Petition stating that *"Having heard learned counsel for the petitioner and upon perusing the relevant material, we are not inclined to interfere."*

**20. State Of Haryana Vs Capro Power Ltd**

Before the Punjab and Haryana High Court The petitioner has challenged the respondents' refusal to issue`C' Forms in respect of natural gas purchased by it in the course of interstate trade or commerce and used by it for the generation of electricity

After implementation of the GST Act with effect from 01.07.2017, the definition of `goods' under the CST Act was amended. The amended definition of `goods' now covers only six items. What is important is that natural gas is one of them.

It is pertinent to note that till date, the Government has not issued a notification under either the CGST Act or the HGST Act. Hence inter-state sale of natural gas continues to be governed by the CST Act.

The net effect therefore is that even after the implementation of the CGST Act, the items mentioned in amended entry 54 are governed by the CST Act. Further, a notification under Section 9 (2) of the HGST Act, 2017 not having been issued natural gas continues to be covered under the CST Act

Operating para:

> "It is held that the respondents are liable to issue `C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana. In the event of the petitioner having had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms the petitioner shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax through the oil companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing and the petitioner furnishing the requisite documents/form."

Supreme Court on SLP held

Heard the learned counsel for the petitioners and perused the relevant material.

**We do not find any legal and valid ground for interference. The Special Leave Petition is dismissed.**

## Seeks to extend the due date for filing FORM GSTR-4 for financial year 2019-2020

**Notification No. 59/2020 – Central Tax**

New Delhi, the 13th July, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:–

In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words "15th day of July, 2020", the figures, letters and words "31st day of August, 2020" shall be substituted.

[F. No. CBEC-20/01/09/2019-GST]
(Gaurav Singh)
Deputy Secretary, Government of India

Note: The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, vide number G.S.R. 322(E), dated the 23rd April, 2019 and last amended by notification No. 34/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 234(E), dated the 3rd April, 2020.

## Notification CGST making Tenth amendment (2020) to CGST Rules

**Notification No 62/2020 – Central Tax**

New Delhi, the 20th August, 2020

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

1. Short Title and commencement.- (1) These rules may be called the Central Goods and Services Tax (Tenth Amendment) Rules, 2020.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 8, for sub-rule (4A), the following sub-rule shall be substituted with effect from 01st April, 2020, namely: -

"(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), with effect from 21st August, 2020, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.".

3. In the said rules, in rule 9, with effect from 21st August, 2020,-

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

"Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the registration shall be granted only after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25:

Provided further that the proper officer may, for reasons to be recorded in writing and with the approval of an officer not below the rank of Joint Commissioner, in lieu of the physical verification of the place of business, carry out the verification of such documents as he may deem fit.";

(ii) in sub-rule (2), before the Explanation, the following proviso shall be inserted, namely: -

"Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of

Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the notice in FORM GST REG-03 may be issued not later than twenty one days from the date of submission of the application.";

(iii) in sub-rule (4), for the word, "shall", the word "may" shall be substituted;

(iv) for sub-rule (5), the following sub-rule shall be substituted, namely:-

"(5) If the proper officer fails to take any action, -

(a) within a period of three working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number or is notified under sub-section (6D) of section 25; or

(b) within the time period prescribed under the proviso to sub-rule (2), in cases where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8; or

(c) within a period of twenty one days from the date of submission of the application in cases where a person does not opt for authentication of Aadhaar number; or

(d) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

the application for grant of registration shall be deemed to have been approved.".

4. In the said rules, in rule 25, with effect from 21st August, 2020, after the words "failure of Aadhaar authentication", the words "or due to not opting for Aadhaar authentication" shall be inserted.

[F. No. CBEC-20/06/16/2018-GST (Pt. II)]
(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and was last amended vide notification No. 60/2020 - Central Tax, dated the 30th July, 2020, published vide number G.S.R. 480(E), dated the 30th July, 2020.

Notification appointing 01.09.2020 as the date on which proviso to section 50 of CGST Act shall come into force which clarifies that interest will be levied on net basis.

**Notification No. 63/2020 – Central Tax**

New Delhi, the 25th August, 2020

G.S.R. ….(E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of September, 2020, as the date on which the provisions of section 100 of the Finance (No. 2) Act, 2019 (23 of 2019), shall come into force.

[F. No. 20/06/09/2019-GST]
(Pramod Kumar)
Director, Government of India

Notification extending the due date for filing FORM GSTR-4 for financial year 2019-20 to 31.10.2020.

**Notification No. 64/2020 – Central Tax**

New Delhi, the 31st August, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:–

In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words “31st day of August, 2020”, the figures, letters and words “31st day of October, 2020” shall be substituted.

[F. No. CBEC-20/06/07/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, vide number G.S.R. 322(E),

dated the 23rd April, 2019 and last amended by notification No. 59/2020-Central Tax, dated the 13th July, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 443(E), dated the 13th July, 2020.

## Notification extending due date of compliance u/s 171 of the CGST Act (Anti profiting measure) which falls during "20.03.2020 to 29.11.2020 till 30.11.2020.

**Notification No. 65/2020 – Central Tax**

New Delhi, the 01st September, 2020

G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (i), the following proviso shall be inserted, namely: -

"Provided that where, any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of November, 2020.".

[F.No.CBEC-20/06/07/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 55/2020 – Central Tax, dated the 27th June, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 416(E), dated the 27th June, 2020.

## Notification extending time to issue invoice where goods are sent on approval basis which falls between "20.03.200 to 30.10.2020" till 31.10.2020 [Section 31(7)]

**Notification No. 66/2020 – Central Tax**

New Delhi, the 21st September, 2020

G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (i), after the first proviso, the following proviso shall be inserted, namely: -

> "Provided further that where, any time limit for completion or compliance of any action, by any person, has been specified in, or prescribed or notified under sub-section (7) of section 31 of the said Act in respect of goods being sent or taken out of India on approval for sale or return, which falls during the period from the 20th day of March, 2020 to the 30th day of October, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall stand extended upto the 31st day of October, 2020.".

[F.No.CBEC-20/06/08/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 65/2020 – Central Tax, dated the 1st September, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 542(E), dated the 1st September, 2020.

# Notification granting waiver / reduction in late fee for not furnishing FORM GSTR-4 for 2017-18 and 2018-19 subject to the condition that returns are filed between 22.09.2020 to 31.10.2020 (see corrigendum also)

**Notification No 67/2020 – Central Tax**

New Delhi, the 21st September, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 73/2017– Central Tax, dated the 29th December, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 1600(E), dated the 29th December, 2017, namely :–

In the said notification: -

(ii) after the second proviso, the following proviso shall be inserted, namely: –

—Provided also that late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March, 2020 by the due date but furnishes the said return between the period from 22th day of September, 2020 to 31st day of October, 2020.॥.

[F. No. CBEC-20/06/08/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 73/2017-Central Tax, dated 29th December, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended vide notification number 77/2018 – Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 1254(E), dated the 31st December, 2018.

## Corrigendum to Notification No. 67/2020-Central Tax

शुद्धि-पत्र

नई दिल्ली, तारीख 22 दिसंबर, 2020

सा. का. नि... (अ).- भारत सरकार, वित्त मंत्रालय, राजस्व विभाग के अवधसूचना संख्या 67/2020-केन्द्रीय कर, दिनांक 21 सितंबर, 2020, जिसे सा. का. नि 572 (अ), 21 सितंबर, 2020 के तहत भारत के राजपत्र, असाधारण के भाग 2 खंड 3, उप-खंड (i) में प्रकाशित किया गया था, में :-

- पृष्ठ 3 में, पंवि 11 में, अंक "(पप)" का यरप दकया जायेगा;
- पृष्ठ 3 में, पंवि 12 में, "मार्च, 2020" के स्थान पर "मार्च, 2019" पढे।

[फा. सं. सीबीईसी-20/06/08/2019-जीएसटी]
(प्रमोद कुमार)
निदेशक, भारत सरकार

## Notification granting waiver / reduction in late fee for not furni shing FORM GSTR-10 subject to the condition that the returns are filed between 22.09.2020 to 31.12.2020 (see corrigendum also)

### Notification No. 68/2020 – Central Tax

New Delhi, 21st September, 2020

G.S.R……(E):- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby waives the amount of late fee payable under section 47 of the said Act which is in excess of two hundred and fifty rupees, for the registered persons who fail to furnish the return in FORM GSTR-10 by the due date but furnishes the said return between the period from 22 th day of September, 2020 to 31st day of December, 2020.".

[F. No. CBEC-20/06/08/2019-GST]
(Pramod Kumar)
Director, Government of India

**Corrigendum to Notification No. 68/2020-Central Tax**

New Delhi, the 22nd September, 2020

G.S.R...(E).:- In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No. 68/2020-Central Tax, dated the 21st September, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 573(E), dated the 21st September, 2020, :

- at page 4, in line 30, for the figures and letter “22th ” read “ 22nd”.

[F. No. CBEC-20/06/08/2019-GST]
(Pramod Kumar)
Director, Government of India

Notification extending due date of filing return under Section 44 till 31.10.2020

**Notification No. 69/2020 – Central Tax**

New Delhi, the 30th September, 2020

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with rule 80 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of Government of India in the Ministry of Finance (Department of Revenue), No. 41/2020-Central Tax, dated the 5th May, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 275(E), dated the 5th May, 2020, namely:-

In the said notification, for the figures, letters and words “30th September, 2020”, the figures, letters and words “31st October, 2020” shall be substituted.

[F. No. CBEC-20/06/09/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 41/2020 - Central Tax, dated the 5th May, 2020, was published in the Gazette of India, Extraordinary, vide number G.S.R. 275(E), dated the 5th May, 2020.

## Notification amending notification no. 13/2020-Central Tax dt. 21.03.2020.

**Notification No. 70/2020 – Central Tax**

New Delhi, the 30th September, 2020

G.S.R……(E). - In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 –

Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, -

(i) for the words “a financial year”, the words and figures “any preceding financial year from 2017-18 onwards” shall be substituted;

(ii) after the words “goods or services or both to a registered person”, the words “or for exports” shall be inserted.

[F. No.CBEC-20/06/09/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, vide number G.S.R. 196(E), dated 21st March, 2020 and was subsequently amended vide notification No. 61/2020-Central Tax, dated the 30th July, 2020, published vide number G.S.R. 481(E), dated the 30th July, 2020.

## Notification extending date of implementation of dynamic QR Code for B2C invoices till 01.12.2020.

**Notification No. 71/2020 – Central Tax**

New Delhi, the 30th September, 2020

G.S.R.....(E).—In exercise of the powers conferred by sixth proviso to rule 46 of the Central Goods and Services Tax Rules, 2017, the Government,

on the recommendations of the Council, hereby makes the following amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.14/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 197(E), dated the 21st March, 2020, namely:–

In the said notification,–

(i) in the first paragraph, for the words —a financial year‖, the words and figures —any preceding financial year from 2017-18 onwards‖ shall be substituted;

(ii) in the second paragraph, for the figures, letters and words —1st day of October‖, the figures, letters and words —1st day of December‖ shall be substituted.

[F. No. CBEC 20/06/07/2019-GST]
(Pramod Kumar)
Director, Government of India

## Notification making CGST (11th Amendment) Rules, 2020.

**Notification No. 72/2020 – Central Tax**

New Delhi, the 30th September, 2020

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

1. (1) These rules may be called the Central Goods and Services Tax (Eleventh Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 46, after clause (q), the following clause shall be inserted, namely:-

"(r) Quick Reference code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of rule 48.".

3. In the said rules, in rule 48, in sub-rule (4), the following proviso shall be inserted, namely:-

"Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.".

4. In the said rules, in rule 138A, for sub-rule (2), the following sub-rule shall be substituted, namely:- "(2) In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.".

[F. No.CBEC-20/06/09/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 62/2020 - Central Tax, dated the 20th August, 2020, published vide number G.S.R. 517 (E), dated the 20th August, 2020.

## Notification notifying a special procedure for issuance of e-Invoices during 01.10.2020 to 31.10.2020.

**Notification No. 73/2020 – Central Tax**

New Delhi, the 1st October, 2020

G.S.R.....(E). - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the registered persons required to prepare the tax invoice in the manner specified under sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, who have prepared tax invoice in a manner other than the said manner, as the class of persons who shall, during the period from the

1st day of October, 2020 to the 31st day of October, 2020, follow the special procedure such that the said persons shall obtain an Invoice Reference Number (IRN) for such invoice by uploading specified particulars in FORM GST INV-01 on the Common Goods and Services Tax Electronic Portal, within thirty days from the date of such invoice, failing which the same shall not be treated as an invoice.

[F. No. CBEC 20/16/09/2019-GST (Part – I)]
(Pramod Kumar)
Director, Government of India

## Notification extending due date for furnishing FORM GSTR-1 for quarter ending 31.12.2020 and 31.03.2021 for registered persons having aggregate turnover of upto Rs. 1.5 crores..

**Notification No. 74/2020 – Central Tax**

New Delhi, the 15th October, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said registered persons shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 under the Central Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

| Sl. No. | Quarter for which details in FORM GSTR-1 are furnished | Time period for furnishing details in FORM GSTR-1 |
|---|---|---|
| 1 | 2 | 3 |
| 1 | October, 2020 to December, 2020 | 13th January, 2021 |
| 2 | January, 2021 to March, 2021 | 13th April, 2021 |

3. The time limit for furnishing the details or return, as the case may be, under subsection (2) of section 38 of the said Act, for the months of October, 2020 to March, 2021 shall be subsequently notified in the Official Gazette.

[F. No. CBEC 20/06/09/2019-GST]
(Pramod Kumar)
Director, Government of India

## Notification prescribing due date for furnishing FORM GSTR-1 by registered persons having turnover of more than Rs. 1.5 crores for each of the months from October, 2020 to March, 2021

**NOTIFICATION No. 75/2020 - Central Tax**

F. No. CBEC-20/06/09/2019-GST New Delhi, the 15th October, 2020

G.S.R. - 635(E). In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with, section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby extends the time-limit for furnishing the details of outward supplies in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from October, 2020 to March, 2021 till the eleventh day of the month succeeding such month.

2. The time-limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2020 to March, 2021 shall be subsequently notified in the Official Gazette.

Sd/-
Pramod Kumar,
Director, Government of India

## Notification prescribing returns in FORM GSTR-3B along with due dates of furnishing the said form for October, 2020 to March, 2021.

**NOTIFICATION No. 76/2020 - Central Tax**

F. No. CBEC-20/06/09/2019-GST New Delhi, the 15th October, 2020

G.S.R. - 636(E). In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter

in this notification referred to as the said Act), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby specifies that the return in FORM GSTR-3B of the said rules for each of the months from October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month:

Provided that, for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in FORM GSTR-3B of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:

Provided further that, for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in FORM GSTR-3B of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month.

2. Payment of taxes for discharge of tax liability as per FORM GSTR-3B. Every registered person furnishing the return in FORM GSTR-3B of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax by debiting the electronic cash ledger or electronic credit ledger, as the case may be and his liability towards interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

Sd/-
Pramod Kumar,
Director, Government of India

## Notification making filing of annual return under Section 44(1) of CGST Act, for financial year 2019-20 optional for taxpayers having aggregate turnover less than Rs. 2 Crores.

**NOTIFICATION No. 77/2020 - Central Tax**

F. No. CBEC-20/06/09/2019-GST New Delhi, the 15th October, 2020

G.S.R. - 637(E). In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of Government of India in the Ministry of Finance, (Department of Revenue), No. 47/2019 Central Tax dated the 9th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 770(E), dated the 9th October, 2019, namely: -

In the said notification in the opening paragraph, for the words and figures "financial year 2017-18 and 2018-19", the word and figures "financial year 2017-18, 2018-19 and 2019-20" shall be substituted.

Sd/-
Pramod Kumar,
Director, Government of India

Note: The principal notification No. 47/2019 Central Tax, dated the 9th October, 2019 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 770(E), dated the 9th October, 2019.

## Notification notifying number of HSN digits required on tax invoice.

**NOTIFICATION No. 78/2020 - Central Tax**

F. No. CBEC-20/06/09/2019-GST New Delhi, the 15th October, 2020

G.S.R. - 638(E). In exercise of the powers conferred by the first proviso to rule 46 of the Central Goods and Services Tax Rules, 2017, the Central Board of Indirect Taxes and Customs, 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.12/2017 Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), dated the 28th June, 2017, namely:

In the said notification, with effect from the 01st day of April, 2021, for the Table, the following shall be substituted, namely, -

TABLE

| Serial Number | Aggregate Turnover in the preceding Financial Year | Number of Digits of Harmonised System of Nomenclature Code (HSN Code) |
|---|---|---|
| (1) | (2) | (3) |
| 1. | Up to rupees five crores | 4 |
| 2. | more than rupees five crores | 6 |

Provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, as specified in the corresponding entry in column (3) of the said table in a tax invoice issued by him under the said rules in respect to supplies made to unregistered persons".

Sd/-
Pramod Kumar,
Director, Government of India

Note: The principal notification number 12/2017 Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), dated the 28th June, 2017.

## Notification making CGST (12th Amendment) Rules, 2020.

**Notification No. 79 /2020 – Central Tax**

No. 79/2020 Central Tax New Delhi, the 15th October, 2020

**G.S.R. 639(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 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 (Twelveth Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

**2.** In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 46, for the first proviso, the following proviso shall be substituted, namely: -

"Provided that the Board may, on the recommendations of the Council, by notification, specify-

(i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or

(ii) a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and

(iii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services:".

3. In the said rules, for rule 67A, the following rule shall be substituted, namely: -

**67A. Manner of furnishing of return or details of outward supplies by short messaging service facility.-** Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** or a Nil details of outward supplies under section 37 in **FORM GSTR-1** or a Nil statement in **FORM GST CMP-08** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

***Explanation.*** - For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B** or **FORM GSTR-1** or **FORM GST CMP-08,** as the case may be".

4. In the said rules, in rule 80, in sub-rule (3), for the proviso, the following proviso shall be substituted, namely:-

"Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C** for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner."

5. In the said rules, with effect from the 20th day of March, 2020, in rule 138E, after the third proviso, the following proviso shall be inserted, namely: -

"Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February, 2020 to August, 2020."

6. In the said rules, in rule 142, in sub-rule (1A), -

(i) for the words "proper officer shall", the words "proper officer may" shall be substituted;

(ii) for the words "shall communicate", thw word "communicate" shall be substituted, namely:-

7. In the said rules, in **FORM GSTR-1**, against serial number 12, in the Table, in column 6, in the heading, Total value", the words "Rate of Tax" shall be substituted.

8. In the said rules, for **FORM GSTR-2A**, the following form shall be substituted, namely: -

**"FORM GSTR-2A**
**[See rule 60(1)]**

| | | | |
|---|---|---|---|
| Year | | | |
| Month | | | |

| | | | |
|---|---|---|---|
| 1. | GSTIN | | |
| 2. | (a) | Legal name of the registered person | |
| | (b) | Trade name, if any | |

## PART A

(Amount in Rs. all Tables)

3. Inward supplies received from a registered person including supplies attracting reverse charge

| GSTIN of supplier | Trade/ Legal name | Invoice details | | | | Rate (%) | Taxable value | Amount of tax | | | | Place of supply (Name of State/ UT) | Supply attracting reverse charge (Y/N) | GSTR-1/5 period | GSTR-1/5 filing date | GSTR-3B filing status (Yes/ No) | Amendment made, if any (GSTIN, Others) | Tax period in which amended | Effective date of cancellation, if any |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | No. | Type | Date | Value | | | Integrated tax | Central tax | State/ UT tax | Cess | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | | | | | | | | | | | | | | | | | | | |

4. Amendment to Inward supplies received from a registered person including supplies attracting reverse charge (Amendment to 3)

| Details of original Document | | Revised details | | | | | | Rate (%) | Taxable value | Amount of tax | | | | Place of supply (Name of State/ UT) | Supply attracting reverse charge (Y/N) | GSTR-1/5 period | GSTR-1/5 filing date | GSTR-3B filing status (Yes / No) | Amendment made (GSTIN, Others) | Tax period of original record | Effective date of cancellation if any, |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| No. | Date | GSTIN | Trade / Legal name | No. | Type | Date | Value | | | Integrated tax | Central tax | State/ UT tax | Cess | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| | | | | | | | | | | | | | | | | | | | | | |

5. Debit / Credit notes received during current tax period

| GSTIN of supplier | Trade/ Legal name | Credit / Debit Note Details | | | | | Rate (%) | Taxable value | Amount of tax | | | | Place of supply (Name of State/ UT) | Supply attracting reverse charge (Y/N) | GSTR-1/5 period | GSTR-1/5 filing date | GSTR-3B filing status (Yes/ No) | Amendment made, if any (GSTIN, Others) | Tax period in which amended | Effective date of cancellation, if any |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | No. | Note type | Note supply type | Date | Value | | | Integrated tax | Central tax | State/ UT tax | Cess | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| | | | | | | | | | | | | | | | | | | | | |

6. Amendment to Debit / Credit notes (Amendment to 5)

| Details of original document | | | Revised details | | | | | | | Rate (%) | Taxable value | Amount of tax | | | | Place of supply (Name of State/ UT) | Supply attracting reverse charge (Y/N) | GSTR-1/5 period | GSTR-1/5 filing date | GSTR-3B filing status (Yes / No) | Amendment made (GSTIN, Others) | Tax period of original record | Effective date of cancellation if any |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Type | No. | Date | GSTIN of Supplier | Trade / Legal name | No. | Note type | Note supply type | Date | Value | | | Integrated tax | Central tax | State/ UT tax | Cess | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| | | | | | | | | | | | | | | | | | | | | | | | |

## PART B

### 7. ISD credit received

| GSTIN of ISD | Trade/ Legal name | ISD document details | | ISD invoice details (for ISD credit note only) | | | ITC amount involved | | | | GSTR-6 Period | GSTR-6 filing date | Amend-ment made, if any | Tax Pe-riod in which amend-ed | ITC Eligibil-ity |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Type | No. | Date | No. | Date | Inte-grated tax | Central tax | State/ UT tax | Cess | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| | | | | | | | | | | | | | | | |

### 8. Amendments to ISD credit details

| Original ISD Document Details | | | Revised details | | | | | Original ISD invoice details (for ISD credit note only) | | ITC amount involved | | | | ISD GSTR-6 Period | ISD GSTR-6 filing date | Amendment made | Tax period of original record | ITC Eligibility |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Type | No. | Date | GSTIN of ISD | Trade/ Legal name | Type | No. | Date | No. | 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 | 17 | 18 | 19 |
| | | | | | | | | | | | | | | | | | | |

## PART- C

### 9. TDS and TCS Credit (including amendments thereof) received

| GSTIN of Deductor / GSTIN of E-Commerce Operator | | Deduc-tor Name / E- Com-merce Operator Name | Tax period of GSTR-7 / GSTR-8 (Original / Amend-ed) | Amount received / Gross value (Original / Re-vised) | Value of supplies returned | Net amount liable for TCS Integrated tax | Amount (Original / Revised) | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Central tax | State /UT tax | |
| 1 | | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 9A. | TDS | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| 9B. | TCS | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

## PART- D

### 10. Import of goods from overseas on bill of entry (including amendments thereof)

| ICEGATE Reference date | Bill of entry details | | | | Amount of tax | | Amended (Yes/ No) |
|---|---|---|---|---|---|---|---|
| | Port code | No. | Date | Value | Integrated tax | Cess | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | | | |

11. Inward supplies of goods received from SEZ units / developers on bill of entry (including amendments thereof)

| GSTIN of the Supplier (SEZ) | Trade / Legal name | ICE-GATE Refer-ence date | Bill of Entry details | | | | Amount of tax | | Amended (Yes/ No) |
|---|---|---|---|---|---|---|---|---|---|
| | | | Port code | No. | Date | Value | Integrated tax | Cess | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| | | | | | | | | | |

**Instructions:**

1. Terms Used :-
   a. ITC Input tax credit
   b. ISDInput Service Distributor

2. **Important Advisory:** FORM GSTR-2A is statement which has been generated on the basis of the information furnished by your suppliers in their respective FORMS GSTR-1,5,6,7 and 8. It is a dynamic statement and is updated on new addition/amendment made by your supplier in near real time. The details added by supplier would reflect in corresponding FORM GSTR-2A of the recipient irrespective of supplier's date of filing.

3. 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.

4. **Table wise instructions:**

| Table No. and Heading | Instructions |
|---|---|
| 3<br>Inward supplies received from a registered person including supplies attracting reverse charge | i. The table consists of all the invoices (including invoices on which reverse charge is applicable) which have been saved / filed by your suppliers in their FORM GSTR-1 and 5.<br>ii. Invoice type :<br>a. R- Regular (Other than SEZ supplies and Deemed exports)<br>b. SEZWP- SEZ supplies with payment of tax<br>c. SEZWOP- SEZ supplies without payment of tax<br>d. DE- Deemed exports<br>e. CBW - Intra-State supplies attracting IGST<br>iii. For every invoice, the period and date of **FORM GSTR-1/5** in which such invoice has been declared and filed is being provided. It may be noted that the details added by supplier would reflect in corresponding **FORM** |

| | |
|---|---|
| | **GSTR-2A** of the recipient irrespective of supplier's date of filing. For example, if a supplier files his invoice INV-1 dated 10th November 2019 in his **FORM GSTR-1** of March 2020, the invoice will be reflected in **FORM GSTR-2A** of March, 2020 only. Similarly, if the supplier files his FORM GSTR-1 for the month of November on 5th March 2020, the invoice will be reflected in **FORM GSTR-2A** of November 2019 for the recipient.<br>iv. The status of filing of corresponding FORM GSTR-3B for FORM GSTR-1 will also be provided.<br>v. The table also shows if the invoice or debit note was amended by the supplier and if yes, then the tax period in which such invoice was amended, declared and filed. For example, if a supplier has filed his invoice INV-1 dated 10th November 2019 in his **FORM GSTR-1** of November 2019, the invoice will be reflected in **FORM GSTR-2A** of November, 2019. If the supplier amends this invoice in **FORM GSTR-1** of December 2019, the amended invoice will be made available in Table 4 of **FORM GSTR-2A** of December 2019. The original record present in Table 3 of **FORM GSTR-2A** of November 2019 for the recipient will now have updated columns of amendment made (GSTIN, others) and tax period of amendment as December 2019.<br>vi. In case, the supplier has cancelled his registration, the effective date of cancellation will be provided. |
| 4<br>Amendment to Inward supplies received from a registered person including supplies attracting reverse charge (Amendment to table 3) | i. The table consists of amendment to invoices (including invoice on which reverse charge is applicable) which have been saved/filed by your suppliers in their FORM GSTR-1 and 5.<br>ii. Tax period in which the invoice was reported originally and type of amendment will also be provided. For example, if a supplier has filed his invoice INV-1 dated 10th November 2019 in his **FORM GSTR-1** of November 2019, the invoice will be reflected in **FORM GSTR-2A** of November, 2019. If the supplier amends this invoice in **FORM GSTR-1** of December 2019, the amended invoice will be made available in Table 4 of **FORM GSTR-2A** of December 2019. The original record present in Table 3 of **FORM GSTR-2A** of November 2019 for the recipient will now have updated columns of amendment made (GSTIN, others) and tax period of amendment as December 2019. |

| | |
|---|---|
| 5<br>Debit / Credit notes received during current tax period | i. The table consists of the credit and debit notes (including credit/debit notes relating to transactions on which reverse charge is applicable) which have been saved/filed by your suppliers in their **FORM GSTR-1** and 5.<br>ii. If the credit/debit note has been amended subsequently, tax period in which the note has been amended will also be provided.<br>iii. Note Type:<br>o Credit Note<br>o Debit Note<br>iv. Note supply type:<br>o R- Regular (Other than SEZ supplies and Deemed exports)<br>o SEZWP- SEZ supplies with payment of tax<br>o SEZWOP- SEZ supplies without payment of tax<br>o DE- Deemed exports<br>o CBW - Intra-State supplies attracting IGST<br>v. For every credit or debit note, the period and date of **FORM GSTR-1/5** in which such credit or debit note has been declared and filed is being provided. It may be noted that the details added by supplier would reflect in corresponding **FORM GSTR-2A** of the recipient irrespective of supplier's filing of **FORM GSTR-1**. For example, if a supplier files his credit note CN-1 dated |
| | 10th November 2019 in his **FORM GSTR-1** of March 2020, the credit note will be reflected in **FORM GSTR-2A** of March, 2020 only. Similarly, if the supplier files his **FORM GSTR-1** for the month of November on 5th March 2020, the credit note will be reflected in **FORM GSTR-2A** of November 2019 for the recipient.<br>vi. The status of filing of corresponding FORM GSTR-3B of suppliers will also be provided.<br>vii. The table also shows if the credit note or debit note has been amended subsequently and if yes, then the tax period in which such credit note or debit note was amended, declared and filed.<br>viii. In case, the supplier has cancelled his registration, the effective date of cancellation will be displayed. |

| | |
|---|---|
| 6<br>Amendment to Debit/Credit notes (Amendment to 5) | i. The table consists of the amendments to credit and debit notes (including credit/debit notes on which reverse charge is applicable) which have been saved/ filed by your suppliers in their FORM GSTR-1 and 5.<br>ii. Tax period in which the note was reported originally will also be provided. |
| 7<br>ISD credit received | i. The table consists of the details of the ISD invoices and ISD credit notes which have been saved/filed by an input service distributor in their FORM GSTR-6.<br>ii. Document Type :<br>o ISD Invoice<br>o ISD Credit Note<br>iii. If ISD credit note is issued subsequent to issue of ISD invoice, original invoice number and date will also be shown against such credit note. In case document type is ISD Invoice these columns would be blank<br>iv. For every ISD invoice or ISD credit note, the period and date of FORM GSTR-6 in which such respective invoice or credit note has been declared and filed is being provided.<br>v. The status of eligibility of ITC on ISD invoices as declared in FORM GSTR-6 will be provided.<br>vi. The status of eligibility of ITC on ISD credit notes will be provided. |
| 8<br>Amendment to ISD credit received | i. The table consists of the details of the amendments to details of the ISD invoices and ISD credit notes which have been saved/filed by an input service distributor in their **FORM GSTR-6**. |
| 9<br>TDS / TCS credit received | i. The table consists of the details of TDS and TCS credit from **FORM GSTR-7** and **FORM GSTR-8** and its amendments in a tax period.<br>ii. A separate facility will be provided on the common portal to accept/ reject TDS and TCS credit. |
| 10 & 11<br>Details of Import of goods from overseas on bill of entry and from SEZ units and developers and their respective amendments | i. The table consists of details of IGST paid on imports of goods from overseas and SEZ units / developers on bill of entry and amendment thereof.<br>ii. The ICEGATE reference date is the date from which the recipient is eligible to take input tax credit.<br>iii. The table also provides if the Bill of entry was amended.<br>iv. Information is provided in the tables based on data received from ICEGATE. Information on certain imports such as courier imports may not be available. |

."

9. In the said rules, in FORM GSTR-5, -

(i) in the table, -

(a) in serial number 2, after entry (c), the following entries shall be inserted, namely: -

| | | |
|---|---|---|
| "(d) | ARN | Auto Populated |
| (e) | Date of ARN | Auto Populated." |

(b) in serial number 10, -

(A) in the heading, after the words, "Total tax liability", the brackets and words "(including reverse charge liability, if any)", shall be inserted;

(B) after serial number 10B and the entry relating thereto, the following serial number and entry shall be inserted, namely,-

| "10C. On account of inward supplies liable to reverse charge | | | | | |
|---|---|---|---|---|---|
| | | | | | |

(ii) in the instructions, -

(a) for paragraph 7, the following paragraph shall be substituted, namely: -

"7. Invoice-level information, rate-wise, pertaining to the tax period should be reported as under:

(i) for all B to B supplies (whether inter-State or intra-State), invoice level details should be uploaded in Table 5;

(ii) for all inter-state B to C supplies, where invoice value is more than Rs. 2,50,000/- (B to C Large) invoice level detail to be provided in Table 6; and

(iii) for all B to C supplies, other than those reported in table 6, shall be reported in Table 7 providing State-wise summary of such supplies.";

(b) in paragraph 8, in clause (ii), after the words, "invoice value is more than rupees inserted;

(c) for paragraph 10, the following paragraph shall be substituted, namely:-

"10. Table 10 consists of tax liability on account of outward supplies declared in the current tax period and negative ITC on account of amendment to import of goods in the current tax period. Inward

supplies attracting reverse charge shall be reported in Part C of the table.".

10. In the said rules, in FORM GSTR-5A, -

(i) against serial number 4 and entries relating thereto, the following entries shall be inserted, namely: -

"4(a) ARN:

4(b) Date of ARN.";

(ii) for serial number 6, the following shall be substituted, namely: -

**"6. Calculation of interest, or any other amount**

| Sr. No. | Description | Place of supply (State/UT) | Amount due (Interest/ Other) | |
|---|---|---|---|---|
| | | | Integrated tax | CESS |
| 1 | 2 | 3 | 4 | 5 |
| 1. | Interest | | | |
| 2. | Others | | | |
| | Total | | | |

(iii) for serial number 7, the following shall be substituted, namely: -

**"7. Tax, interest and any other amount payable and paid**

(Amount in Rupees)

| Sr. No. | Description | Amount payable | | Debit entry no. | Amount paid | |
|---|---|---|---|---|---|---|
| | | Integrated tax | Cess | | Integrated tax | Cess |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1. | Tax Liability (based on Table 5 & 5A) | | | | | |
| 2. | Interest (based on Table 6) | | | | | |
| 3. | Others (based on Table 6) | | | | | |

11. In the said rules, in **FORM GSTR-9**, -

(i) in the Table, -

(a) against serial number 8C, in column 2, for the entry, the following entry shall be substituted, namely: -

"ITC on inward supplies (Other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the financial year but availed in the next financial year up to specified period.";

(b) against Pt. V, for the heading, the following heading shall be substituted, namely: -

"Particulars of the transactions for the financial year declared in returns of the next financial year till the specified period.";

(ii) in the instructions, -

(a) after paragraph 2, the following entry shall be inserted, namely,-

"2A. In the Table, against serial numbres 4, 5, 6 and 7, the taxpayers shall report the values pertaining to the financial year only. The value pertaining to the preceding financial year shall not be reported here."

(b) in paragraph 4, -

(A) after the words, letters and figures, "that additional liability for the FY 2017-18 or FY 2018-19", the word, letters and figures "or FY 2019-20" shall be inserted;

(B) in the Table, in second column, for the letters, figures and word "FY 2017-18 and 2018--19"wherever they occur, the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted;

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

(A) against serial number 6B, after the entries, the following entry shall be inserted, namely:-

"For FY 2019-20, the registered person shall report the breakup of input tax credit as capital goods and have an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the "inputs" row only.";

(B) against serial number 6C and serial number 6D, -

(i) after the entry ending with the words "entire input tax credit under the "inputs" row only.", the following entry shall be inserted, namely:-

"For FY 2019-20, the registered person shall report the breakup of input tax credit as capital goods and have an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the "inputs" row only.";

(ii) in the entry ending with the words, figures and letters "Table 6C and 6D in Table 6D only.", for the letters, figures and world "FY 2017-18 and 2018-19-", the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted;

(C) against serial number 6E, after the entry, the following entry shall be inserted, namely: -

"For FY 2019-20, the registered person shall report the breakup of input tax credit as capital goods and have an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the "inputs" row only.";

(D) against serial number 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, in the entry, for the letters, figures and word "FY 2017-18 and 2018- -18, 19", the letters, figures and word "FY 2017-2018-19 and 2019-20" shall be substituted.;

(E) against serial number 8A, after the entry, the following entry shall be inserted, namely: -

"For FY 2019-20, it may be noted that the details from FORM GSTR-2A generated as on the 1st November, 2020 shall be auto-populated in this table."'

(F) against serial number 8C, for the entries, the following entry shall be substituted, namely:-

Aggregate value of input tax credit availed on all inward supplies (except those on which tax is payable on reverse charge basis but includes supply of services received from SEZs) received during the financial year for which the annual return is being filed for but credit on which was availed in the next financial year within the period specified under Section 16(4) of the CGST Act, 2017."'

(d) in paragraph 7,

(A) after the words and figures “April 2019 to September 2019.”, the following shall be inserted, namely: -

“For FY 2019-20, Part V consists of particulars of transactions for the previous financial year but paid in the FORM GSTR-3B between April 2020 to September 2020.

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

(I) against serial number 10 & 11, after the entries, the following entry shall be inserted, namely: -

“For FY 2019-20, 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 2020 to September 2020 shall be declared here.”;

(II) against serial number 12, -

(1) in the entry beginning with the word, letters and figures “For FY 2018-19” after the words “for filling up these details.”, the following entry shall be inserted, namely:-

“For FY 2019-20, Aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April 2020 to September 2020 shall be declared here. Table 4(B) of FORM GSTR-3B may be used for filling up these details. For FY 2019-20, the registered person shall have an option to not fill this table.”;

(2) in the entry beginning with the word, letters and figures “For FY 2017-18” and ending with the words “an option to not fill this table.”, for the letters, figures and word “FY 2017-18 and 2018-19”, the letters, figures and word “FY 2017-18, 2018-19 and 2019-20” shall be substituted;

(III) against serial number 13, —

(1) in the entry beginning with the word, letters

and figures “For FY 2018-19” after the words, letters and figures “in the annual return for FY 2019-20.”, the following entry shall be inserted, namely:-

“For FY 2019 -20, 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 2020 to September 2020 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 2019-20 as per second proviso to sub-section (2) of section 16 but was reclaimed in FY 2020-21, the details of such ITC reclaimed shall be furnished in the annual return for FY 2020--21.”;

(2) in the entry beginning with the word, letters and figures “For FY 2017-18 and ending with words “an option to not fill this table.”, for the letters, figures and word “FY 2017-18 and 2018-19”, the letters, figures and word “FY 2017-18, 2018-19 and 2019-20” shall be substituted;

(e) in paragraph 8, in the Table, in second column, for the letters, figures and word “FY 2017-18 and 2018-19” wherever they occur, the letters, figures and word “FY 2017-18, 2018-19 and 2019-20” shall be substituted.

12. In the said rules, in **FORM GSTR-9C**, in the instructions,-

(i) in paragraph 4, in the Table, in second column, for the letters, figures and word “FY 2017-18 and 2018-19”, wherever they occur, the letters, figures and word “FY 2017-2018-19 and 2019-20” shall be substituted;

(ii) in paragraph 6, in the Table, in second column, for the letters, figures and word “FY 2017-18 and 2018-19” wherever they occur, the letters, figures and word “FY 2017-18, 2018-19 and 2019-20: shall be substituted.

13. In the said rules, in **FORM GST RFD-01**, in Annexure-1, in Statement-2, in the heading the brackets, word and letters “(accumulated ITC)”, shall be omitted.

14. In the said rules, in **FORM GST ASMT-16**, for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turnover | Tax Period | | Act | POS (Place of Supply) | Tax | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ." |

15. In the said rules, in **FORM GST DRC-01**, after entry (c), for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turnover | Tax Period | | Act | POS (Place of Supply) | Tax | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ." |

16. In the said rules, in **FORM GST DRC-02**, after entry (c), for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turnover | Tax Period | | Act | POS (Place of Supply) | Tax | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ." |

17. In the said rules, in **FORM GST DRC-07**, after serial number 5, for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turnover | Tax Period | | Act | POS (Place of Supply) | Tax | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | | | | | | | | | | | | ." |

18. In the said rules, in **FORM GST DRC-08**, after serial number 7, for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turnover | Tax Period | | Act | POS (Place of Supply) | Tax | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ." |

19. In the said rules, in **FORM GST DRC-09**, for the table, the following table shall be substituted, namely: -

| "Act | Tax/Cess | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Integrated tax | | | | | | |
| Central tax | | | | | | |
| State/UT tax | | | | | | |
| Cess | | | | | | |
| Total | | | | | | ". |

20. In the said rules, in **FORM GST DRC-24**, for the table, the following table shall be substituted, namely: -

| "Act | Tax/Cess | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Integrated tax | | | | | | |
| Central tax | | | | | | |
| State/UT tax | | | | | | |
| Cess | | | | | | |
| Total | | | | | | ". |

21. In the said rules, in **FORM GST DRC-25**, for the table, the following table shall be substituted, namely: -

| "Act | Tax/Cess | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Integrated tax | | | | | | |
| Central tax | | | | | | |
| State/UT tax | | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Cess | | | | | | |
| Total | | | | | | ". |

[F. No. CBEC-20/06/09/2019-GST]
PRAMOD KUMAR
Director, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 72/2020-Central Tax, dated the 30th September, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 603(E), dated the 30th September, 2020.

## Seeks to amend notification no. 41/2020-Central Tax dt. 05.05.2020 to extend due date of return under Section 44 till 31.12.2020.

**Notification No. 80 /2020 – Central Tax**

F. No. CBEC-20/06/09/2019-GST New Delhi, the 28th October, 2020

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with rule 80 of the Central Goods and Services Tax Rules, 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. 41/2020 - Central Tax, dated the 5th May, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 275(E), dated the 5th May, 2020, namely:-

In the said notification, for the figures, letters and word "31st October, 2020", the figures, letters and word "31st December, 2020" shall be substituted.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 41/2020 - Central Tax, dated the 5th May, 2020, was published in the Gazette of India, Extraordinary, vide number G.S.R. 275(E), dated the 5th May, 2020 and was last amended vide notification No. 69/2020 – Central Tax dated the 30th September, 2020, published vide number G.S.R. 595 (E), dated the 30th September, 2020.

Seeks to notify amendment carried out in sub-section (1), (2) and (7) of section 39 vide Finance (No.2) Act, 2019.

**Notification No. 81/2020 – Central Tax**

F. No. CBEC 20/06/04/2020-GST New Delhi, the 10th November, 2020

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, 2019 (23 of 2019), the Central Government hereby appoints the 10th day of November, 2020, as the date on which the provisions of section 97 of the said Act shall come into force.

Sd/-
(Pramod Kumar)
Director, Government of India

Seeks to make the Thirteenth amendment (2020) to the CGST Rules. 2017

**Notification No. 82 /2020 – Central Tax**

F. No. CBEC-20/06/09/2019-GST New Delhi, the 10th November, 2020

G.S.R……(E). - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on 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 (Thirteenth Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), for rule 59, the following rule shall be substituted with effect from the 1st day of January, 2021 namely: -

**"59. Form and manner of furnishing details of outward supplies.-** (1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax

Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in **FORM GSTR-1** for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) The registered persons required to furnish return for every quarter under proviso to sub- section (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this notification referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

(4) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the–

(a) invoice wise details of all -

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

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

(b) consolidated details of all -

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

  (ii) State wise inter-State supplies with invoice value upto two and a half 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.

(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the –

(a) invoice wise details of inter-State and intra-State supplies made to the registered persons;

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

3. In the said rules, for rule 60, the following rule shall be substituted with effect from the 1st day of January, 2021, namely: -

"60. Form and manner of ascertaining details of inward supplies.- (1) The details of outward supplies furnished by the supplier in FORM GSTR-1 or using the IFF shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal, as the case may be.

(2) The details of invoices furnished by an non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR 2A electronically through the common portal.

(3) The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 65 shall be made available to the recipient of credit in Part B of FORM GSTR 2A electronically through the common portal.

(4) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the common portal

(5) The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part C of FORM GSTR 2A electronically through the common portal.

(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of FORM GSTR-2A electronically through the common portal.

(7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of -

(i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;

(ii) the details of invoices furnished by a non-resident taxable person in FORM GSTR- 5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,-

(a) for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;

(b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;

(c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter;

(iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

(8) The Statement in FORM GSTR-2B for every month shall be made available to the registered person,-

(i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in FORM GSTR-1 by a registered person, other

than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;

(ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39."

4. In the said rules, in rule 61, after sub-rule (5), the following sub-rule shall be inserted, namely: -

"(6) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non- resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B,** electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the twentieth day of the month succeeding such tax period:

Provided that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in **FORM GSTR-3B** of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:

Provided further that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in **FORM GSTR-3B** of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month."

5. In the said rules, for rule 61, the following rule shall be substituted with effect from the 1st day of January, 2021, namely: -

"61. Form and manner of furnishing of return.-(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in FORM GSTR-3B, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under –

(i) sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month:

(ii) proviso to sub-section (1) of section 39,for each quarter, or part thereof, for the class of registered persons mentioned in column (2) of the Table given below, on or before 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 second day of the month succeeding such quarter. |
| 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 of Jammu and Kashmir, Ladakh, Chandigarh or Delhi. | Twenty fourth day of the month succeeding such quarter. |

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in FORM GSTR-3B.

(3) Every registered person required to furnish return, every quarter, under clause (ii) of sub- rule (1) shall pay the tax due under proviso to sub-section (7) of section 39, for each of the first two months of the quarter, by depositing the said amount in FORM GST PMT-06, by the twenty fifth day of the month succeeding such month:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in FORM GST PMT-06, for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner:

Provided also that while making a deposit in FORM GST PMT-06, such a registered person may –

(a) for the first month of the quarter, take into account the balance in the electronic cash ledger.

(b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.

(4) The amount deposited by the registered persons under sub-rule (3) above, shall be debited while filing the return for the said quarter in FORM GSTR-3B, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the return in FORM GSTR-3B for the said quarter has been filed.”.

6. In the said rules, after rule 61, the following rule shall be inserted, namely: -

“61A. Manner of opting for furnishing quarterly return.- (1) Every registered person intending to furnish return on a quarterly basis

under proviso to sub-section (1) of section 39, shall in accordance with the conditions and restrictions notified in this regard, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised:

Provided that where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless the said registered person,–

(a) becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or

(b) opts for furnishing of return on a monthly basis, electronically, on the common portal:

Provided further that a registered person shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.

(2) A registered person, whose aggregate turnover exceeds 5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds 5 crore rupees.

7. In the said rules, in rule 62,

(i) in sub-rule (1), the words, figures, letters and brackets “or paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be omitted;

(ii) in sub-rule (4), the words, figures, letters and brackets “or by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be omitted;

(iii) in the explanation to sub-rule (4), the words, figures, letters and brackets “or opting for paying tax by availing the benefit of notification

of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019." shall be omitted;

(iv) sub-rule (6) shall be omitted.

7. In FORM GSTR-1, in the Instructions, after serial number 17, the following instruction shall be inserted, namely:-

"18. It will be mandatory to specify the number of digits of HSN code for goods or services that a class of registered persons shall be required to mention as may be specified in the notification issued from time to time under proviso to rule 46 of the said rules.

8. After FORM-2A, the following FORM shall be inserted, namely:–

**"FORM-2B**

*[See rule 60(7)]*

Auto-drafted ITC Statement

(From FORM GSTR-1, GSTR-5, GSTR-6 and Import data received from ICEGATE)

| **Year** | **YYYY-YY** |
|---|---|
| 1. GSTIN | |
| 2(a). Legal name of the registered person | |
| 2(b). Trade name, if any | |
| 2(c). Date of generation | DD/MM/YYYY HH:MM |

3. ITC Available Summary (Amount in ₹ in all sections)

| 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)** | | | | | If this is **positive**, credit may be availed under Table 4(A)(5) of FORM GSTR-3B.<br>If this is **negative**, credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Details | B2B - Invoices | | | | | | |
| | B2B - Debit notes | | | | | | |
| | B2B - Invoices (Amendment) | | | | | | |
| | B2B - Debit notes (Amendment) | | | | | | |
| **II** | **Inward Supplies from ISD** | **4(A)(4)** | | | | | If this is **positive**, credit may be availed under Table 4(A)(4) of FORM GSTR-3B.<br>If this is **negative**, credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. |
| Details | ISD - Invoices | | | | | | |
| | ISD - Invoices (Amendment) | | | | | | |
| **III** | **Inward Supplies liable for reverse charge** | **3.1(d)**<br>**4(A)(3)** | | | | | 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. |
| Details | B2B - Invoices | | | | | | |
| | B2B - Debit notes | | | | | | |
| | B2B - Invoices (Amendment) | | | | | | |
| | B2B - Debit notes (Amendment) | | | | | | |
| **IV** | **Import of Goods** | **4(A)(1)** | | | | | If this is **positive**, credit may be availed under Table 4(A)(1) of FORM GSTR-3B.<br>If this is **negative**, credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Details | IMPG - Import of goods from overseas | | | | | | |
| | IMPG (Amendment) | | | | | | |
| | IMGSEZ - Import of goods from SEZ | | | | | | |
| | IMGSEZ (Amendment) | | | | | | |

| Part B : ITC Reversal - Credit shall be reversed in relevant headings in GSTR-3B | | | | | | | |
|---|---|---|---|---|---|---|---|
| I | Others | 4(B)(2) | | | | | If this is **positive**, Credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.<br>If this is **negative**, then credit may be reclaimed subject to reversal of the same on an earlier instance. |
| Details | B2B - Credit notes | | | | | | |
| | B2B - Credit notes (Amendment) | | | | | | |
| | B2B - Credit notes (Reverse charge) | | | | | | |
| | B2B - Credit notes (Reverse charge) (Amendment) | | | | | | |
| | ISD - Credit notes | | | | | | |
| | ISD - Credit notes (Amendment) | | | | | | |

## 4. ITC Not Available Summary (Amount in ₹ in all sections)

| S. No. | Heading | GSTR-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 | NA | | | | | Such credit shall not be taken in **FORM GSTR-3B** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Details | B2B - Invoices | | | | | | |
| | B2B - Debit notes | | | | | | |
| | B2B - Invoices (Amendment) | | | | | | |
| | B2B - Debit notes (Amendment) | | | | | | |
| II | Inward Supplies from ISD | NA | | | | | Such credit shall not be taken in **FORM GSTR-3B** |
| Details | ISD - Invoices | | | | | | |
| | ISD Amendment - Invoices | | | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| III | Inward Supplies liable for reverse charge | 3.1(d) | | | | | 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 the same. |
| Details | B2B - Invoices | | | | | | |
| | B2B - Debit notes | | | | | | |
| | B2B - Invoices (Amend-ment) | | | | | | |
| | B2B - Debit notes (Amendment) | | | | | | |
| Part B : ITC Reversal | | | | | | | |
| I | Others | 4(B)(2) | | | | | Credit shall be reversed under Table 4(B)(2) of **FORM GSTR-3B.** |
| Details | B2B - Credit notes | | | | | | |
| | B2B - Credit notes (Amendment) | | | | | | |
| | B2B - Credit notes (Reverse charge) | | | | | | |
| | B2B - Credit notes (Reverse charge) (Amendment) | | | | | | |
| | ISD - Credit notes | | | | | | |
| | ISD - Credit 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

2. Important Advisory:

   a) **FORM GSTR-2B** is a statement which has been generated on the basis of the information furnished by your suppliers in their respective FORMS GSTR-1,5 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-1,5 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 for additional details, they may refer to their respective FORM GSTR-2A (which is updated on near real time basis) for more details.

   b) 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 FORM GSTR-1s, 5s and 6s being filed by your suppliers, generally between the due dates of filing of two consequent GSTR-1 or furnishing of IFFs, based on the filing option (monthly or quarterly) as chosen by the corresponding supplier. The dates for which the relevant data has been extracted is specified in the CGST Rules and is also available under the "View Advisory" tab on the online portal. For example, FORM GSTR-2B for the month of

February will consist of all the documents filed by suppliers who choose to file their FORM GSTR-1 monthly from 00:00 hours on 12th February to 23:59 hours on 11th March.

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 FORM 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 reversed in relevant table of FORM GSTR-3B.

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

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

9. 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.

10. 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.

11. Table wise instructions:

| Table No. and Heading | Instructions |
|---|---|
| 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 in their FORM GSTR-1 and 5.<br>ii. This table displays only the supplies on which input tax credit is available.<br>iii. Negative credit, if any may arise due to amendment in B2B– Invoices and B2B – Debit notes. Such credit shall be reversed in Table 4(B)(2) 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.<br>ii. This table displays only the supplies on which ITC is available.<br>iii. Negative credit, if any, may arise due to amendment in ISD Amendments – Invoices. Such credit shall be reversed in table 4(B)(2) 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.<br>ii. This table provides only the supplies on which ITC is available.<br>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. |
| 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.<br>ii. This table shall consist of data on the imports made by you (GSTIN) in the month for which FORM GSTR-2B is being generated for.<br>iii. The ICEGATE reference date is the date from which the recipient is eligible to take input tax credit.<br>iv. The table also provides if the Bill of entry was amended.<br>v. Information is provided in the tables based on data received from ICEGATE. Information on certain imports such as courier imports may not be available. |
| 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 and 5<br>ii. Such credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. If this value is negative, then credit may be reclaimed subject to reversal of the same on an earlier instance. |
| Table 4 Part A Section I<br>All other ITC - Supplies from registered persons other than reverse<br>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 in their FORM GSTR-1 and 5.<br>ii. This table provides only the supplies on which ITC is not available.<br>iii. This is for information only and such credit shall not be taken in FORM GSTR-3B. |

| | |
|---|---|
| Table 4 Part A Section II Inward Supplies from ISD | i. This section consists of the details supplies, which have been declared and filed by an input service distributor in their FORM GSTR-6.<br>ii. This table provides only the supplies on which ITC is not available.<br>iii. This is for information only and such credit shall not be taken in FORM GSTR-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.<br>ii. This table provides only the supplies on which ITC is not available.<br>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. |
| Table 4 Part B Section I Others | i. This section consists details the credit notes received and amendment thereof which have been declared and filed by your suppliers in their FORM GSTR-1 and 5<br>ii. This table provides only the credit notes on which ITC is not available. |
| | iii. Such credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. |

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610 (E), dated the 19th June, 2017 and was last amended vide notification No. 72/2020- Central Tax, dated the 30th September, 2020, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 603(E), dated the 30th September, 2020.

## Seeks to extend the due date for FORM GSTR-1
## **Notification No. 83/2020 – Central Tax**

F. No. CBEC 20/06/04/2020-GST New Delhi, the 10th November, 2020

G.S.R.....(E).– In exercise of the powers conferred by the second proviso to sub- section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 74/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 634 (E), dated the 15th October, 2020, and notification of the Government of India in the Ministry

of Finance (Department of Revenue) No. 75/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, *vide* number

G.S.R. 635 (E), dated the 15th October, 2020,except as respects things done or omitted to be done before such supersession, the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), for each of the tax periods, till the eleventh day of the month succeeding such tax period:

Provided that the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of the said rules for the class of registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 of the said Act, shall be extended till the thirteenth day of the month succeeding such tax period.

2. This notification shall come into force with effect from the 1st day of January, 2021.

Sd/-
(Pramod Kumar)
Director, Government of India

Seeks to notify class of persons
under proviso to section 39(1)

**Notification No. 84/2020 – Central Tax**

F. No. CBEC 20/06/04/2020-GST New Delhi, the 10th November, 2020

G.S.R (E).— In exercise of the powers conferred by proviso to sub-section (1) of section 39 read with proviso to sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies the registered persons, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), having an aggregate turnover of up to five crore rupees in the preceding financial year, and who have opted to furnish a return for every quarter, under sub-rule (1) of rule 61A of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules) as the class of persons who shall, subject to the following conditions and restrictions, furnish a return for every quarter from January, 2021 onwards, and pay the tax due every month in

accordance with the proviso to sub-section (7) of section 39 of the said Act, namely: —

(i) the return for the preceding month, as due on the date of exercising such option, has been furnished:

(ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.

(2) A registered person whose aggregate turnover crosses five crore rupees during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

(3) For the registered person falling in the class specified in column (2) of the Table below, who have furnished the return for the tax period October, 2020 on or before 30th November, 2020, it shall be deemed that they have opted under sub-rule (1) of rule 61A of the said rules for the monthly or quarterly furnishing of return as mentioned in column (3) of the said Table:-

Table

| Sl. No. | Class of registered person | Deemed Option |
|---|---|---|
| **(1)** | **(2)** | **(3)** |
| 1. | Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished **FORM GSTR- 1** on quarterly basis in the current financial year | Quarterly return |
| 2. | Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished **FORM GSTR- 1** on monthly basis in the current financial year | Monthly return |
| 3. | Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year | Quarterly return |

The registered persons referred to in column (2) of the said Table, may change the default option electronically, on the common portal, during the period from the 5th day of December, 2020 to the 31st day of January, 2021.

Sd/-
(Pramod Kumar)
Director, Government of India

Seeks to notify special procedure for making payment of 35% as tax liability in first two month

**Notification No. 85/2020 – Central Tax**

F. No. CBEC 20/06/04/2020-GST New Delhi, the 10th November, 2020

G.S.R……(E). — In exercise of the powers conferred by section 148 read with sub-section (7) of section 39 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 registered persons, notified under proviso to sub-section (1) of section 39 of the said Act, who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, follow the special procedure such that the said persons may pay the tax due under proviso to sub-section (7) of section 39 of the said Act, by way of making a deposit of an amount in the electronic cash ledger equivalent to, -

(i) thirty five per cent. of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or

(ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly:

Provided that no such amount may be required to be deposited-

(a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability ;

(b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability:

Provided further that registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.

**Explanation-** For the purpose of this notification, the expression “a complete tax period” means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

2. This notification shall come into force with effect from the 1st day of January, 2021.

Sd/-
(Pramod Kumar)
Director, Government of India

Seeks to rescind Notification 76/2020-Central tax dated 15.08.2020

**Notification No. 86/2020 – Central Tax**

F. No. CBEC 20/06/04/2020-GST New Delhi, the 10th November, 2020

G.S.R.....(E).– In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations on the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 76/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 636 (E), dated the 15th October, 2020, except as respects things done or omitted to be done before such rescission.

Sd/-
(Pramod Kumar)
Director, Government of India

Seeks to extend the due date for furnishing of FORM ITC-04 for the period July- September 2020 till 30th November, 2020.

**Notification No. 87/2020 – Central Tax**

F. No. CBEC 20/06/04/2020-GST New Delhi, the 10th November, 2020

G.S.R….. (E):- In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017, the Commissioner, with the approval of the Board, hereby extends the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job

worker or received from a job worker, during the period from July, 2020 to September, 2020 till the 30th day of November, 2020.

2. This notification shall be deemed to have come into force with effect from the 25th day of October, 2020.

Sd/-
(Pramod Kumar)
Director, Government of India

## Seeks to implement e-invoicing for the taxpapers having aggregate turnover exceeding Rs. 100 Cr from 01st January 2021

**Notification No. 88/2020 – Central Tax**

F. No.CBEC-20/06/04/2020-GST New Delhi, the 10th November, 2020

G.S.R……(E). - In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of January, 2021, for the words “five hundred crore rupees”, the words “one hundred crore rupees” shall be substituted.

Sd/-
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, vide number G.S.R. 196(E), dated 21st March, 2020 and was last amended vide notification No. 70/2020-Central Tax, dated the 30th September, 2020, published vide number G.S.R. 596(E), dated the 30th September, 2020.

Seeks to walve penalty payable for noncompliance of the provisions of notification No. 14/2020 - Central Tax, dated the 21st March, 2020

**Notification No. 89/2020 – Central Tax**

F. No-CBEC-20/16/38/2020-GST New Delhi, the 29th November, 2020

G.S.R……(E). - In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby waives the amount of penalty payable by any registered person under section 125 of the said Act for non-compliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 197(E), dated the 21st March, 2020, between the period from the 01st day of December, 2020 to the 31st day of March, 2021, subject to the condition that the said person complies with the provisions of the said notification from the 01st day of April, 2021.

Sd/-
(Pramod Kumar)
Director, Government of India

Seeks to make amendment to Notification no. 12/2017-Central Tax dated 28.06.2017.

**Notification No. 90/2020 – Central Tax**

New Delhi, the 1st December, 2020

G.S.R.....(E).—In exercise of the powers conferred by the first proviso to rule 46 of the Central Goods and Services Tax Rules, 2017, the Central Board of Indirect Taxes and Customs, 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.12/2017 – Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), dated the 28th June, 2017, namely:–

In the said notification, after the first proviso, the following proviso shall be inserted, namely,-

Provided further that for class of supply as specified in column (2) and whose HSN Code as specified in column (3) of the Table below, a registered person shall mention eight number of digits of HSN Codes in a tax invoice issued by him under the said rules –

| S.No. (1) | Chemical name (2) | HSN Code (3) |
|---|---|---|
| 1 | Mixture of (5-ethyl-2-methyl-2-oxido-1, 3, 2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate (CAS RN 41203-81-0) and Bis [(5-Ethyl-2-methyl-2-oxido-1, 3, 2-dioxaphosphinan-5-yl) methyl] methylphosphonate (CAS RN42595-45-9) | 38249100 |
| 2 | Dimethyl propylphosphonate | 29313200 |
| 3 | (5-Ethyl-2-methyl-2-oxido-1, 3, 2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate | 29313600 |
| 4 | Bis[(5-Ethyl-2-methyl-2-oxido-1, 3, 2-dioxaphosphinan-5-yl)methyl] methylphosphonate | 29313700 |
| 5 | 2,4,6-Tripropyl-1, 3, 5, 2, 4, 6-trioxatriphosphinane 2, 4, 6-trioxide | 29313500 |
| 6 | Dimethyl methylphosphonate | 29313100 |
| 7 | Diethyl ethylphosphonate | 29313300 |
| 8 | Methylphosphonic acid with (aminoimin7065omethyl) urea (1: 1) | 29313800 |
| 9 | Sodium 3-(trihydroxysilyl) propyl methylphosphonate | 29313400 |
| 10 | 2,2-Diphenyl-2-hydroxyacetic acid | 29181700 |
| 11 | 2-(N,N-Diisopropylamino) ethylchloride hydrochloride | 29211400 |
| 12 | 2-(N,N-Dimethylamino) ethylchloride hydrochloride | 29211200 |
| 13 | 2-(N,N-Diethylamino) ethylchloride hydrochloride | 29211300 |
| 14 | 2-(N,N-Diisopropylamino) ethanol | 29221800 |
| 15 | 2-(N,N-Diethylamino) ethanethiol | 29306000 |
| 16 | Bis (2-hydroxyethyl) sulfide | 29307000 |
| 17 | 2-(N,N-Dimethylamino) ethanethiol | 29309092 |

| | | |
|---|---|---|
| 18 | Product from the reaction of Methylphosphonic acid and l,3,5- Triazine-2, 4, 6- triamine | As applicable |
| 19 | 3-Quinuclidinol | 29333930 |
| 20 | R-(- )-3-Quinuclidinol | 29333930 |
| 21 | 3,9-Dimethyl-2,4,8,10-tetraoxa-3,9-diphosphaspiro [5.5] undecane 3,9- dioxide | 29313900 |
| 22 | Propylphosphonic dichloride | 29313900 |
| 23 | Methylphosphonic dichloride | 29313900 |
| 24 | Diphenyl methylphosphonate | 29313900 |
| 25 | O-(3-chloropropyl)O-[4-nitro-3-(trifluoromethyl)phenyl] methylphosphonothionate | 29313900 |
| 26 | Methylphosphonic acid | 29313900 |
| 27 | Product from the reaction of methylphosphonic acid and 1,2- ethanediamine | As applicable |
| 28 | Phosphonic acid,methyl-, polyglycol ester (Exolit OP 560 TP) | 38249900 |
| 29 | Phosphonic acid,methyl-,polyglycol ester (Exolit OP 560) | 38249900 |
| 30 | Bis (polyoxyethylene) methylphosphonate | 39072090 |
| 31 | Poly(1,3-phenylene methyl phosphonate) | 39119090 |
| 32 | Dimethylmethylphosphonate, polymer with oxirane and phosphorus oxide | 38249900 |
| 33. | Carbonyl dichloride | 28121100 |
| 34. | Cyanogen chloride | 28531000 |
| 35. | Hydrogen cyanide | 28111200 |
| 36. | Trichloronitromethane | 29049100 |
| 37. | Phosphorus oxychloride | 28121200 |
| 38. | Phosphorus trichloride | 28121300 |
| 39. | Phosphorus pentachloride | 28121400 |
| 40. | Trimethyl phosphite | 29202300 |
| 41. | Triethyl phosphite | 29202400 |
| 42. | Dimethyl phosphite | 29202100 |
| 43. | Diethyl phosphite | 29202200 |
| 44. | Sulfur monochloride | 28121500 |
| 45. | Sulfur dichloride | 28121600 |

| | | |
|---|---|---|
| 46. | Thionyl chloride | 28121700 |
| 47. | Ethyldiethanolamine | 29221720 |
| 48. | Methyldiethanolamine | 29221710 |
| 49. | Triethanolamine | 29221500 |

## Seeks to extend the due dates for compliances and actions in respect of anti-profiteering measures under GST till 31.03.2021

**Notification No. 91/2020 – Central Tax**

New Delhi, the 14th December, 2020

G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in the proviso to clause (i),

(i) for the words, figures and letters “29th day of November, 2020”, the words, figures and letters “30th day of March, 2021” shall be substituted.

(ii) for the words, figures and letters “30th day of November, 2020”, the words, figures and letters “31st day of March, 2021” shall be substituted

2. This notification shall be deemed to have come into force with effect from 1st day of December, 2020.

[F.No.20/13/07/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 65/2020 – Central Tax, dated the 1st September, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 542(E), dated the 1st September, 2020.

Seeks to bring into force Sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of Finance Act, 2020(12 of 2020).

**Notification No 92/2020-Central Tax**

New Delhi, the 22nd December, 2020

S.O. ..... (E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance Act, 2020 (12 of 2020) (hereinafter referred to as the said Act), the Central Government hereby appoints the 1st day of January, 2021, as the date on which the provisions of sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the said Act shall come into force.

[F.No. CBEC-20/06/04/2020-GST]
(Pramod Kumar)
Director, Government of India

Seeks to waive late fee for FORM GSTR-4 filing in UT of Ladakh for Financial year 2019-20.

**Notification No. 93/2020-Central Tax**

New Delhi, the 22nd December, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 73/2017–Central Tax, dated the 29th December, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide

number G.S.R. 1600(E), dated the 29th December, 2017, namely :–

In the said notification, after the third proviso, the following proviso shall be inserted, namely: –

"Provided also that the late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2019-20 under section 47 of the said Act, from the 1st day of November, 2020 till the 31st day of December, 2020 shall stand waived for the registered person whose principal place of business is in the Union Territory of Ladakh.".

[F.No. CBEC-20/06/04/2020-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 73/2017-Central Tax, dated 29th December, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended vide notification number 67/2020 – Central Tax, dated the 21st September, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 572(E), dated the 21st September, 2020.

**Corrigendum**

New Delhi, the 28th December, 2020

G.S.R……(E). - In the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 94/2020-Central Tax, dated 22nd December,2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 786(E), dated the 22nd December, 2020,:

- at page 8, in line 31, for the words "for the proviso" read "for the provisos";
- at page 12, in line 12, for the words "seven working days" read "thirty days".

[F. No. CBEC-20/06/04/2020-GST]
(Pramod Kumar)
Director, Government of India

Seeks to make the Fourteenth amendment (2020)
to the CGST Rules. 2017.

**Notification No. 94 /2020 – Central Tax**

New Delhi, the 22nd December, 2020

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

**1. Short title and commencement.** - (1) These rules may be called the Central Goods and Services Tax (Fourteenth Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 8, for sub-rule (4A), with effect from a date to be notified, the following sub-rule shall be substituted, namely: -

"(4A)Every application made under rule (4) shall be followed by—

(a) biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number; or

(b) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done, 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 Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.".

3. In the said rules, in rule 9,-

(a) in sub-rule (1), -

(i) after the words “applicant within a period of”, for the word “three”, the word “seven” shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely:-

“Provided that where-

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.”;

(b) in sub-rule (2), -

(i) for the word “three”, the word “seven” shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely: -

“Provided that where-

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application.”;

(c) for sub-rule (5), the following sub-rule shall be substituted, namely:-

"(5) If the proper officer fails to take any action, -

(a) within a period of seven working days from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or

(b) within a period of thirty days from the date of submission of the application in cases where a person is covered under proviso to sub-rule (1); or

(c) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

the application for grant of registration shall be deemed to have been approved.".

4. In the said rules, in rule 21,-

(a) in clause (b), after the words "goods or services", the words "or both" shall be inserted;

(b) after clause (d), the following clauses shall be inserted, namely:-

"(e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or

(f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

(g) violates the provision of rule 86B.".

5. In the said rules, in rule 21A,-

(a) in sub-rule (2), the words ",after affording the said person a reasonable opportunity of being heard," shall be omitted;

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

"(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in FORM GSTR-1; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.";

(c) in sub-rule (3), after the words, brackets and figure "or sub-rule (2)", the words, brackets, figure and letter "or sub-rule (2A)" shall be inserted;

(d) after sub-rule (3), the following sub-rule shall be inserted, namely: -

"(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.";

(e) in sub-rule (4), -

(i) after the words, brackets and figure "or sub-rule (2)", the words, brackets, figure and letter "or sub-rule (2A)" shall be inserted;

(ii) the following proviso shall be inserted, namely: -

"Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.".

6. In the said rules, in rule 22,-

(a) in sub-rule (3), after the words, brackets and figure "the show cause issued under sub-rule (1)", the words, brackets, figures and letters "or under sub-rule (2A) of rule 21A" shall be inserted;

(b) in sub-rule (4), after the words, brackets and figure "reply furnished

under sub-rule (2)", the words, brackets, figures and letters "or in response to the notice issued under sub-rule (2A) of rule 21A" shall be inserted.

7. In the said rules, in rule 36, in sub-rule (4), with effect from the 1st day of January, 2021,-

(a) for the word "uploaded", at both the places where it occurs, the word "furnished" shall be substituted;

(b) after the words, brackets and figures "by the suppliers under sub-section (1) of section 37", at both the places where they occur, the words, letters and figure "in FORM GSTR-1 or using the invoice furnishing facility" shall be inserted;

(c) for the figures and words "10 per cent.", the figure and words "5 per cent." shall be substituted.

8. In the said rules, in rule 59, after sub-rule (4), the following sub-rule shall be inserted, namely: -

"(5) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.".

9. In the said rules, after rule 86A, with effect from the 1st day of January, 2021, the following rule shall be inserted, namely: -

"86B. Restrictions on use of amount available in electronic credit ledger.-Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:

Provided that the said restriction shall not apply where –

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or

(b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or

(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is –

(i) Government Department; or

(ii) a Public Sector Undertaking; or

(iii) a local authority;or

(iv) a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.".

10. In the said rules, in rule 138, in sub-rule (10), with effect from the 1st day of January, 2021,-

(a) in the Table, against serial number 1, in column 2, for the figures and letters “100 km.”, the figures and letters “200 km.” shall be substituted;

(b) in the Table, against serial number 2, in column 2, for the figures and letters “100 km.”, the figures and letters “200 km.” shall be substituted.

11. In the said rules, in rule 138E, -

(a) in clause (b), for the words “two months”, the words “two tax periods” shall be substituted;

(b) after clause (c),the following clause shall be inserted, namely:-

“(d) being a person, whose registration has been suspended under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A.”.

12. In the said rules, after FORM GST REG-30, the following FORM shall be inserted, namely-

**“FORM GST REG – 31**

[*See rule 21A*]

Reference No. Date: <DD><MM><YYYY>

To,

GSTIN

Name:

Address:

Intimation for suspension and notice for cancellation of registration

In a comparison of the following, namely,

(i) returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017;

(ii) outwards supplies details furnished by you in FORM GSTR-1;

(iii) auto-generated details of your inwards supplies

for the period _____ to _____;

(iv) …….. (specify)

and other available information, the following discrepancies/ anomalies have been revealed:

- □ Observation 1
- □ Observation 2
- □ Observation 3

(details to be filled based on the criteria relevant for the taxpayer).

2. These discrepancies/anomalies prima facie indicate contravention of the provisions of the Central Goods and Services Tax Act, 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/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 21 A.

4. You are requested to submit a reply to the jurisdictional tax officer within seven working days from the receipt of this notice, providing explanation to the above stated discrepancy/ anomaly. 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 on satisfaction of the jurisdictional officer with the reply along with documents furnished by you, and any further verification as jurisdictional officer considers necessary.

6. You may please note that your registration may be cancelled in case you fail to furnish a reply within the prescribed period or do not furnish a satisfactory reply.

Name:

Designation:

NB: This is a system generated notice and does not require signature by the issuing authority.”.

[F. No. CBEC-20/06/04/2020-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 82/2020-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. 698(E), dated the 10th November, 2020.

## Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 28.02.2021

**Notification No. 95/2020 – Central Tax**

New Delhi, the 30th December, 2020

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with rule 80 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, for the financial year 2019-20 till 28.02.2021.

[F. No. CBEC-20/06/13/2020-GST]
(Pramod Kumar)
Director, Government of India

## Seeks to make amendment (2021) to CGST Rules, 2017

**Notification No. 01/2021 – Central Tax**

New Delhi, the 1st January, 2021

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

**1. Short title and commencement.** - (1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), in rule 59, after sub-rule (5), the following sub-rule shall be inserted namely:-

"(6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.".

[F. No. CBEC-20/06/04/2020-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 94/2020-Central Tax, dated the 22nd December, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 786(E), dated the 22nd December, 2020.

## COURT FEE REQUIRED TO BE AFFIXED IN FRESH CASES FILED BEFORE THE ESTABLISHMENT OF DISTRICT AND SESSIONS JUDGE

| Sr. No | NATURE OF CASE | COURT FEE IN ₹ |
|---|---|---|
| 1 | Regular Civil Appeal | **50 (Each Relief)** |
| 2 | Civil Misc. Appeal | **50** |
| 3 | Rent Appeal | **50** |
| 4 | Civil Suit | **50** |
| 5 | Every other suit where it is not possible to estimate the money value the subject matter in dispute and which is not otherwise provided for by this Act. | **50** |
| 6 | Civil Misc. Application | **10** |
| 7 | Caveat Petition | **25** |
| 8 | MACT Petition | **10** |
| 9 | Execution Application against the order of MACT Award | **10** |
| 10 | Pauper Application | **10** |
| 11 | Petition U/s 34 of Arbitration and Conciliation Act | **300** |
| 12 | Petition U/s 9 of Arbitration and Conciliation Act | **150** |
| 13 | Execution petition against the Award u/s 36 of Arbitration and Conciliation Act | **200** |
| 14 | Hindu Marriage Act U/s 13 and 13-B and Section 24 of HM Act | **50** |
| 15 | Special Marriage Act | **100** |
| 16 | Plaint or memorandum of appal under the Parsi Marriage and Divorce Act 1936 | **500** |

| | | |
|---|---|---|
| 17 | Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law or declaration in respect of an alienation of ancestral land | **500** |
| 18 | Criminal Appeal where accused is on bail | **10** |
| 19 | Criminal Revision | **10** |
| 20 | Bail Application (Anticipatory) | **10** |
| 21 | Criminal Misc. Application | **10** |
| 22 | Process fee in Civil Appeal, Rent Appeal, Civil Misc. Civil Revision, Appeal, Arbitration Case, Hindu Marriage Act, Hindu Marriage Act Case, Criminal Appeal, Criminal Revision, Execution(Arbitration),Transfer Applications | **50** |
| 23 | Process fee in Civil Misc. Application, Criminal Misc. Application, Bail application in Private Complaint, Execution Applications other than Arbitration | **25** |
| 24 | Power of Attorney (Wakalatnama) | **10** |
| 25 | Court Fee on Certified copy of Judgment/order/Award | **10** |
| 26 | Court Fee on Certified copy of order passed by Rent Controller | **20** |
| 27 | Court fee on Certified Copy of Decree Sheet | **20** |

## LIMITATION PERIOD FOR FILING APPEAL/REVISION ETC.

| S. No. | NATURE OF CASE | LIMITATION |
|---|---|---|
| 1 | Regular Civil Appeal | **30 days** |
| 2 | Civil Misc. Appeal | **30 days** |
| 3 | Rent Appeal | **15 days** |
| 4 | Civil Revision | **30 days** |

| | | |
|---|---|---|
| 5 | Criminal Appeal against Conviction | **30 days** |
| 6 | Criminal Appeal against Acquittal | **60 days** |
| 7 | Criminal Revision | **90 days** |
| 8 | Cross Objections U/o 41 rule 22 CPC | **30 days from the date of Service** |

## COURT FEE REQUIRED TO BE AFFIXED IN FRESH CASES FILED BEFORE THE ESTABLISHMENT OF CIVIL JUDGE (SENIOR DIVISION)

| S. No. | NATURE OF CASE | Court Fee in ₹ |
|---|---|---|
| 1. | Civil Suit (except Recovery Suit) | **50 (Each Relief)** |
| 2 | Every other suit where it is not possible to estimate the money value the subject matter in dispute and which is not otherwise provided for by this Act. | **50** |
| 2. | Ejectment Petition | **50** |
| 3 | Succession Application | **10** |
| 4 | Guardian and Wards Act Petition | **50** |
| 5 | Hindu Marriage Act Petition U/s 9 | **50** |
| 6 | Civil Misc. Application | **10** |
| 7 | Execution Application | **10** |
| 8 | Pauper Application | **10** |
| 9 | Caveat Petition | **25** |

| | | |
|---|---|---|
| 10 | Process Fee in Civil Suit, Ejectment Petition, Succession Application, Guardian and Wards Act Petition, Hindu Marriage Act Cases | **50** |
| 11 | Process Fee in Civil Misc Application, Execution Application | **25** |
| 12 | Power of Attorney (Wakalatnama) | **10** |

## COURT FEE REQUIRED TO BE AFFIXED IN FRESH CASES FILED BEFORE THE ESTABLISHMENT OF CHIEF JUDICIAL MAGISTRATE

| S. No. | NATURE OF CASE | Court Fee in |
|---|---|---|
| 1. | Private Criminal Complaint under IPC | **50** |
| 2. | Complaint under section 138 of Negotiable Instruments Act 1881 | **50** |
| 3. | Petition U/s 125 Cr.P.C | **50** |
| 4 | Anticipatory Bail application | **10** |
| 5 | Criminal Misc. Application | **10** |
| 6 | Process Fee in Complaint under IPC and Act | **50** |
| 7 | Process fee in Criminal Misc. Application | **25** |
| 8 | Power of Attorney (Wakalatnama) | **10** |

## COURT FEE IS REQUIRED TO BE AFFIXED IN RECOVERY SUIT/APPEAL (As per amended Court Fee Act 2010)

| Sr. No. | The amount or value of the subject matter exceed ₹ | But does not exceed ₹ | Proper Fee ₹ | Maximum Leviable Fee in ₹ |
|---|---|---|---|---|
| 1 | When the amount or value exceeds | 10,000/- | 2½% of the amount exceeding ₹ 1 | **250/-** |
| 2 | 10,000/- | 20,000/- | 250+3½% of the amount exceeding ₹ 10,000/- | **600/-** |
| 3 | 20,000/- | 30,000/- | 600+4½% of the amount exceeding ₹ 20,000/- | **1050/-** |
| 4 | 30,000/- | 40,000/- | 1050+5½% of the amount exceeding ₹ 30,000/- | **1600/-** |
| 5 | 40,000/- | 50,000/- | 1600+6½% of the amount exceeding ₹ 40,000/- | **2250/-** |
| 6 | 50,000/- | 60,000/- | 2250+7½% of the amount exceeding ₹ 50,000/- | **3000/-** |
| 7 | 60,000/- | 70,000/- | 3000+6½% of the amount exceeding ₹ 60,000/- | **3975/-** |
| 8 | 75,000/- | 1,00,000/- | 3975+5½% of the amount exceeding ₹ 75,000/- | **5350/-** |
| 9 | 1,00,000/- | 2,00,000/- | 5350+3½% of the amount exceeding ₹ 1,00,000/- | **8850/-** |
| 10 | 2,00,000/- | 3,00,000/- | 8850+2¼ of the amount exceeding ₹ 2,00,000/- | 11,100/- |

| | | | | |
|---|---|---|---|---|
| 11 | 3,00,000/- | 4,00,000/- | 11,100+2¼ of the amount exceeding ₹ 3,00,000/- | 13,350/- |
| 12 | 4,00,000/- | Any Amount | 13,350+2¼ of the amount exceeding ₹ 4,00,000/- | |

## RATE OF FEE FOR COPIES (APPLIED IN COPYING AGENCY) WHETHER IN ENGLISH OR VERNACULAR

### Vol. IV Chapter 17 of High Court Rules and Orders

| Sr. No. | Nature of Document | Rate |
|---|---|---|
| 1. | (a) Copies of Judgments, decree & Orders and all other papers connected thereto, in Civil Cases<br>(b) Copies of Judgments in Criminal Cases and papers connected thereto | ₹ 2 per age subject to minimum of<br>₹ 5 For each additional carbon copy<br>₹ 1 per page<br>Ditto |
| 2. | Copies of original documents filed in the cases and marked as exhibits | Ditto |
| 3. | Copies of Entries in register | ₹ 1 per entry per copy |
| 4. | Copies of documents in Part-B of the file/ case | ₹ 2 per age subject to minimum of<br>₹ 5 For each additional carbon copy<br>₹ 1 per page |
| 5. | Copies of documents of which only certified copies are placed on the record | Ditto |
| 6. | Copies of map. Etc<br>(a) Building Maps<br>(b) Copies of maps/Shajras-Khasra, Pamaish, Khasra Khana shumari masavi etc.<br>(c) Copies of naqsha<br>(d) Copies of pedigree table | ₹. 10 for house upto 4 rooms. ₹ 1 for each additional room per copy.<br>₹ 10 upto Khasras ₹.1 for each additional Khasra per copy.<br>₹. 5 per entry per copy. ₹ 5 upto 5 entries. ₹ 1 for each additional entry per copy. |

| | | |
|---|---|---|
| 7. | Unattested copies of all kinds of documents on record | ₹ 1 per age subject to minimum of<br>₹ 2 For each additional carbon copy<br>₹ 1 per page |
| 8. | Bahi transliterations | ₹ 2 per age subject to minimum of<br>₹ 5 For each additional carbon copy<br>₹ 1 per page. |

NOTES:

I. The above rates for attested and unattested copies shall also apply to copies supplied in departmental enquiries.

II. For additional charges for copies required by post or by V.P.P and for search fees reference shall be made to Rules 11 and 34.

III. The urgent fee is ₹5 extra for each copy, Urgent fee shall be charged only when an urgent application has been made and priority is consequently given to it over other applications and not when a copy is prepared and delivered on the same day in the ordinary course.

IV. For the purpose of Note (III) above, the extra fee to be charged shall be for each paper which can properly be regarded as a separate paper, e.g., every deposition of a witness or written statement of a party, or order of the Court is a separate paper. In case of doubt as to whether a paper is separate or not, the decision of the officer-in-charge shall be final.

V. If two or three English type-written copies of a document are asked for, there shall be only one “Urgent fee”. If the copies asked for are from four to six, the urgent fee shall be twice as much and so on. In the cases of vernacular script, urgent fee shall be charged for each copy.

VI. All copies of proceedings and other cases decided by a Debt Conciliation Board under the Punjab Relief Indebtedness Act, 1934, shall be charged with fee on the same scale as for the Civil Suits.

Seeks to make amendment (2021) to CGST Rules, 2017

**Notification No. 01/2021 – Central Tax**

New Delhi, the 1st January, 2021

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

**1. Short title and commencement.** - (1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), in rule 59, after sub-rule (5), the following sub-rule shall be inserted namely:-

"(6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.".

[F. No. CBEC-20/06/04/2020-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 94/2020-Central Tax, dated the 22nd December, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 786(E), dated the 22nd December, 2020.

## Notifying amendment to jurisdiction of Central Tax officers

**Notification No. 02/2021 - Central Tax**

New Delhi, the12th January, 2021

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 Government, hereby makes the following notification further to amend the notification of the Government of India, Ministry of Finance, Department of Revenue No. 2/2017-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, -

(I). in Table I, -

(a) against Sl. No. 7, in column (4), for 7.4.2 and the entries relating thereto, the following shall be substituted, namely: -

| | (4) |
|---|---|
| "7.4.2 | Commissioner (Appeals I) Delhi and Additional Commissioner (Appeals II) Delhi"; |

(b) against Sl. No. 14, in column (4), for 14.4.1 and the entries relating thereto, the following shall be substituted, namely: -

| | (4) |
|---|---|
| "14.4.1 | Commissioner (Appeals II) Mumbai and Additional Commissioner (Appeals I) Mumbai"; |

(II). in Table III, the following shall be inserted at the end, namely: -

"Note 1: The Commissioner (Appeals I) Delhi mentioned in Column (4) for entries at Sl. No. 7.4.1 and 7.4.2 shall have jurisdiction over Delhi I and Delhi II mentioned in Column (2) at Sl. No. 13 and 14 of Table III;

Note 2: The Commissioner (Appeals II) Mumbai mentioned in Column (4) for entries at Sl. No. 14.4.1 and 14.4.2 shall have jurisdiction over Mumbai I and Mumbai II mentioned in Column (2) at Sl. No. 31 and 32 of Table III."

[F.No. CBEC-20/19/06/2020-GST]
(Pramod Kumar)
Director, Government of India

Note: - The principal Notification No. 2/2017-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 and was last amended vide notification No. 04/2019 – Central Tax, dated 29th January, 2019, published vide number G.S.R. 64 (E), dated the 29th January, 2019.

## Seeks to notify persons to whom provisions of sub-section (6B) or sub-section (6C) of section 25 of CGST Act will not apply

**Notification No. 03/2021 - Central Tax**

New Delhi, the 23rd February, 2021

G.S.R. .... (E).- In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), 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. 17/2020-Central Tax, dated the 23rct March, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 200(E), dated the 23rd March, 2020, except as respects things done or omitted to be done before such supersession, hereby notifies that the provisions of subsection (6B) or sub-section (6C) of section 25 of the said Act shall not apply to a person who is,—

(a) not a citizen of India; or

(b) a Department or establishment of the Central Government or State Government; or

(c) a local authority; or

(d) a statutory body; or

(e) a Public Sector Undertaking; or

(f) a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

[F. No. CBEC-20/06/02/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 31.03.2021

**Notification No. 04/2021 - Central Tax**

New Delhi, the 28th February, 2021

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with rule 80 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 95/2020 - Central Tax, dated the 30th December, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 809(E), dated the 30th December, 2020, namely:-

In the said notification, for the figures “28.02.2021”, the figures “31.03.2021” shall be substituted.

[F. No. CBEC-20/06/13/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 95/2020 - Central Tax, dated the 30th December, 2020, was published in the Gazette of India, Extraordinary, vide number 809(E), dated the 30th December, 2020.

## Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 50 Cr from 01st April 2021

**Notification No. 05/2021 - Central Tax**

New Delhi, the 8th March, 2021

G.S.R.....(E).– In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of April, 2021, for the words “one hundred crore rupees”, the words “fifty crore rupees” shall be substituted.

[F. No. CBEC-20/13/01/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, vide number G.S.R. 196(E), dated 21st March, 2020 and was last amended vide notification No. 88/2020-Central Tax, dated the 10th November, 2020, published vide number G.S.R. 704(E), dated the 10th November, 2020

## Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020

**Notification No. 06/2021 - Central Tax**

New Delhi, the 30th March, 2021

G.S.R……(E):- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 89/2020 – Central Tax, dated the 29th November, 2020, published in the Gazette of India, Extraordinary,

Part II, Section 3, Subsection (i), vide number G.S.R. 745(E), dated the 29th November, 2020, namely:–

In the said notification, –

(i) in the first paragraph, for the figures, letters and words, "31st day of March", the figures, letters and words "30th day of June", shall be substituted;

(ii) in the first paragraph, for the figures, letters and words, "01st day of April", the figures, letters and words "1st day of July", shall be substituted.

[F. No-20/16/38/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide notification No. 89/2020-Central Tax, dated the 29th November, 2020, published vide number G.S.R. 745(E), dated the 29th November, 2020.

## Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017.

**Circular No. 145/01/2021-GST**

New Delhi, dated the 11th February, 2021

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /Commissioners of Central Tax (All)

Madam/Sir,

**Subject: Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017 – regarding**

As you are aware that vide notification No. 94/2020- Central Tax, dated 22.12.2020, sub-rule (2A) has been inserted to rule 21A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the

CGST Rules). The said provision provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue.

2.1 Sub-rule (2A) of rule 21A is reproduced hereunder:

"(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in FORM GSTR-1; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.";

2.2 Till the time an independent functionality for FORM REG-31 is developed on the portal, in order to ensure uniformity in the implementation of the provisions of above rule 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 provides the following guidelines for implementation of the provision of suspension of registrations under the said rule.

3. On the recommendation of the Council, the registration of specified taxpayers shall be suspended and system generated intimation for suspension and notice for cancellation of registration in FORM GST REG-31, containing the reasons of suspension, shall be sent to such taxpayers on their registered e-mail address. Till the time functionality for FORM

REG-31 is made available on portal, such notice/intimation shall be made available to the taxpayer on their dashboard on common portal in FORM GST REG-17. The taxpayers will be able to view the notice in the "View/ Notice and Order" tab post login.

4. The taxpayers, whose registrations are suspended (hereinafter referred to as "the said person") under the above provisions, would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/ anomalies, if any, and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled:

a. The said person would be required to reply to the jurisdictional officer against the notice for cancellation of registration sent to them, in FORM GST REG-18 online through Common Portal withing the time limit of thirty days from the receipt of notice/ intimation.

b. In case the intimation for suspension and notice for cancellation of registration is issued on ground of non -filing of returns, the said person may file all the due returns and submit the response. Similarly, in other scenarios as specified under FORM GST REG-31, they may meet the requirements and submit the reply.

5.1 Post issuance of FORM GST REG-31 via email, the list of such taxpayers would be sent to the concerned Nodal officers of the CBIC/ States. Also, the system generated notice can be viewed by the jurisdictional proper officers on their Dashboard for suitable actions. Upon receipt of reply from the said person or on expiry of thirty days (reply period), a task would be created in the dashboard of the concerned proper officer under "Suo moto cancellation proceeding".

5.2 Proper officer, post examination of the response received from the said person, may pass an order either for dropping the proceedings for suspension/ cancellation of registration in FORM GST REG-20 or for cancellation of registration in FORM GST REG-19. Based on the action taken by the proper officer, the GSTIN status would be changed to "Active" or "Cancelled Suo-moto" as the case maybe.

5.3 Till the time independent functionality for FORM GST REG-31 is fully ready, it is advised that if the proper officer considers it appropriate to drop a proceeding anytime after the issuance of FORM GST REG-31, he may advise the said person to furnish his reply on the common portal in FORM GST REG-18.

5.4 It is advised that in case the proper officer is prima-facie satisfied with the reply of the said person, he may revoke the suspension by passing an order in FORM GST REG-20. Post such revocation, if need be, the proper officer can continue with the detailed verification of the documents and recovery of short payment of tax, if any. Further, in such cases, after detailed verification or otherwise, if the proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in FORM GST REG-17.

6. Difficulties, if any, in implementation of these instructions may be informed to the board (gst-cbec@gov.in). Hindi version follows.

(Sanjay Mangal)
Commissioner (GST)

## Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020-Central Tax dated 21st March, 2020 - Reg.

**Circular no. 146/02/2021-GST**

New Delhi, dated the 23rd February, 2021

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /Commissioners of Central Tax (All)

Madam/Sir,

**Subject: Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 - Reg.**

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020. Further, vide Notification No. 89/2020- Central Tax, dated 29th November 2020, penalty has been waived for non-compliance of the provisions of Notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 31st March, 2021, subject to the condition that the said person complies with the provisions of the said Notification from 01st April, 2021.

2. Various references have been received from trade and industry seeking clarification on applicability of Dynamic Quick Response (QR) Code on B2C (Registered person to Customer) invoices and compliance of Notification No. 14/2020-Central Tax, dated 21st March, 2020 as amended. The issues have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, 2017, hereby clarifies the issues in the table below:

| Sl. No. | Issues | Clarification |
|---|---|---|
| 1. | **To which invoice is Notification No 14/2020- Central Tax dated 21st March, 2020 applicable? Would this requirement be applicable on invoices issued for supplies made for Exports?** | This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases:<br>i. Where the supplier of taxable service is:<br>a) an insurer or a banking company or a financial institution, including a non-banking financial company;<br>b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;<br>c) supplying passenger transportation service;<br>d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens<br>ii. OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person. |
| | | As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of Notification no. 13/2020-Central Tax, dated 21st March, 2020 treating them as Business to Business (B2B) supplies, Notification no. 14/2020- Central Tax, dated 21st March, 2020 will not be applicable to them. |

| | | |
|---|---|---|
| **2.** | **What parameters/ details are required to be captured in the Quick Response (QR) Code?** | Dynamic QR Code, in terms of Notification No. 14/2020-Central Tax, dated 21st March, 2020 is required, inter-alia, to contain the following information: -<br>i. Supplier GSTIN number<br>ii. Supplier UPI ID<br>iii. Payee's Bank A/C number and IFSC<br>iv. Invoice number & invoice date,<br>v. Total Invoice Value and<br>vi. GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc.<br>Further, Dynamic QR Code should be such that it can be scanned to make a digital payment. |
| **3.** | **If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice?** | If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements.<br>In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: -<br>i. Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice ; or<br>ii. In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash , along with date of such payment on the invoice;<br>The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code. |
| **4.** | **If the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based** | In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code.<br>However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice. |

| | | |
|---|---|---|
| | **applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?** | |
| **5.** | **Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre-paid invoices i.e. where payment has been made before issuance of the invoice?** | If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code.<br><br>In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice. |
| **6.** | **Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?** | The provisions of the notification shall apply to each supplier/registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the Ecommerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice. |

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)
Commissioner

Seeks to Clarify Certain Refund Related Issues

**Circular No. 147/03//2021-GST**

New Delhi, Dated the 12th March, 2021

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /Commissioners of Central Tax (All)

Madam/Sir,

**Subject: Clarification on refund related issues – Reg.**

Various representations have been received seeking clarification on some of the issues relating to GST refunds. The issues have been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

2. **Clarification in respect of refund claim by recipient of Deemed Export Supply**

2.1 Representations have been received in respect of difficulties being faced by the recipients of the deemed export supplies in claiming refund of tax paid in respect of such supplies since the system is not allowing them to file refund claim under the aforesaid category unless the claimed amount is debited in the electronic credit ledger.

2.2 Para 41 of Circular No. 125/44/2019 – GST dated 18/11/2019 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

2.3 The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a **deemed export supply** to **the recipient or the supplier** of deemed export supplies. The said proviso is reproduced as under:

"Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) *the recipient of deemed export supplies; or*

(b) *the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund"*

From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim. The said restriction has been placed by the Circular No. 125/44/2019-GST dated 18.11.2019.

In this regard, it is submitted that in order to ensure that there is no dual benefit to the claimant, the portal allows refund of only Input Tax Credit (ITC) to the recipients which is required to be debited by the claimant while filing application for refund claim. Therefore, whenever the recipient of deemed export supplies files an application for refund, the portal requires debit of the equivalent amount from the electronic credit ledger of the claimant.

As stated above, there is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient. The amended para 41 of Circular no. 125/44/2.019-GST dated 18.11.2019 would read as under:

"41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of

deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and ***the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period***. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with."

**3. Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a).**

3.1 Para 26 of Circular No. 125/44/2019-GST dated 18th November 2019 gave a clarification in relation to cases where taxpayers had inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of **FORM GSTR-3B** of the relevant period and were unable to claim refund of the integrated tax paid on the same through **FORM GST RFD-01A**. This was because of a validation check placed on the common portal which prevented the value of refund of integrated tax/cess in **FORM GST RFD-01A** from being more than the amount of integrated tax/cess declared in table 3.1(b) of **FORM GSTR-3B**. The said Circular clarified that for the tax periods from **01.07.2017 to 30.06.2019**, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the tables **3.1(a), 3.1(b) and 3.1(c)** of **FORM GSTR-3B** filed for the corresponding tax period.

3.2 Since the clarification issued vide the above Circular was valid only from 01.07.2017 to 30.06.2019, taxpayers who committed these errors in subsequent periods were not able to file the refund applications in **FORM GST RFD-01A/ FORM GST RFD-01**.

3.3 The issue has been examined and it has been decided to extend the relaxation provided for filing refund claims where the taxpayer inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of

FORM GSTR-3B **till 31.03.2021**. Accordingly, para 26 of Circular No. 125/44/2019-GST dated 18.11.2019 stands modified as under:

> "26. In this regard, it is clarified that for the tax periods commencing from ***01.07.2017 to 31.03.2021***, such registered persons shall be allowed to file the refund application in FORM GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period."

**4. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.**

4.1 Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

4.2 Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

> "Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover"

4.3 Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under:

> "Adjusted Total Turnover" means the sum total of the value of-
>
> (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
>
> (b) the turnover of zero-rated supply of services determined

in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'

4.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as:

*"Turnover in State or turnover in Union territory" means the aggregate* ***value of all taxable supplies*** *(excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person,* ***exports of goods*** *or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess"*

4.5 From the examination of the above provisions, it is noticed that "Adjusted Total Turnover" includes "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act. As per Section 2(112), "Turnover in a State or Union Territory" includes turnover/ value of export/ zero-rated supplies of goods. The definition of "Turnover of zero-rated supply of goods" has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89 (4) of the CGST Rules, 2017.

4.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero- rated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said

sub-rule. The same can explained by the following illustration where actual value per unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier:

**Illustration:** Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Net admissible ITC = Rs. 270

All values in Rs.

| Outward Supply | Value per unit | No of units supplied | Turnover | Turnover as per amended definition |
|---|---|---|---|---|
| Local (Quantity 5) | 200 | 5 | 1000 | 1000 |
| Export (Quantity 5) | 350 | 5 | 1750 | 1500 (1.5*5*200) |
| **Total** | | | **2750** | **2500** |

The formula for calculation of refund as per Rule 89(4) is :

*Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover*

Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500

Adjusted Total Turnover= Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750] Net ITC = Rs. 270

Refund Amount = Rs. $\frac{1500*270}{2500}$ = Rs. 162

Thus, the admissible refund amount in the instant case is Rs. 162.

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)
Commissioner (GST)

Reserve Bank of India
www.rbi.org.in

**RBI Circular is respect to Refund of Interest and Asset Classification**

RBI/2021-22/17 DOR.STR.REC.4/21.04.048/2021-22 April 7, 2021

All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks) All Primary (Urban) Co-operative Banks/ State Co-operative Banks/ District Central Co-operative Banks All All-India Financial Institutions All Non-Banking Financial Companies (including Housing Finance Companies)

Madam / Dear Sir,

Asset Classification and Income Recognition following the expiry of Covid-19 regulatory package

The Hon'ble Supreme Court of India has pronounced its judgement in the matter of Small Scale Industrial Manufacturers Association vs UOI & Ors. and other connected matters on March 23, 2021. In this connection, it is advised hereunder:

**I. Refund/adjustment of 'interest on interest'**

2. All lending institutions[1] shall immediately put in place a Board-approved policy to refund/adjust the 'interest on interest' charged to the borrowers during the moratorium period, i.e. March 1, 2020 to August 31, 2020 in conformity with the above judgement. In order to ensure that the above judgement is implemented uniformly in letter and spirit by all lending institutions, methodology for calculation of the amount to be refunded/ adjusted for different facilities shall be finalised by the Indian Banks Association (IBA) in consultation with other industry participants/bodies, which shall be adopted by all lending institutions.

3. The above reliefs shall be applicable to all borrowers, including those who had availed of working capital facilities during the moratorium period, irrespective of whether moratorium had been fully or partially availed, or

1 Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks), Primary (Urban) Co-operative Banks/State Co-operative Banks/ District Central Co-operative Banks, All-India Financial Institutions, and Non-Banking Financial Companies (including Housing Finance Companies)

not availed, in terms of the circulars DOR.No.BP.BC.47/21.04.048/2019-20 dated March 27, 2020 and DOR.No.BP.BC.71/21.04.048/2019-20 dated May 23, 2020 ("Covid-19 Regulatory Package").

4. Lending institutions shall disclose the aggregate amount to be refunded/adjusted in respect of their borrowers based on the above reliefs in their financial statements for the year ending March 31, 2021.

**II. Asset Classification**

5. Asset classification of borrower accounts by all lending institutions following the above judgment shall continue to be governed by the extant instructions as clarified below.

(i) In respect of accounts which were not granted any moratorium in terms of the Covid19 Regulatory Package, asset classification shall be as per the criteria laid out in the Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 1, 2015 or other relevant instructions as applicable to the specific category of lending institutions (IRAC Norms).

(ii) In respect of accounts which were granted moratorium in terms of the Covid19 Regulatory Package, the asset classification for the period from March 1, 2020 to August 31, 2020 shall be governed in terms of the circular DOR.No.BP.BC.63/21.04.048/2019-20 dated April 17, 2020, read with circular DOR.No.BP.BC.71/21.04.048/2019-20 dated May 23, 2020. For the period commencing September 1, 2020, asset classification for all such accounts shall be as per the applicable IRAC Norms.

Yours faithfully,
(Manoranjan Mishra)
Chief General Manager

## Notifying amendment to jurisdiction of Central Tax officers

**Notification No. 02/2021 - Central Tax**

New Delhi, the12th January, 2021

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 Government, hereby makes the following notification further to amend the notification of the Government of India, Ministry of Finance, Department of Revenue No. 2/2017-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, -

(I). in Table I, -

(a) against Sl. No. 7, in column (4), for 7.4.2 and the entries relating thereto, the following shall be substituted, namely: -

| | (4) |
|---|---|
| "7.4.2 | Commissioner (Appeals I) Delhi and Additional Commissioner (Appeals II) Delhi"; |

(b) against Sl. No. 14, in column (4), for 14.4.1 and the entries relating thereto, the following shall be substituted, namely: -

| | (4) |
|---|---|
| "14.4.1 | Commissioner (Appeals II) Mumbai and Additional Commissioner (Appeals I) Mumbai"; |

(II). in Table III, the following shall be inserted at the end, namely: -

"Note 1: The Commissioner (Appeals I) Delhi mentioned in Column (4) for entries at Sl. No. 7.4.1 and 7.4.2 shall have jurisdiction over Delhi I and Delhi II mentioned in Column (2) at Sl. No. 13 and 14 of Table III;

Note 2: The Commissioner (Appeals II) Mumbai mentioned in Column (4) for entries at Sl. No. 14.4.1 and 14.4.2 shall have jurisdiction over Mumbai I and Mumbai II mentioned in Column (2) at Sl. No. 31 and 32 of Table III."

[F.No. CBEC-20/19/06/2020-GST]
(Pramod Kumar)
Director, Government of India

Note: - The principal Notification No. 2/2017-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 and was last amended vide notification No. 04/2019 – Central Tax, dated 29th January, 2019, published vide number G.S.R. 64 (E), dated the 29th January, 2019.

Seeks to notify persons to whom provisions of sub-section (6B) or sub-section (6C) of section 25 of CGST Act will not apply.

**Notification No. 03/2021 - Central Tax**

New Delhi, the 23rd February, 2021

G.S.R. .... (E).- In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), 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. 17/2020-Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 200(E), dated the 23rd March, 2020, except as respects things done or omitted to be done before such supersession, hereby notifies that the provisions of subsection (6B) or sub-section (6C) of section 25 of the said Act shall not apply to a person who is,

(a) not a citizen of India; or

(b) a Department or establishment of the Central Government or State Government; or

(c) a local authority; or

(d) a statutory body; or

(e) a Public Sector Undertaking; or

(f) a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

[F. No. CBEC-20/06/02/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

## Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 31.03.2021.

**Notification No. 04/2021 - Central Tax**

New Delhi, the 28th February, 2021

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with rule 80 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 95/2020 - Central Tax, dated the 30th December, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 809(E), dated the 30th December, 2020, namely:-

In the said notification, for the figures "28.02.2021", the figures "31.03.2021" shall be substituted.

[F. No. CBEC-20/06/13/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 95/2020 - Central Tax, dated the 30th December, 2020, was published in the Gazette of India, Extraordinary, vide number 809(E), dated the 30th December, 2020.

## Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 50 Cr from 01st April 2021.

**Notification No. 05/2021 - Central Tax**

New Delhi, the 8th March, 2021

G.S.R.....(E).– In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of April, 2021, for the words “one hundred crore rupees”, the words “fifty crore rupees” shall be substituted.

[F. No. CBEC-20/13/01/2019-GST]
(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, vide number G.S.R. 196(E), dated 21st March, 2020 and was last amended vide notification No. 88/2020-Central Tax, dated the 10th November, 2020, published vide number G.S.R. 704(E), dated the 10th November, 2020.

## Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020

**Notification No. 06/2021 - Central Tax**

New Delhi, the 30th March, 2021

G.S.R……(E):- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 89/2020 – Central Tax, dated the 29th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 745(E), dated the 29th November, 2020, namely:–

In the said notification, –

(i) in the first paragraph, for the figures, letters and words, “31st day of March”, the figures, letters and words “30th day of June”, shall be substituted;

(ii) in the first paragraph, for the figures, letters and words, “01st day of April”, the figures, letters and words “1st day of July”, shall be substituted.

[F. No-20/16/38/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide notification No. 89/2020-Central Tax, dated the 29th November, 2020, published vide number G.S.R. 745(E), dated the 29th November, 2020.

Seeks to make second amendment (2021) to CGST Rules.

**Notification No. 07/2021 - Central Tax**

New Delhi, the 27th April, 2021

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

1. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, in rule 26 in sub-rule (1), after the third proviso, the following proviso shall be inserted, namely:-

> "Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of May, 2021, also be allowed to furnish the return under section 39 in FORM GSTR-3B and the details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility, verified through electronic verification code (EVC).".

[F. No. CBEC-20/06/08/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 01/2021-Central Tax, dated the 1st January, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 2(E), dated the 1st January, 2021

Seeks to provide relief by lowering of interest rate for the month of March and April, 2021

**Notification No. 08/2021 - Central Tax**

New Delhi, the 1st May, 2021

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 50 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2017 – Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 661(E), dated the 28th June, 2017, namely:–

(i) In the said notification, in the first paragraph, in the first proviso, in the Table after S. No. 3, the following shall be inserted, namely: –

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| "4. | Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year | 9 per cent for the first 15 days from the due date and 18 per cent thereafter | March, 2021, April, 2021 |
| 5. | Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39 | Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter | March, 2021, April, 2021 |
| 6. | Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39 | Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter | March, 2021, April, 2021 |

| | | | |
|---|---|---|---|
| 7. | Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39 | Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter | Quarter ending March, 2021.". |

2. This notification shall be deemed to have come into force with effect from the 18th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification number 13/2017 – Central Tax, dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R. 661(E), dated the 28th June, 2017 and was last amended vide notification number 51/2020 – Central Tax, dated the 24th June, 2020, publishedin the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 404(E), dated the 24th June, 2020.

## Seeks to amend notification no. 76/2018-Central Tax in order to provide waiver of late fees for specified taxpayers and specified tax periods

**Notification No. 09/2021 - Central Tax**

New Delhi, the 1st May, 2021

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 76/2018–Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1253(E), dated the 31st December, 2018, namely:–

In the said notification, after the seventh proviso, the following proviso shall be inserted, namely: –

"Provided also that the amount of late fee payable under section 47 shall stand waived for the period as specified in column (4) of the Table given below, for the tax period as specified in the corresponding entry in column (3) of the said Table, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in FORM GSTR-3B by the due date, namely:-

| S. No. | Class of registered persons | Tax period | Period for which late fee waived |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 1. | Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year | March, 2021 and April, 2021 | Fifteen days from the due date of furnishing return |
| 2. | Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39 | March, 2021 and April, 2021 | Thirty days from the due date of furnishing return |
| 3. | Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to subsection (1) of section 39 | January-March, 2021 | Thirty days from the due date of furnishing return.". |

2. This notification shall be deemed to have come into force with effect from 20th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 76/2018-Central Tax, dated 31st December, 2018 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1253(E), dated the 31st December, 2018 and was last amended vide notification number 57/2020 – Central Tax, dated the 30th June, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 424(E), dated the 30th June, 2020.

## Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.05.2021

**Notification No. 10/2021 – Central Tax**

New Delhi, the 1st May, 2021

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:–

In the said notification, in the third paragraph, after the first proviso, the following proviso shall be inserted, namely: –

> "Provided further that the said persons shall furnish the return in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2021, upto the 31st day of May, 2021.".

2. This notification shall be deemed to have come into force with effect from the 30th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-

section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019 and was last amended by notification No. 64/2020-Central Tax, dated the 31st August, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 539(E), dated the 31st August, 2020.

Seeks to extend the due date for furnishing of FORM ITC-04 for the period Jan-March, 2021 till 31st May, 2021.

**Notification No. 11/2021 – Central Tax**

New Delhi, the 1st May, 2021

G.S.R….. (E).- In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017, the Commissioner, with the approval of the Board, hereby extends the time period upto the 31st day of May, 2021, for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from 1st January, 2021 to 31st March, 2021.

2. This notification shall be deemed to have come into force with effect from the 25th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Seeks to extend the due date of furnishing FORM GSTR-1 for April, 2021

**Notification No. 12/2021 – Central Tax**

New Delhi, the 1st May, 2021

G.S.R.....(E).- In exercise of the powers conferred by the second proviso to subsection (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance

(Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely:–

In the said notification, after the proviso, the following proviso shall be inserted, namely:-

"Provided further that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act, for the tax period April, 2021, shall be extended till the twenty-sixth day of the month succeeding the said tax period.".

[F. No. CBEC-20/06/08/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification number 83/2020 – Central Tax, dated the 10th November, 2020, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020.

Seeks to make third amendment (2021) to CGST Rules.

**Notification No. 13/2021 – Central Tax**

New Delhi, the 1st May, 2021

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

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017,----

(i) in sub-rule (4) of rule 36, after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that such condition shall apply cumulatively for the period April and May, 2021 and the return in FORM GSTR-3B for the tax period May, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.";

(ii) in sub-rule (2) of rule 59, the following proviso shall be inserted, namely:-

"Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.".

[F. No. CBEC-20/06/08/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and last amended vide notification No. 07/2021 - Central Tax, dated the 27th April, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 292 (E), dated the 27th April, 2021.

## Seeks to extend specified compliances falling between 15.04.2021 to 30.05.2021 till 31.05.2021 in exercise of powers under section 168A of CGST Act.

**Notification No. 14/2021 – Central Tax**

New Delhi, the 1st May, 2021

G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of Union Territory Goods and Services Tax Act, 2017 (14 of 2017), in view of the spread of pandemic COVID-19 across many parts of India, the Government, on the recommendations of the Council, hereby notifies, as under,-

(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 15th day of April, 2021 to the 30th day of May, 2021, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 31st day of May, 2021, including for the purposes of--

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above; but, such extension of time shall not be applicable for the compliances of the following provisions of the said Act, namely: -

(a) Chapter IV;

(b) sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129;

(c) section 39, except sub-section (3), (4) and (5);

(d) section 68, in so far as e-way bill is concerned; and

(e) rules made under the provisions specified at clause (a) to (d) above:

Provided that where, any time limit for completion of any action, by any authority or by any person, specified in, or prescribed or notified under rule 9 of the Central Goods and Services Tax Rules, 2017, falls during the period from the 1st day of May, 2021 to the 31st day of May, 2021, and where completion of such action has not been made within such time, then, the time limit for completion of such action, shall be extended upto the 15th day of June, 2021;

(ii) in cases where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for issuance of order

in terms of the provisions of subsection (5), read with sub-section (7) of section 54 of the said Act falls during the period from the 15th day of April, 2021 to the 30th day of May, 2021, in such cases the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 31st day of May, 2021, whichever is later.

2. This notification shall come into force with effect from the 15th day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]
(Rajeev Ranjan)
Under Secretary to the Government of India

Seeks to make fourth amendment (2021) to CGST Rules, 2017

**Notification No. 15 /2021 – Central Tax**

New Delhi, the 18th May, 2021

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

1. S**hort title and commencement. -** (1) These rules may be called the Central Goods and Services Tax (Fourth Amendment) Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2**. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 23, in sub-rule (1), after the words "date of the service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30," shall be inserted;

(ii) in rule 90, -

(a) in sub-rule (3), the following proviso shall be inserted, -

"Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under sub-section of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.";

(b) after sub-rule (4), the following sub-rules shall be inserted, namely: -

"(5) The applicant may, at any time before issuance of provisional refund sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08,** in respect of any refund application filed in **FORM GST**

**RFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W.**

(6) On submission of application for withdrawal of refund in **FORM GST RFD-01W**, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORM GST RFD-01**, shall be credited back to the ledger from which such debit was made.";

(iii) in rule 92, -

(a) in sub-rule (1), the proviso shall be omitted;

(b) in sub-rule (2), -

(i) for the word and letter "Part B", the word and letter "Part A" shall be substituted;

(ii) the following proviso shall be inserted, namely: -

"Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of **FORM GST RFD- 07**.";

(iv) in rule 96, -

(a) in sub-rule (6), for the word and letter "Part B", the word and letter "Part A" shall be substituted;

(b) in sub-rule (7), for the words, letters and figures, "after passing an order in **FORM GST RFD-06**", the words, letters and figures, "by passing an order in **FORM GST RFD-06** after passing an order for release of withheld refund in Part B of **FORM GST RFD-07**" shall be substituted;

(v) in **FORM GST REG-21**, under the sub-heading "Instructions for submission of application for revocation of cancellation of registration", in the first bullet point "after the words "date of service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Additional Commissioner or the Joint Commissioner or Commissioner, as the case may be, in exercise of the powers provided under proviso to sub-section (1) of section 30," shall be inserted;

(vi) in rule 138E, for the words "in respect of a registered person, whether as a supplier or a recipient, who, —" the words „"in respect of any outward movement of goods of a registered person, who, —" shall be substituted.

(vii) for **FORM GST RFD-07**, the following **FORM** shall be substituted, namely: -

"**FORM GST RFD-07**
[See rules 92(2) & 96(6)]

Reference No. Date: <DD/MM/YYYY>

To
**.....** (GSTIN/UIN/Temp. ID)
**.....** (Name)
..... (Address)
..... (ARN)

**Part-A**

**Order for withholding the refund**

Refund payable to the taxpayer with respect to ARN specified above are hereby withheld in accordance with the provisions of sub-section (10)/ (11) of section 54 of the CGST Act, 2017. The reasons for withholding are given as under:

| **S. No**. | **Particulars** | |
|---|---|---|
| 1 | ARN | |
| 2 | Amount Claimed in RFD-01 | <Auto-populated> |
| 3 | Amount Inadmissible in RFD-06 | <Auto-populated> |
| 4 | Amount Adjusted in RFD-06 | <Auto-populated> |
| 5 | Amount Withheld | |
| 6 | Reasons for withholding (More than one reason can be selected) | • Recoverable dues not paid<br>• In view of sub-section 11 of Section 54<br>• On account of fraud (s) of serious nature<br>• Others, (specify) |
| 7 | Description of the reasons | (Up to 500 characters, separate file can be attached for detailed reasons) |
| 8 | Record of Personal Hearing | (Up to 500 characters, separate file can be attached for detailed records) |

**Part-B**

**Order for release of withheld refund**

This has reference to your refund application <ARN> dated <date> against which the payment of refund amount sanctioned vide order <RFD-06 order no> dated <date> was withheld by this office order <Order Reference No> dated <date>. It has been now found to my satisfaction that the conditions for withholding of refund no longer exist and therefore, the refund amount withheld is hereby allowed to be released as given under:

| S. No. | Particulars | |
|---|---|---|
| 1 | ARN | |
| 2 | Amount Claimed in RFD-01 | <Auto-populated> |
| 3 | Amount Inadmissible in RFD-06 | <Auto-populated> |
| 4 | Amount Adjusted in RFD-06 | <Auto-populated> |
| 5 | Amount Withheld in RFD-07 A | <Auto-populated> |
| 6 | Amount Released | |
| 7 | Amount to be Paid | |

Date:
Place:

Signature (DSC):
Name:
Designation:
Office Address: ";

(viii) after **FORM GST RFD-01 B**, the following **FORM** shall be inserted, namely: -

**"FORM GST RFD-01 W**
***[Refer Rule 90(5)]***
**Application for Withdrawal of Refund Application**

1. ARN:
2. GSTIN:
3. Name of Business (Legal):
4. Trade Name, if any:
5. Tax Period:
6. Amount of Refund Claimed:
7. Grounds for Withdrawing Refund Claim:
   i. Filed the refund application by mistake
   ii. Filed Refund Application under wrong category

iii. Wrong details mentioned in the refund application

iv. Others (Please Specify)

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

Place: Signature of Authorised Signatory

Date: Name

Designation/ Status".

[F. No. CBEC-20/06/04/2020-GST]
(Rajeev Ranjan)
Under Secretary, Government of India

**Note**: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* notification No. 3/2017 -Central Tax, dated the 19th June, 2017, published *vide* number G.S.R. 610 (E), dated the 19th June, 2017 and was last amended *vide* notification No. 13/2021-Central Tax, dated the 01.05.2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 309(E), dated the 01st May, 2021.

## Clarification of issues relating to application of sub-rule (4) of rule 36 of the CGST Rules, 2017, cumulatively for the months of February, 2020 to August, 2020

**Circular No. 142/12/2020- GST**

New Delhi, the 9th October, 2020

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All),

The Principal Director Generals / Director Generals (All)

Madam / Sir,

**Subject: Clarification relating to application of sub-rule (4) of rule 36 of the CGST Rules, 2017 for the months of February, 2020 to August, 2020 – reg.**

Vide Circular No. 123/42/2019 – GST dated 11th November, 2019, various issues relating to implementation of sub-rule (4) of rule 36 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) relating to availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) were clarified.

2. Keeping the situation prevailing in view of measures taken to contain the spread of COVID-19 pandemic, vide notification No. 30/2020-CT, dated 03.04.2020, it had been prescribed that the condition made under sub-rule (4) of rule 36 of the CGST Rules shall apply cumulatively for the tax period February, March, April, May, June, July and August, 2020 and that the return in **FORM GSTR-**3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months.

3. To ensure uniformity in the implementation of the said provisions across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies certain issues in succeeding paragraphs.

3.1 **It is re-iterated that the clarifications issued earlier vide Circular No. 123/42/2019 – GST dated 11.11.2019 shall still remain applicable, except for the cumulative application as prescribed in proviso to sub-rule (4) of rule 36 of the CGST Rules.** Accordingly, all the taxpayers are advised to ascertain the details of invoices uploaded by their suppliers under sub-section (1) of section 37 of the CGST Act for the periods of February, March, April, May, June, July and August, 2020, till the due date of furnishing of the statement in **FORM GSTR-1** for the month of September, 2020 as reflected in GSTR-2As.

3.2 Taxpayers shall reconcile the ITC availed in their **FORM GSTR-3Bs** for the period February, 2020 to August, 2020 with the details of invoices uploaded by their suppliers of the said months, till the due date of furnishing **FORM GSTR-1** for the month of September, 2020. The cumulative amount of ITC availed for the said months in **FORM GSTR-3B** should not exceed 110% of the cumulative value of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 of the CGST Act, till the due date of furnishing of the statements in **FORM GSTR-1** for the month of September, 2020.

3.3 It may be noted that availability of 110% of the cumulative value of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 of the CGST Act does not mean that the total credit can exceed the tax amount as reflected in the total invoices for the supplies received by the taxpayer i.e. the maximum credit available in terms of provisions of section 16 of the CGST Act.

3.4 The excess ITC availed arising out of reconciliation during this period, if any, shall be required to be reversed in Table 4(B)(2) of FORM GSTR-**3B,** for the month of September, 2020. Failure to reverse such excess availed ITC on account of cumulative application of sub-rule (4) of rule 36 of the CGST Rules would be treated as availment of ineligible ITC during the month of September, 2020.

4. The manner of cumulative reconciliation for the said months in terms of proviso to sub-rule (4) of rule 36 of the CGST Rules is explained by way of illustration, in a tabulated form, below.

**Table I**

| Tax period | Eligible ITC as per the provisions of Chapter V of the CGST Act and the rules made thereunder, except rule 36(4) | ITC availed by the taxpayer (recipient) in GSTR- 3B of the respective months | Invoices on which ITC is eligible and uploaded by the suppliers till due date of FORM GSTR-1 for the tax period of September, 2020 | Effect of cumulative application of rule 36(4) on availability of ITC. |
|---|---|---|---|---|
| Feb, 2020 | 300 | 300 | 270 | Maximum eligible ITC in terms of rule 36 (4) is 2450 + [10% of 2450] =2695. Taxpayer had availed ITC of 2750. Therefore, ITC of 55 [2750-2695] would be required to be reversed as mentioned in para 3.4. above. |
| March, 2020 | 400 | 400 | 380 | |
| April, 2020 | 500 | 500 | 450 | |
| May, 2020 | 350 | 350 | 320 | |
| June, 2020 | 450 | 450 | 400 | |
| July, 2020 | 550 | 550 | 480 | |
| August, 2020 | 200 | 200 | 150 | |
| **TOTAL** | **2750** | **2750** | **2450** | |
| **ITC Reversal required to the extent of 55** | | | | |
| September, 2020 | **500** | **385** | **350** | 10% Rule shall apply independently for September, 2020 |
| In the FORM GSTR-3B for the month of September, 2020, the tax payer shall avail ITC of 385 under Table 4(A) and would reverse ITC of 55 under Table 4(B)(2) | | | | |

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Hindi version will follow.

6. Difficulty, if any, in implementation of this circular may please be brought to the notice of the Board.

(Yogendra Garg)
Principal Commissioner (GST)
y.garg@nic.in

## Provisions Relating to Quarterly Return Monthly Payment Scheme

**Circular No. 143/13/2020- GST**

New Delhi, dated the 10th November, 2020

To

The Principal Chief Commissioners / Chief Commissioners /
Principal Commissioners / Commissioners of Central Tax (All) /
The Principal Director Generals / Director Generals (All)

Madam/Sir,

**Subject: Quarterly Return Monthly Payment Scheme - Reg.**

As a trade facilitation measure and in order to further ease the process of doing business, the GST Council in its 42nd meeting held on 05.10.2020, had recommended that registered person having aggregate turnover up to five (5) crore rupees may be allowed to furnish return on quarterly basis along with monthly payment of tax, with effect from 01.01.2021. Government has issued following notifications to implement the Scheme of quarterly return filing along with monthly payment of taxes (hereinafter referred to as "QRMP Scheme/ Scheme"):

| Sl. No. | Notification | Remarks |
|---|---|---|
| 1 | Notification No. 81/2020 – Central Tax, dated 10.11.2020. | Notifies amendment carried out in sub-section (1), (2) and (7) of section 39 of the CGST Act vide Finance (No.2) Act, 2019. |
| 2. | Notification No. 82/2020 – Central Tax, dated 10.11.2020. | Makes the Thirteenth amendment (2020) to the CGST Rules 2017. |
| 3. | Notification No. 84/2020 – Central Tax, dated 10.11.2020. | Notifies class of persons under proviso to section 39(1) of the CGST Act. |
| 4. | Notification No. 85/2020 – Central Tax dated 10.11.2020. | Notifies special procedure for making payment of tax liability in the first two months of a quarter |

2. Various issues related to notifications issued to implement the QRMP Scheme have been examined. In order to explain the Scheme in simple terms and in order to ensure uniformity in implementation across field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies various issues in succeeding paragraphs.

**3. Eligibility for the Scheme**

In terms of notification No. 84/2020- Central Tax, dated 10.11.2020, a registered person who is required to furnish a return in **FORM GSTR-3B**, and who has **an aggregate turnover of up to 5 crore rupees in the preceding financial year,** is eligible for the QRMP Scheme. It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 01.01.2021. Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

**4. Exercising option for QRMP Scheme**

**4.1** Facility to avail the Scheme on the common portal would be available throughout the year. In terms of rule 61A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as CGST Rules), a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

***For example:*** *A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July.*

*If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.*

**4.2** Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall

continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

**4.3** For the first quarter of the Scheme i.e. for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, it has been decided that all the registered persons, whose aggregate turnover for the FY 2019-20 is up to 5 crore rupees and who have furnished the return in **FORM GSTR-3B** for the month of October, 2020 by 30th November, 2020, shall be migrated on the common portal as below. Therefore, taxpayers are advised to furnish the return of October, 2020 in time so as to be eligible for default migration. The taxpayers who have not filed their return for October, 2020 on or before 30th November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the **FORM GSTR-3B** as due on the date of exercising option has been filed.

| Sl. No. | Class of registered person | Default Option |
|---|---|---|
| 1. | Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on quarterly basis in the current financial year | Quarterly return |
| 2. | Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on monthly basis in the current financial year | Monthly Return |
| 3. | Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year | Quarterly return |

Above default option has been provided for the convenience of registered persons based on their anticipated behaviour. However, such registered persons are free to change the option as above, if they so desire, from 5th of December, 2020 to 31st of January, 2021. It is re-iterated that any taxpayer whose aggregate turnover has exceeded 5 crore rupees in the financial year 2020-21, shall opt out of the Scheme.

4.4 Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

4.5 All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option as in para 4.1.

4.6 It is also clarified that such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

4.7 It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

**5. Furnishing of details of outward supplies under section 37 of the CGST Act.**

5.1 The registered persons opting for the Scheme would be required to furnish the details of outward supply in **FORM GSTR-1** quarterly as per the rule 59 of the CGST Rule.

5.2 For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward **supplies to a registered person**, as he may consider necessary, between **the** 1st day of the succeeding month till the 13th day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the **FORM GSTR-2A** and **FORM GSTR-2B** of the concerned recipient.

*For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself.*

*Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in* ***FORM GSTR-1*** *of the said quarter. The two invoices furnished in IFF shall be reflected in* ***FORM GSTR-2B*** *of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in* ***FORM GSTR-1*** *shall be reflected in* ***FORM GSTR-2B*** *of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1st August till 13th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September.*

It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

5.3 The details of invoices furnished using the said facility in the first two months are not required to be furnished again in **FORM GSTR-1**. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in **FORM GSTR-1** for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in **FORM GSTR-1** only, without using the IFF.

**6. Monthly Payment of Tax**

6.1 The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month. While generating the challan, taxpayers should select "Monthly payment for quarterly taxpayer" as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months -

**(a) Fixed Sum Method:** A facility is being made available on the portal for generating a pre-filled challan in **FORM GST PMT-06** for an amount equal to thirty five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

For easy understanding, the same is explained by way of illustration in table below:

(i) In case the last return filed was on quarterly basis for Quarter Ending March, 2021:

| Tax paid in Cash in Quarter (January - March, 2021) | | Tax required to be paid in each of the months – April and May, 2021 | |
|---|---|---|---|
| CGST | 100 | CGST | 35 |
| SGST | 100 | SGST | 35 |
| IGST | 500 | IGST | 175 |
| Cess | 50 | Cess | 17.5 |

(ii) In case the last return filed was monthly for tax period March, 2021:

| Tax paid in Cash in Quarter (January - March, 2021) | | Tax required to be paid in each of the months – April and May, 2021 | |
|---|---|---|---|
| CGST | 50 | CGST | 50 |
| SGST | 50 | SGST | 50 |
| IGST | 80 | IGST | 80 |
| Cess | – | Cess | – |

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

**(b) Self-Assessment Method:** The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in **FORM GST PMT-06**. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in **FORM GSTR-2B**, for every month.

6.2 The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.

6.3 It is clarified that in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

6.4 Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

**7. Quarterly filing of FORM GSTR-3B**

Such registered persons would be required to furnish **FORM GSTR-3B**, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In **FORM GSTR-3B**, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's **FORM GSTR-3B**. However, any amount left after filing of that quarter's **FORM GSTR-3B** may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in **FORM GSTR-3B** for the relevant tax period.

**8. Applicability of Interest**

8.1. **For registered person making payment of tax by opting Fixed Sum Method**

i. No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as detailed in para 6.1(a) above by the due date. In other words, if while furnishing return in **FORM GSTR-3B**, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made /received was higher

than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.

ii. In case such payment of tax by depositing the system calculated amount in **FORM GST PMT-06** is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing **FORM GST PMT-06** till the date of making such payment.

iii. Further, in case **FORM GSTR-3B** for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

**Illustration 1 –**

*A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under **fixed sum method**. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was Rs. 40/- and for February it was Rs. 42/-. No interest would be payable for the lesser amount of tax (i.e. Rs. 5 and Rs. 7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.*

**Illustration 2 –**

A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was Rs. 125 but he files the return on 30th April. Interest would be payable at applicable rate on Rs. 55 [Rs. 125 – Rs. 70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly GSTR 3B and 30th April

**8.2 For registered person making payment of tax by opting Self-Assessment Method** Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter.

**8.3** Interest payable, if any, shall be paid through **FORM GSTR-3B.**

**9. Applicability of Late Fee -** Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return / details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

10. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Hindi version will follow.

11. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board.

(Yogendra Garg)
Principal Commissioner
y.garg@nic.in

## Waiver from recording of UIN on the invoices for the months of April 2020 to March 2021

**Circular No.144/14/2020-GST**

New Delhi, dated the 15th December,2020

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)/ The Principal Director General/ Director General (All)/ Pr. Chief Controller of Accounts (CBIC)

Madam/Sir,

**Subject: Waiver from recording of UIN on the invoices for the months of April 2020 to March2021-regarding**

Vide Circular No.63/37/2018-GST dated 14th September, 2018 & corrigendum to the said circular dated 6th September 2019, waiver from recording of UIN on the invoices issued by retailers/other suppliers were given to UIN entities till March,2020.

2. It has been bought to the notice of the Board that the issue of non-recording of UINs has continued even after 31st March,2020. Therefore, it has been decided to give waiver from recording of UIN on the invoices issued by the retailers/suppliers, pertaining to the refund claims from **April 2020 to March 2021**, subject to the condition that the copies of such invoices are attested by the authorized representative of the UIN entity and the same is submitted to the jurisdictional officer.

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)
Commissioner (GST)

## Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017.

**Circular No. 145/01/2021-GST**

New Delhi, dated the 11th February, 2021

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /

Commissioners of Central Tax (All)

Madam/Sir,

**Subject: Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017 – regarding**

As you are aware that vide notification No. 94/2020- Central Tax, dated 22.12.2020, sub-rule (2A) has been inserted to rule 21A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules). The said provision provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue.

2.1 Sub-rule (2A) of rule 21A is reproduced hereunder:

"(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in **FORM GSTR-1**; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1,**

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in **FORM GST REG-31**, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.";

2.2 Till the time an independent functionality for **FORM REG-31** is developed on the portal, in order to ensure uniformity in the implementation of the provisions of above rule 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 provides the following guidelines for implementation of the provision of suspension of registrations under the said rule.

3. On the recommendation of the Council, the registration of specified taxpayers shall be suspended and system generated intimation for

suspension and notice for cancellation of registration in **FORM GST REG-31,** containing the reasons of suspension, shall be sent to such taxpayers on their registered e-mail address. Till the time functionality for **FORM REG-31** is made available on portal, such notice/intimation shall be made available to the taxpayer on their dashboard on common portal in **FORM GST REG-17**. The taxpayers will be able to view the notice in the "View/ Notice and Order" tab post login.

4. The taxpayers, whose registrations are suspended (hereinafter referred to as "the said person") under the above provisions, would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/ anomalies, if any, and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled:

a. The said person would be required to reply to the jurisdictional officer against the notice for cancellation of registration sent to them, in **FORM GST REG-18** online through Common Portal withing the time limit of thirty days from the receipt of notice/ intimation.

b. In case the intimation for suspension and notice for cancellation of registration is issued on ground of non -filing of returns, the said person may file all the due returns and submit the response. Similarly, in other scenarios as specified under **FORM GST REG-31**, they may meet the requirements and submit the reply.

5.1 Post issuance of **FORM GST REG-31** via email, the list of such taxpayers would be sent to the concerned Nodal officers of the CBIC/ States. Also, the system generated notice can be viewed by the jurisdictional proper officers on their Dashboard for suitable actions. Upon receipt of reply from the said person or on expiry of thirty days (reply period), a task would be created in the dashboard of the concerned proper officer under **"Suo moto cancellation proceeding**".

5.2 Proper officer, post examination of the response received from the said person, may pass an order either for dropping the proceedings for suspension/ cancellation of registration in **FORM GST REG-20** or for cancellation of registration in **FORM GST REG-19**. Based on the action taken by the proper officer, the GSTIN status would be changed to "Active" or "Cancelled Suo-moto" as the case maybe.

5.3 Till the time independent functionality for **FORM GST REG-31** is fully ready, it is advised that if the proper officer considers it appropriate to drop a proceeding anytime after the issuance of **FORM GST REG-31**, he may advise the said person to furnish his reply on the common portal in **FORM GST REG-18**.

5.4 It is advised that in case the proper officer is prima-facie satisfied with the reply of the said person, he may revoke the suspension by passing an order in **FORM GST REG-20**. Post such revocation, if need be, the proper officer can continue with the detailed verification of the documents and recovery of short payment of tax, if any. Further, in such cases, after detailed verification or otherwise, if the proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in **FORM GST REG-17**.

6. Difficulties, if any, in implementation of these instructions may be informed to the board (gst-cbec@gov.in). Hindi version follows.

(Sanjay Mangal)
Commissioner (GST)

## Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 - Reg.

**Circular no. 146/02/2021-GST**

New Delhi, dated the 23rd February, 2021

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 applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 - Reg.**

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020. Further, vide Notification No. 89/2020-Central Tax, dated 29th November 2020, penalty has been waived for non-compliance of the provisions of Notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 31st March, 2021, subject to the condition that the said person complies with the provisions of the said Notification from 01st April, 2021.

2. Various references have been received from trade and industry seeking clarification on applicability of Dynamic Quick Response (QR) Code on B2C (Registered person to Customer) invoices and compliance of Notification No. 14/2020-Central Tax, dated 21st March, 2020 as amended. The issues have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, 2017, hereby clarifies the issues in the table below:

| Sl. No. | Issues | Clarification |
|---|---|---|
| 1. | To which invoice is Notification No 14/2020- Central Tax dated 21st March, 2020 applicable? Would this requirement be applicable on invoices issued for supplies made for Exports? | This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases:<br>i. Where the supplier of taxable service is:<br>a) an insurer or a banking company or a financial institution, including a non-banking financial company;<br>b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;<br>c) supplying passenger transportation service;<br>d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens<br>ii. OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person.<br>As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of Notification no. 13/2020-Central Tax, dated 21st March, 2020 treating them as Business to Business (B2B) supplies, Notification no. 14/2020- Central Tax, dated 21st March, 2020 will not be applicable to them. |

| | | |
|---|---|---|
| 2 | What parameters/ details are required to be captured in the Quick Response (QR) Code? | Dynamic QR Code, in terms of Notification No. 14/2020-Central Tax, dated 21st March, 2020 is required, inter-alia, to contain the following information: -<br>i. Supplier GSTIN number<br>ii. Supplier UPI ID<br>iii. Payee's Bank A/C number and IFSC<br>iv. Invoice number & invoice date,<br>v. Total Invoice Value and<br>vi. GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc.<br>Further, Dynamic QR Code should be such that it can be scanned to make a digital payment. |
| 3. | If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice? | If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: -<br>i. Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice ; or<br>ii. In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash , along with date of such payment on the invoice; The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code. |
| 4. | If the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with? | In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice. |
| 5. | Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre paid invoices i.e. where payment has been made before issuance of the invoice? | If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice. |

| | | |
|---|---|---|
| 6. | Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code? | The provisions of the notification shall apply to each supplier/registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the Ecommerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the 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 the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Commissioner

## Seeks to Clarify Certain Refund Related Issues

**Circular No. 147/03//2021-GST**

New Delhi, Dated the 12th March, 2021

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)

The Principal Director Generals/ Director Generals (All)

Madam/Sir,

**Subject: Clarification on refund related issues – Reg.**

Various representations have been received seeking clarification on some of the issues relating to GST refunds. The issues have been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers

conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

**2. Clarification in respect of refund claim by recipient of Deemed Export Supply**

2.1 Representations have been received in respect of difficulties being faced by the recipients of the deemed export supplies in claiming refund of tax paid in respect of such supplies since the system is not allowing them to file refund claim under the aforesaid category unless the claimed amount is debited in the electronic credit ledger.

2.2 Para 41 of Circular No. 125/44/2019 – GST dated 18/11/2019 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

2.3 The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a **deemed export supply** to **the recipient or the supplier** of deemed export supplies. The said proviso is reproduced as under:

"Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund"

From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim. The said restriction has been placed by the Circular No. 125/44/2019-GST dated 18.11.2019.

2.4 In this regard, it is submitted that in order to ensure that there is no dual benefit to the claimant, the portal allows refund of only Input Tax Credit (ITC) to the recipients which is required to be debited by the claimant while filing application for refund claim. Therefore, whenever the recipient of deemed export supplies files an application for refund, the portal requires debit of the equivalent amount from the electronic credit ledger of the claimant.

2.5 As stated above, there is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient. The amended para 41 of Circular no. 125/44/2.019-GST dated 18.11.2019 would read as under:

"41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and ***the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period***. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware

Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with."

**3. Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a).**

3.1 Para 26 of Circular No. 125/44/2019-GST dated 18th November 2019 gave a clarification in relation to cases where taxpayers had inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of **FORM GSTR-3B** of the relevant period and were unable to claim refund of the integrated tax paid on the same through **FORM GST RFD-01A**. This was because of a validation check placed on the common portal which prevented the value of refund of integrated tax/cess in **FORM GST RFD-01A** from being more than the amount of integrated tax/cess declared in table 3.1(b) of **FORM GSTR-3B**. The said Circular clarified that for the tax periods from **01.07.2017 to 30.06.2019**, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the tables **3.1(a), 3.1(b) and 3.1(c)** of **FORM GSTR-3B** filed for the corresponding tax period.

3.2 Since the clarification issued vide the above Circular was valid only from 01.07.2017 to 30.06.2019, taxpayers who committed these errors in subsequent periods were not able to file the refund applications in **FORM GST RFD-01A/ FORM GST RFD-01**.

3.3 The issue has been examined and it has been decided to extend the relaxation provided for filing refund claims where the taxpayer inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of FORM GSTR-3B **till 31.03.2021**. Accordingly, para 26 of Circular No. 125/44/2019-GST dated 18.11.2019 stands modified as under:

"26. In this regard, it is clarified that for the tax periods commencing from ***01.07.2017 to 31.03.2021***, such registered persons shall be allowed to file the refund application in FORM

GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/ cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period."

**4. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule of CGST Rules, 2017.**

4.1 Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

4.2 Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover"

4.3 Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under:

"Adjusted Total Turnover" means the sum total of the value of-

***(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2****, excluding the turnover of services; and*

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'

4.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as:

*"Turnover in State or turnover in Union territory" means the aggregate* ***value of all taxable supplies*** *(excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person,* ***exports of goods*** *or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess"*

4.5 From the examination of the above provisions, it is noticed that "Adjusted Total Turnover" includes "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act. As per Section 2(112), "Turnover in a State or Union Territory" includes turnover/ value of export/ zero-rated supplies of goods. The definition of "Turnover of zero-rated supply of goods" has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule

89 Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89 (4) of the CGST Rules, 2017.

4.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero-rated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule. The same can explained by the following illustration where actual value per

unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier:

**Illustration:** Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Net admissible ITC = Rs. 270

All values in Rs.

| Outward Supply | Value per unit | No of units supplied | Turnover | Turnover as per amended definition |
|---|---|---|---|---|
| Local (Quantity 5) | 200 | 5 | 1000 | 1000 |
| Export (Quantity 5) | 350 | 5 | 1750 | 1500 (1.5*5*200) |
| **Total** | | | **2750** | **2500** |

The formula for calculation of refund as per Rule 89(4) is :

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover

Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500

Adjusted Total Turnover= Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750] Net ITC = Rs. 270

Refund Amount = Rs. $\frac{1500*270}{2500}$ = Rs. 162

**Thus, the admissible refund amount in the instant case is Rs. 162.**

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)
Commissioner (GST)

Seeks to prescribe Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017.

**Circular No. 148/04/2021-GST**

New Delhi, dated the18th May, 2021

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)

Madam/Sir,

**Subject: Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017 – reg.**

As you are aware *vide* Finance Act, 2020, section 30 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") was amended and the same has been notified with effect from 01.01.2021 *vide* notification No. 92/2020- Central Tax, dated 22.12.2020. The amended provision provides for extension of time limit for applying for revocation of cancellation of registration on sufficient cause being shown and for reasons to be recorded in writing, by:

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

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

Consequently, changes have also been made in rule 23 and **FORM GST REG-21** of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") vide notification No.15/2021- Central Tax, dated 18.05.2021.

2. In order to ensure uniformity in the implementation of the provisions of above rule across the field formations, till the time an independent functionality for extension of time limit for applying in **FORM GST REG-21** is developed on the GSTN portal, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby provides the following

guidelines for implementation of the provision for extension of time limit for applying for revocation of cancellation of registration under the said section and rule.

3. As has been provided in section 30 of the CGST Act, any registered person whose registration is cancelled by the proper officer on his own motion, may apply to such officer in **FORM GST REG-21**, for revocation of cancellation of registration within 30 days from the date of service of the cancellation order. In case the registered person applies for revocation of cancellation beyond 30 days, but within 90 days from the date of service of the cancellation order, the following procedure is specified for handling such cases:

4.1. Where a person applies for revocation of cancellation of registration beyond a period of 30 days from the date of service of the order of cancellation of registration but within 60 days of such date, the said person may request, through letter or e-mail, for extension of time limit to apply for revocation of cancellation of registration to the proper officer by providing the grounds on which such extension is sought. The proper officer shall forward the request to the jurisdictional Joint/Additional Commissioner for decision on the request for extension of time limit.

4.2 The Joint/Additional Commissioner, on examination of the request filed for extension of time limit for revocation of cancellation of registration and on sufficient cause being shown and for reasons to be recorded in writing, may extend the time limit to apply for revocation of cancellation of registration. In case the request is accepted, the extension of the time limit shall be communicated to the proper officer. However, in case the concerned Joint/ Additional Commissioner, is not satisfied with the grounds on which such extension is sought, an opportunity of personal hearing may be granted to the person before taking decision in the matter. In case of rejection of the request for the extension of time limit, the grounds for such rejection may be communicated to the person concerned, through the proper officer.

4.3 On receipt of the decision of the Joint/Additional Commissioner on request for extension of time limit for applying for revocation of cancellation of registration, the proper officer shall process the application for revocation of cancellation of registration according to the law and procedure laid down in this regard.

5. Procedure similar to that explained in paragraph 4.1 to 4.3 above, shall be followed *mutatis-mutandis* in case a person applies for revocation

of cancellation of registration beyond a period of 60 days from the date of service of the order of cancellation of registration but within 90 days of such date.

6. The circular shall cease to have effect once the independent functionality for extension of time limit for applying in **FORM GST REG-21** is developed on the GSTN portal.

7. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in). Hindi version follows.

(Sanjay Mangal)
Commissioner (GST)

## Clarification regarding applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported for repairs

**Circular No. 16/2021-Customs**

Room No.156, North Block, New Delhi.
New Delhi, dated 19th July, 2021

To,

All Principal Chief Commissioners/
Chief Commissioners of Customs/ Customs (Preventive),

All Principal Chief Commissioners/
Chief Commissioners of Customs & Central tax,

All Principal Commissioners/
Commissioners of Customs/ Customs (Preventive),

All Principal Commissioners/
Commissioners of Customs & Central tax

Madam/Sir,

**Subject: Clarification regarding applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported for repairs, on the recommendations of the GST Council made in its 43rd meeting – reg.**

References have been received seeking clarification on the issues of the applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported abroad for repairs.

2. Notification Nos. 45/2017-Customs and 46/2017-Customs, both dated 30th June, 2017, issued at the time of implementation of GST, prescribe certain concession from duty/taxes on reimport of goods exported for repair outside India. These notifications, specifically serial No. 2 ibid, clearly specify that goods exported (other than those exported under claim of benefits listed), when re-imported into India, are exempt from so much of the duty of customs leviable thereon which is specified in the said First Schedule of the Customs Act, 1962, and the integrated tax, compensation cess leviable there on respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, 1975 as is in excess of the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways.

3. Therefore, the said notification prescribes that duties or taxes (including BCD, IGST, etc) at the applicable rates will be payable on such imports, calculated on the value of repairs, insurance and freight, instead of the value of the goods itself. Similar concession existed in pre-GST period too, vide notification No. 94/96-Customs, whereby, the customs duty (BCD, additional duty of customs under section 3 of Customs Tariff Act, 1975, etc.) were payable on the value of repairs instead of the entire value of goods in such imports.

4. GST rate and exemptions are prescribed on the recommendation of the GST Council. The Council, at the time of roll out of GST decided to continue the concession as were available under the said notification No. 94/96-Cus, with only consequential amendment, i.e, replacing additional duties of customs with IGST and Compensation cess, as discussed in the 14th Meeting of the GST Council. Accordingly, under GST, IGST and Compensation cess were made applicable on the value of repairs, insurance and freight on re-import of goods sent abroad for repair.

5. Again, during the 37th GST Council Meeting, while examining the request to make available the credit of ITC paid on aircraft engines and parts exported for repairs and later reimported, the leviability of IGST on such imports, on the cost of repairs, insurance and freight charges, was affirmed. In fact, this was never disputed in first place and the request was to allow credit of the IGST so paid. Similarly, while examining the question of GST rate on maintenance, repair and overhauling (MRO) services in respect of aircraft, aircraft engines and other components and

parts, the leviability of IGST on such re-imports was again affirmed by the GST Council in its 39th meeting, making it explicitly clear that such goods reimported after repair from outside India attract IGST on the repair, freight and insurance value. In the said discussion, the IGST levied on such goods re-imported after being exported abroad for repairs was a significant factor considered by the GST Council while deciding the rate on MRO services. The above deliberations of the GST Council leave no doubt that the Council had consciously recommended for levy of IGST and cess, albeit at the repair, insurance and freight cost instead of the entire value of goods imports, on the basis of which the said notifications No. 45/2017-Cus and 46/2017-Cus were issued.

6. Recently, in the matter of M/s Interglobe Aviation Limited versus Commissioner of Customs, in its Final Order Nos. 51226-51571/2020 dated the 2nd November, 2020 {2020 (43) G.S.T.L. 410 (Tri. - Del.)}, the Hon'ble CESTAT Principal Bench, New Delhi on analysis of notification No. 45/2017-Customs, has interpreted that intention of legislation was only to impose basic customs duty on the fair cost of repair charges, freight and insurance charges on such imports of goods after repair. The Hon'ble CESTAT has thus concluded that integrated tax and compensation cess on such goods would be wholly exempt. An appeal has been preferred by the Department before the Hon'ble Supreme Court against the said Order.

7. In the above background, the matter was placed before the GST Council in its 43rd Meeting held on the 28th May, 2021. The GST Council deliberated on the issue and recommended that a suitable clarification, including any clarificatory amendment, if required, may be issued for removal of any doubt, to clarify the decision of the GST Council that re-import of goods sent abroad for repair attracts IGST and cess (as applicable) on a value equal to the repair value, insurance and freight.

8. Accordingly, as recommended by the GST Council, it is clarified that notification Nos. 45/2017-Customs and 46/2017-Customs, both dated the 30th of June, 2017 were issued to implement the decision of the GST Council taken earlier, that re-import of goods sent abroad for repair attracts IGST on a value equal to the repair value, insurance and freight. Further, in the light of the recommendations of the GST Council in its 43rd Meeting, a clarificatory amendment has been made in the said notifications, vide notification Nos. 36/2021-Customs and 37/2021- Customs, both dated 19th July, 2021, without prejudice to the leviability of IGST, as above, on such imports as it stood before the amendment.

9. The contents of this circular may please be brought to the notice of trade and industry through issue of Trade/ Public notices. The field

formations may also be suitably sensitized in this regard. Difficulty, if any, in the implementation of this Circular may be brought to the notice of this office.

Yours faithfully,

(Gaurav Singh)
Deputy Secretary to the Government of India

## IGST refunds on exports-extension in SB005 alternate mechanism

**Circular No. 05 /2021-Customs**

Room No.244A, North Block, New Delhi.
New Delhi, dated 17th February, 2021

To,

All Principal Chief Commissioners/
Chief Commissioners of Customs/Customs (Preventive),
All Principal Chief Commissioners/
Chief Commissioners of Customs & Central tax,
All Principal Commissioners/ Commissioners of Customs/
Customs (Preventive),
All Principal Commissioners/ Commissioners of Customs &
Central tax,

Madam/Sir,

**Subject: IGST refunds on exports-extension in SB005 alternate mechanism -reg.**

Kind reference is invited to Board`s Circulars 5/2018-Cus. dated 23.02.201808/2018 Cus. dt 23.03.2018, 15/2018 Cus. dt 06.06.2018, 22/2018 Cus dt 16.07.2018, 40/2018 Cus. dt 24.10.2018, 26/2019 Cus. dt 27.08.2019 and 22/2020-Cus. dated 21.04.2020 on the above subject of SB005 error resolution.

2. The above-mentioned Board Circulars provide the facility for resolving invoice mis-match errors with officer interface as an alternative measure for the specified period which was further extended, several times, based on representations received from Trade regarding continuance of such error. Last such extension has been granted for the Shipping Bills filed upto 31.12.2019 vide above referred Circular No. 22/2020-Customs dated 21.04.2020.

3. There have been several representations from the Trade to extend the Officer Interface to resolve the genuine error committed during data entry. The issue has been examined. It is noticed that, the quantum of Shipping Bills pending on account of such errors being committed by the Trade have come down significantly, but still it is occurring in some cases resulting in hold- up of IGST refunds.

4. Keeping in view the above factual position, it has been decided as a measure of trade facilitation to keep the Officer Interface available on permanent basis to resolve such errors on payment of specified fee by the exporter. The exporter may avail the facility of correction of Invoice mis-match errors (error code SB-005) in respect of all past shipping bills, irrespective of its date of filling, by following the procedure as provided in the above Circulars, subject to payment of Rs. 1,000/- as fee towards such rendering of service by Customs Officers for correlation and verification of the claim. Necessary amendments have been made in the Levy of Fee (Customs Documents) Regulations, 1970 vide Notification No.17/2021 dated 17th February, 2021.

5. Suitable Trade Notice/ Standing order may please be issued to guide the trade and industry. Difficulty, if any, faced in implementation may be brought to the notice of Board immediately.

Yours faithfully,

(Vineeta Sinha)
Joint Commissioner (Customs)

## Extension of Board's Circular no. 12/2018-Customs dated 29.05.2018 for sanction of pending IGST refund claims where the records have not been transmitted to ICEGATE due to GSTR-1 and GSTR-3B mismatch error.

**Circular No. 04/2021-Customs**

Room No.244A, North Block, New Delhi.
New Delhi, dated 16th February, 2021

To,

All Principal Chief Commissioners/
Chief Commissioners of Customs/Customs (Preventive),

All Principal Chief Commissioners/
Chief Commissioners of Customs & Central tax,

All Principal Commissioners/ Commissioners of Customs/ Customs (Preventive),

All Principal Commissioners/ Commissioners of Customs & Central tax,

Madam/Sir,

**Subject: Extension of Board's Circular No. 12/2018-Customs dated 29.05.2018 for sanction of pending IGST refund claims where the records have not been transmitted to ICEGATE due to GSTR-1 and GSTR- 3B mismatch error -reg.**

Several representations are being received by the Board in respect of IGST refunds which are pending due to mis-match of data between GSTR-1 & GSTR-3B. The resolution to the above problem was provided by the Board, as an interim measure, vide Circular No. 12/2018-Cus dated 29.05.2018 read with Circular No. 25/2019- Cus dated 27.08.2019 in respect of Shipping Bills filed upto 31.03.2019.

2. The IGST refunds relatable to the Shipping Bills filed after 31.03.2019 having mismatch error between GSTR-1 and GSTR-3B could not be processed and are held up on above account. Having regard to the fact that a substantial number of IGST refunds are stuck due to above error as functionality to amend GSTR-3B return is not available so far, there is a need to extend the facility as provided vide above Circular No. 12/2018-Cus dated 29.05.2018 and 25/20 I 9-Cus dated 27.08.2019 in respect of the Shipping Bills filed after 31.03.2019 as well.

3. The matter has been examined. It appears that the payments mismatch has happened even subsequent to the period covered in the above said Circulars. Therefore, in order to overcome the problems faced by the exporters, CBIC has decided that the solution provided in the Circular 12/2018-Customs read with Circular No. 25/2019-Customs would be applicable mutatis mutandis for the Shipping Bills filed during the financial year 2019- 20 and 2020-21 (i.e. in respect of all Shipping Bills filed/ to be filed upto 31.03.2021).

4. In respect of guidelines provided in Para 3A and 3B of the said Circular 12/2018-Customs, dated 29.05.2018. the comparison between the cumulative IGST payments in GSTR-1 and GSTR 3B would now be for the period April 2019 to March 2021. The corresponding CA certificate evidencing that there is no discrepancy between the IGST amount refunded on exports in terms of this Circular and the actual IGST amount paid on exports of goods for the period April 2019 to March 2020 and April. 2020

to March, 2021 shall be furnished by **31st March, 2021 and 30th October 2021, respectively**.

5. The concerned Customs Zones shall provide the list of GSTINs, who have availed benefit under Para 3A & 3B of said circular and yet have not submitted the CA certificate to the Board by the **15th April 2021 for the IGST refunds relatable to financial year 2019-20 and by 15th November, 2021 for financial year 2020-21**.

All the field formations under your zone and the trade may be suitably sensitized in this regard.

Yours faithfully,

(Vineeta Sinha)
Joint Commissioner (Customs)

## IGST refunds on exports-extension in SB005 alternate mechanism- reg

**Circular No.22/2020-Customs**

Room No.229A, North Block, New Delhi.
New Delhi, dated the 21st of April, 2020

To,

All Principal Chief Commissioners/
Chief Commissioners of Customs/Customs (Preventive),

All Principal Chief Commissioners/
Chief Commissioners of Customs & Central tax,

All Principal Commissioners/ Commissioners of Customs/
Customs (Preventive),

All Principal Commissioners/ Commissioners of Customs &
Central tax,

Madam/Sir,

**Subject: IGST refunds on exports-extension in SB005 alternate mechanism- reg.**

Kind reference is invited to Board`s Circulars 08/2018- Cus dt 23.03.2018, 15/2018- Cus dt 06.06.2018, 22/2018-Cus dt 18.07.2018,

40/2018-Cus dt 24.10.2018 and 26/2019-Cus dt 27.08.2019 on the above subject of SB005 error resolution.

2. The above Board circulars have been issued in the spirit of trade facilitation and as interim measures to help trade adapt and acclimatize to changing requirements in the GST era. However, representations have been received till today on the same subject issue. There are still numerous Shipping Bills having invoice mismatches between the GST returns data and the customs data presented along with the Shipping Bills resulting in SB005 error. This results in blocking of the IGST refund disbursal, which is otherwise fully automated, except for the refund scroll generation.

3. The matter has been re-examined. Considering that the entire country is facing unprecedented challenges due to the COVID 19 pandemic , and that the exporters are facing genuine hard-ships due to the SB005 errors, it has now been decided to extend the facility of SB005 error correction in the Customs EDI system for Shipping Bills with date upto 31.12.2019.

4. All members of the trade, exporters, shipping lines, customs brokers are duly advised again to make efforts to understand the problems due to mismatch of invoices resulting in SB005 error, and to invest time and due precautions for preventing such error in the future.

5. Suitable Trade Notice/ Standing order may please be issued to guide the trade and industry. Difficulty, if any, faced in implementation may be brought to the notice of Board immediately.

Yours faithfully

(Eric C Lallawmpuia)
OSD Cus IV

## IGST Export refunds- extension in SB005 alternate mechanism and revised processing in certain cases including disbursal of Compensation cess

**Circular No. 26 /2019-Customs**

Room No.229A, North Block, New Delhi.
New Delhi, dated the 27 August, 2019

To,

All Principal Chief Commissioners/
Chief Commissioners of Customs/Customs (Preventive),

All Principal Chief Commissioners/
Chief Commissioners of Customs & Central tax,

All Principal Commissioners/ Commissioners of Customs/
Customs (Preventive),

All Principal Commissioners/ Commissioners of Customs &
Central tax,

Madam/Sir,

**Subject:- IGST Export Refunds - extension in SB005 alternate mechanism and revised processing in certain cases including disbursal of compensation Cess -reg.**

CBIC has issued circulars 05/2018-Customs dated 23.02.2018, 08/2018-Customs dated 23.03.2018, 15/2018-Customs dated 06.06.2018 and 40/2018-Customs dated 24.10.2018 wherein an alternative mechanism with an officer interface to resolve invoice mismatches (SB005 error) was provided for the shipping bills filed till 15.11.2018.

2. Despite wide publicity and outreach programmes to make exporters aware about the need to have identical details in invoices given in shipping Bills and GST returns, it has been observed that a few exporters continue to commit such errors. Therefore, in view of the recent announcement by Hon'ble Finance Minister, giving high priority to the interests of exporters, it has been decided by the Board to extend the rectification facility for all cases covered under Circular 40/2018-Customs dated 24.10.2018 to Shipping Bills filed up to 31.07.2019.

3. Field formations shall conduct outreach programmes to make all stakeholders aware about the correct procedure for claiming IGST refunds so that repeated errors are avoided/ minimised.

4. Difficulties, if any, shall be brought to the notice of the Board.

Yours sincerely,

(Rajiv Ranjan)
Director (PAC-Customs)

# IGST refunds-mechanism to verify the IGST payments for goods exported out of India in certain cases

**Circular No. 25 /2019-Customs**

Room No. 244-A, North Block, New Delhi.
Dated the 27th August, 2019

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)/Central Tax & Central Excise.

All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)/Central Tax & Central Excise

All Principal Commissioners/Commissioners of Customs & Central Excise

Madam/Sir,

**Subject:-IGST refunds-mechanism to verify the IGST payments for goods exported out of India in certain cases- reg.**

Kindly refer to Board's earlier Circular 12/2018-Customs dated 29.05.2018 wherein an interim solution was provided to tide over the difficulty faced by exporters for the first 9 months after introduction of GST i.e. till 31.03.2018. Although exporters have benefited from the procedure prescribed in the said circular, and the incidence of such errors have greatly reduced, but some exporters have still committed the same error while filing GSTR 3B on account of which their records are yet to be transmitted to Customs System. CBIC has received the representations to extend the interim solution.

2. The matter has been examined. Vide Circular 12/2018-Customs dated 29.05.2018, CBIC had provided an interim solution in cases where the records could not be transmitted from GSTN to Customs system due to payments mismatch between GSTR-1 and GSTR-3B. The solution covered the period July 2017 to March 2018. It appears that the payments mismatch has happened even subsequent to the period covered in the

said circular. In order to overcome the problems faced by the exporters, CBIC in consultation with the GST Law Committee, has decided that the solution provided in the circular 12/20 18-Customs would be applicable mutatis mutandis for the Shipping Bills filed during FY April 2018 to March 2019 also.

3. Therefore, in respect of guidelines provided in Para 3A and 3B of the said circular. the comparison between the cumulative IGST payments in GSTR-1 and GSTR3B would now be for the period April 20 18 to March 20 19 and the corresponding CA certificate evidencing that there is no discrepancy between the IGST amount refunded on exports under this circular and the actual I GST amount paid on exports of goods for the period April 2018 to March 2019 shall be furnished by 30th October 2019.

4. The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15111 November 2019. All the field formations under your zone and the trade may be suitably sensitized in this regard.

Yours sincerely,

(Rajiv Ranjan)
Director (PAC-Customs)

## Clarifications regarding Refunds of IGST paid on import in case of specialized agencies

**Circular No. 23/2019-Customs**

Room No. 227-B, North Block, New Delhi.
Dated the 1st August, 2019

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)

All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)

All Principal Commissioners/Commissioners of Customs & Central Excise

Madam/Sir,

**Subject:– Clarifications regarding Refunds of IGST paid on import in case of specialized agencies - reg.**

Board has received various representations wherein specialized agencies have raised the matter of refund of IGST paid on imported goods. It has been informed that the specialized agencies are paying IGST on import of goods but the refund of same is not being processed by Customs formations.

2. The matter has been deliberated among various wings of the Board like TRU, GST Policy Wing and Customs Policy Wing. It has been decided to operationalise a refund mechanism of IGST paid on imports by the specialized agencies as under:

(i) Section 55 of the CGST Act provides refund of taxes paid on the notified supplies of goods or services or both received by them. In pursuance of this provision, Notification No.16/2017-Central Tax (Rate) dated 28.6.2017 has been issued which inter-alia provides that United Nations or a specified international organisation shall be entitled to claim refund of central tax paid on the supplies of goods or services or both received by them subject to a certificate from United Nations or that specified international organisation that the goods and services have been used or are intended to be used for official use of the United Nations or the specified international organisation. A similar refund mechanism has been provided in respect of integrated tax vide notification No.13/2017-Central Tax (Rate) and Union Territory tax vide Notification No.16/2017-Union Territory Tax (Rate) respectively.

(ii) Section 3 (7) of Customs Tariff Act, 1975 (CTA), provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. In the case of UN and specialised agencies, the above referred to notifications envisage payment and then refund of taxes paid. Therefore, on this principle of parity, specialised agencies ought to get the refund of the IGST paid on imported goods.

3. In view of the above, Board has decided that respective customs field formations shall provide refund of IGST paid on import of goods by the specialized agencies notified by Central Government under Section 55 of CGST, Act, 2017.

4. Difficulties, if any, shall be brought to the knowledge of Board.

Yours sincerely,

(Zubair Riaz)
Director (Customs)

## Clarifications regarding Refunds of IGST paid on import in case of risky exporters.

**Circular No.22/2019-Customs**

Room No. 227-B, North Block, New Delhi.
Dated the 1st August, 2019

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/Customs (Preventive)

All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)

All Principal Commissioners/Commissioners of Customs & Central Excise

Madam/Sir,

**Subject:– Clarifications regarding Refunds of IGST paid on import in case of risky exporters - reg.**

Board has received representations wherein various exporters and organisations have raised the issue of repeated opening of export containers for 100% examination related to risky exporters, under the new procedure laid down in Circular 16/2019-Customs dated 17.06.2019. Exporters have taken the plea that their cargo is getting delayed and they have to incur additional costs for carrying out re-packing.

2. The matter has been examined. Board has issued the aforesaid circular as a preventive measure against fraudulent refund of IGST on

the basis of ineligible or fraudulently availed input tax credit (ITC). While addressing the aforesaid issue and consequent risk to revenue, Board would not like to dilute the emphasis it laid on reduction in time and cost related with EXIM clearances. It is pertinent to mention that only a miniscule percentage of export consignments are being selected for examination on account of risk associated with fraudulent availment of IGST refunds. However, keeping in view the issues raised by trade, Board has decided that the requirement of 100% physical examination of each export consignment shall be gradually relaxed provided no irregularity was noticed in earlier examinations of export consignments of export entities in terms of Circular No. 16/2019-Customs dated 17.06.2019.

3. In order to bring down the level of examination, Board has decided that RMCC shall take into consideration the feedback received from field formations with regard to the 100% examination conducted on exports of risk based identified entities and wherever the examination has validated the declaration made in the shipping bill, RMCC may review the risk assessment and gradually taper down the percentage of physical examination. Suitable alerts based on reevaluated risk may accordingly be inserted in the system by RMCC in such cases.

4. Difficulties, if any, shall be brought to the notice of the Board.

Yours sincerely,

(Zubair Riaz)
Director (Customs)

## IGST refunds- mechanism to verify the IGST payments for goods exported out of India in certain cases

**Circular No. 16/2019-Customs**

Room No. 227B, North Block
Dated June 17, 2019

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)/Customs & Central Tax,

All Director Generals under CBIC,

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)/Customs & Central Tax.

Madam/Sir,

**Subject:–IGST refunds- mechanism to verify the IGST payments for goods exported out of India in certain cases- reg.**

The procedure for claiming IGST refunds is fully automated as provided under Instruction 15/2017-Cus dated 09.10.2017. It has come to the notice of the Board that instances of availment of IGST refund using fraudulent ITC claims by some exporters have been observed by various authorities. Exporters have availed ITC on the basis of ineligible documents or fraudulently and utilized that credit for payment of IGST on goods exported out of India. It has also been observed in several cases that there is huge variation between the FOB value declared in the Shipping Bill and the Taxable value declared in GST Return apparently to effect higher IGST pay out leading to encashment of credit.

2. In view of above, it has been decided to verify the IGST payments through the respective GST field formations. The procedure specified in the instruction 15/2017-Cus dated 09.10.2017 stand modified to the extent as under:

**A. Identification of Suspicious cases:** DG (Systems) shall work out the suitable criteria to identify risky exporters at the national level and forward the list of said risky exporters to Risk Management Centre for Customs (RMCC) and respective Chief Commissioners of Central Tax. DG (Systems) shall inform the respective Chief Commissioner of Central Tax about the past IGST refunds granted to such risky exporters (along with details of bank accounts in which such refund has been disbursed).

**B. Inserting Alert in the System:** RMCC shall insert alerts for all such risky exporters and make 100% examination mandatory of export consignments relating to those risky exporters. Also, alert shall be placed to suspend IGST refunds in such cases.

**C. Examination of the export goods:** Customs officers shall examine the consignment as per the RMCC alert. In case the outcome of examination tallies with the declaration in the Shipping Bill subject to no other violation of any of provision of the Customs Act, 1962 or other laws being observed, the consignment may be cleared as per the regular practice.

**D. Suspension of IGST refunds:** Notwithstanding the clearance of the export consignments as per para C above, such Shipping Bills shall be suspended for IGST refund by the Deputy or Assistant Commissioner of

Customs dealing with refund at the port of export.

**E. Verification by GST formations:**

(i) Chief Commissioner of Central Tax shall get the verification of the IGST refund claims and other related aspects done in accordance with the Standard Operating procedure to be issued by the GST policy wing.

(ii) The GST formation shall furnish a report to the respective Chief Commissioner of Central Tax within 30 days specifying clearly whether the amount of IGST paid and claimed/ sanctioned as refund was in accordance with the law or not.

(iii) Chief Commissioner of Central Tax shall compile and forward report of all cases to RMCC and concerned customs port of export within 5 working days thereafter.

**F. Action to be taken by customs formations on receipt of verification report from GST formations:**

(i) Cases where no malpractices have been reported on verification: On receipt of verification report from Chief Commissioner of Central Tax informing that the ITC availed by the exporter was in accordance with the GST Law and rules made thereunder, the Customs officer at the port of export shall proceed to process the IGST refund to the extent verified by the GST Authorities. The detailed advisory in this regard shall be issued by DG(Systems) for the benefit of customs officers handling refunds.

(ii) Cases where malpractices have been reported on verification: For cases where upon verification, it has been found that the exporter has availed ITC fraudulently or on the basis of ineligible documents and utilized the said ITC for payment of IGST claimed as refund, the customs officer will not process the refund claim.

3. Difficulties in this regard may be brought to the knowledge of the Board.

Yours sincerely,

(Zubair Riaz)
Director (Customs)

IGST Export Refunds–resolution of errors– reg.

**Circular No. 01/2019-Customs**

Room No. 227B, North Block, New Delhi
Dated, 2nd January, 2019

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)

All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)

All Principal Commissioners/Commissioners of Customs & Central Excise

**Subject: IGST Export Refunds–resolution of errors– reg.**

Madam/Sir,

The processing of IGST refund claims on exports is fully automated. Majority of refunds claims are getting processed and sanctioned within five days of filing of GSTR-1 and GSTR-3B returns. However, in a few cases, particularly for the LCL cargo consignments originating from ICDs, Export General Manifest (EGM) related errors continue to hinder smooth and automatic sanction of IGST refund claims. The nature of these errors has been examined in detail. It has been observed that the main reasons for such EGM errors still hampering the IGST refund processing are as under:

(i) Online filing of both local and Gateway EGM not being done on time by the concerned stakeholders.

(ii) Mismatch in local and gateway EGM details wherever both are filed online.

(iii) Non-filing of stuffing report by the Preventive officers at Gateway Ports for the LCL cargo being consolidated at the Gateway Ports/ CFSs in the system.

2. Non-filing/Late filing of Online Local and Gateway EGM: -

(i) The processing of IGST refund gets hampered either because the local EGM has not been filed online or has been filed late. There are instances where the cargo originating from the hinterland ICDs reached the gateway port without the local EGM having been filed online. Earlier vide Circular No. 42/2017-Cus., dated 7.11.2017 it was explained that due to manual filing of EGM in respect of Shipping bills originating from ICDs, system is unable to match the gateway EGM and the local EGM. Therefore, it was instructed that all the custodians / carriers / shipping lines operating at ICDs/ Gateway ports should file EGM online. It is re-iterated that the first step would be that the concerned stakeholders at the originating ICDs file the local EGMs online.

(ii) Where the export goods are directly moved by truck to the gateway port, in such cases, filing the local EGM timely should not pose any problem. At inland ICDs/CFSs connected by train, the local EGM shall be filed before the goods actually move out of ICD/CFS. In ICDs/CFSs not connected by train but where the movement of export goods begins from the nearest train-based ICD/CFS, it has been observed that local EGM is not being filed as the Train Number is not known to the custodian for the want of Rail receipt. In such cases, it must be ensured that local EGM is filed by the custodian immediately after getting Train details in which containers are moving to Gateway port but in any case, before the train leaves for the Gateway port. Officers at these stations shall constantly monitor to check the pendency and take necessary action.

(iii) Non-filing of EGM clearly hints at non-compliance by the custodian / person in charge of the conveyance carrying export goods. Section 41 of the Customs Act authorizes the customs officer to take action against such non-filers. However, more than invoking the penal sections, jurisdictional Commissioners need to constantly monitor the activity of timely filing of the EGM and take necessary steps to ensure the same.

(iv) Board expects its jurisdictional officers to take all necessary steps to ensure that all EGMs of cargo related to past cases are filed before 31st January 2019. As a measure of facilitation, penal provisions may not be invoked for EGMs filed till 31st January, 2019. However, continued non-compliance beyond 1st February, 2019 may be dealt strictly by taking recourse to penal provisions in accordance with the law.

**3. Mismatch in Local EGM and Gateway EGM:**

(i) The errors arising out of mismatch of information provided in local and Gateway EGM has been discussed in para 6 of Circular No. 06/2018-Customs where in Board had clearly delineated the roles and responsibilities of the Customs officers at the inland ICDs/ CFSs and at the Gateway port or CFSs attached with the gateway ports respectively in so far as the task of integrating the local EGM and the gateway EGM was concerned.

(ii) One of the major hindrances in smooth processing of IGST refunds for the past period is the problem faced by field formations in gathering information with regard to LCL cargo from Shipping lines and Custodians. The matter has been examined. The procedure related to consolidation of cargo at Gateway ports has already been prescribed vide Circular No. 55/2000-Cus dated 30.06.2000 wherein it is provided inter-alia that the custodian of the gateway port or CFS near gateway port is required to maintain a tally sheet container-wise, giving details of the export consignments, the previous Container No., Shipping Bill No., AR-4 No. and the details of new container in which goods have been re-stuffed. It was also mandated that the concerned shipping line would issue the Bill of Lading, a copy of which would be handed over to the custodian. After necessary endorsements regarding inspection, the other transference copy would be returned to the originating ICD/CFS. Thus, the custodian of the CFSs or Gateway port bears the responsibility to maintain all records with regard to LCL cargo consolidated at their premises. Subsequently, vide circular No. 08/2018- Customs, instead of the said transference copy, correlation with final bill of lading or written confirmation from the custodian of the gateway CFS was permitted for purposes of integration of the local and gateway EGM.

(iii) It has also been learnt that in some field formations tally sheet is being maintained in the form of Container Load Plan (CLP) which is prepared by Shipping lines and gives details of packages stuffed in the container. It has been reported that cargo is destuffed under customs supervision based on Container De-stuffing Plan (CDP). Preparing CLP/CDP does not absolve the custodian of the responsibility of keeping account of the cargo being handled in the form of a tally sheet. Such local practice of CLP/CDP appears to have been started only for the convenience of shipping lines/custodian. The accounting of previous containers vis-a-vis new container in case of LCL cargo being re-stuffed at

CFS or Gateway port is an important event in establishing the linkage between the local EGM and Gateway EGM. Circular 55/2000- Cus dated 30.06.2000 mandating the procedure to be followed at Gateway Ports or CFS attached to Gateway ports and the originating inland ICDs/CFSs for consolidation of LCL cargo on Gateway ports or CFS attached to such gateway ports is still in vogue and the same has not been dispensed with.

(iv) Agents of Shipping lines / freight forwarders/ consolidators operating at the inland ICDs/CFSs play a very critical role in booking of the export cargo for the overseas destination. CBIC has deputed its officers to some of the inland ICDs/ CFSs. The feedback obtained has revealed that these entities have all the necessary information regarding the movement of goods from ICDs/ CFSs to Gateway port, consolidation at the gateway port and journey beyond. These entities can be easily approached to provide the requisite information/ documents for rectification of EGM related errors in case exporters for some reason do not have the requisite information. Jurisdictional Customs officers at inland ICDs/ CFSs are therefore, required to approach these agents to obtain the details of re-worked containers (C or N related EGM errors). The information gathered from the agents shall be collated and immediately communicated to Gateway port officers so that rectification of errors (C or N) could be done.

(v) Customs officers in charge of CFSs shall provide list of Shipping Bills having SB006 error i.e EGM errors to the concerned CFSs at gateway ports. The custodians shall in turn provide details as mentioned in Tally Sheets or CDP/CLP (containing container details) relating to the said SBs to the Customs officers. Simultaneously, Gateway port officers shall coordinate with the officers of the originating ICDs/ CFSs to obtain relevant particulars in accordance with the procedure in para (iv) above. It shall be the responsibility of the officers in charge of CFSs at Gateway ports to obtain necessary details from the stakeholders which establish the linkages between the goods received from inland ICDs/ CFSs and those exported out of India except in cases where the local EGM has not been filed in which case the responsibility would be of the officers manning the inland ICD/CFS.

(vi) Once the details are received, the Preventive officer/ P.O. at the gateway port CFSs shall use the option in the Preventive Officer role (PREV_OFF) to rectify container details. (Refer ICES Advisory 08/18 dt. 09.03.2018). The preventive officer can amend

the container details in the Gateway EGM CTR Amendment Option to correct the N and C errors after verifying the relevant details from shipping bill, master BL and House(local) BL. Once the corrections are made, EGM officer at Gateway port can revalidate EGMs for successful integration of the updated details. For those shipping bills in respect of which no gateway EGM was filed in the first place, the shipping line can file supplementary EGM for successful integration.

(vii) Responsibilities and liabilities of custodians have been provided in detail in the Handling of Cargo in Customs Areas Regulations, 2009. Regulation 6 clearly casts the responsibility of keeping account of export goods on the Customs Cargo Service Provider (CCSP). Further, the procedure for suspension or revocation and imposition of penalty is provided in Regulation 12 which can be resorted to in cases where CCSP fails to comply with the regulations. This must be strictly enforced after following due process in instances of persistent non-compliance.

(viii) Export of goods out of India is an essential condition for grant of IGST refund as provided in Rule 96 of CGST Rules, 2017. It therefore warrants verification whether the goods were indeed exported out of India where the IGST refund claims have been long pending with EGM error (SB006).

**4. Stuffing Report by Preventive Officers at Gateway Ports**

(i) It appears that in some gateway ports, the Preventive officers are entering stuffing report in ICES application of Customs EDI System pertaining to the shipping bills filed only in gateway port, but not for the shipping bills which have been filed in ICDs. It is important that Preventive officers posted in gateway ports should enter stuffing reports for all shipping bills irrespective of the fact from where they have been filed i.e in gateway port or ICDs.

(ii) Further, in order to avoid the problem of mismatch in information in local and gateway EGMs, the preventive officers must play a proactive role. Custodian at CFSs/Gateway Ports shall prepare Tally Sheet as mandated in Circular No. 55/2000-Cus. The preventive officer shall supervise de-stuffing and re-stuffing, so as to verify the details like number of package (s), quantity etc. and satisfy himself that there is no short shipment, replacement or diversion of cargo etc. In addition to providing the stuffing report for the local cargo, the gateway port officer should also verify the correctness of package (s) and container details for cargo coming

from inland ICDs cargo immediately in ICES, using the Gateway EGM CTR Amendment option. Tally sheet shall be prepared containing all the necessary details simultaneously. Corrections, if required, in the container/package details shall be rectified at this stage itself to avoid the occurrence of N and C errors, when the gateway EGM is eventually filed. Once the corrections are made, the EGM officer at the Gateway port can revalidate EGMs for successful integration of the updated details.

5. Board had vide Circular No. 67/2000-Customs extended the procedure prescribed in 55/2000-Customs to agents of shipping lines / MTOs / NVOCCS / freight forwarders/consolidators. This was purely a facilitation measure taking into account the business practice of the shipping lines. Board has allowed these entities a role in the logistics chain only to facilitate the trade. Since these entities have the necessary information, it should not be difficult for them to provide the particulars required to resolve the pending SB006 cases. Therefore, there is a responsibility on these entities to coordinate with the field formations in return. Board would be constrained to review the facility given vide 67/2000-Customs to agents of shipping lines / MTOs / NVOCCS / freight forwarders/ consolidators should there be any report of non-cooperation and non-compliance from their side.

6. Chief Commissioners are requested to strictly implement the guidelines given above. Difficulties, if any, should be brought to the notice of the Board. Hindi version follows.

Yours sincerely,

(Zubair Riaz)
Director (Customs)

## IGST Export Refunds – extension in SB005 alternate mechanism and revised processing in certain cases including disbursal of compensation Cess – reg.

**Circular No. 40/2018-Customs**

Room No. 227B, North Block, New Delhi
Dated, the 24th October, 2018

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)

All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)

All Principal Commissioners/Commissioners of Customs & Central Excise

**Subject: IGST Export Refunds – extension in SB005 alternate mechanism and revised processing in certain cases including disbursal of compensation Cess – reg.**

Madam/Sir,

Exporters are availing the refunds of IGST paid on exports regularly for more than a year now. It has been observed that exporters have committed many errors which have hampered sanctioning of IGST refund. CBIC has introduced several options and alternative mechanisms through which various mismatch errors between the Shipping Bill (SB) and GSTR 1 data can be handled in the system.

2. CBIC has issued circulars 05/2018-Customs dated 23.02.2018, 08/2018-Customs dated 23.03.2018, 15/2018-Customs dated 06.06.2018 and 22/2018-Customs dated 18.07.2018 respectively wherein an alternative mechanism with an officer interface to resolve invoice mismatches (SB005 error) was provided for the shipping bills filed till 30.06.2018. Although the cases having SB005 error have gone down, but still representations have been received from exporters / associations that some exporters had, due to lack of familiarity/awareness, committed the same mistake due to which their IGST refunds are stuck and requested for extension of date. Issue has been examined and it has been observed that exporters are committing same mistakes again and again in spite of several sensitisation/outreach programmes. However, giving high priority to the interests of exporters, it has been decided by the Board to extend the rectification facility to Shipping Bills filed up to 15.11.2018. However, it has been reiterated that the exporters shall have to take care to ensure the details of invoice, such as invoice number, IGST paid etc. under GSTR 1 and shipping bill match with each other since the same transaction is being reported under GST laws and Customs Act.

3. It may be noted that SBs which have not been scrolled due to the IGST paid amount erroneously declared as 'NA' are already being handled through officer interface as per Board's Circular 08/2018 - Customs dated 23.03.2018. However, no such provision was hitherto available in respect of those SBs which were successfully scrolled, albeit with a lesser than eligible amount.

4. CBIC has been receiving representations where the refund scroll has been generated for a much lesser IGST amount than what has actually been paid against the exported goods. Broadly, this has happened due to:

a. Error made by the exporter/CHA in declaring the IGST paid amount in SB or,

b. Cases where Compensation Cess paid amount was not entered by the exporter in the SB along with the IGST paid amount or the same details were not transmitted by GSTN, and the scroll consequently got generated only for the IGST amount or,

c. Typographical mistake by the customs officer while sanctioning the refund through officer interface.

5. In a bid to provide relief to exporters in respect of categories indicated at Para 4 above, Directorate of Systems has now provided a facility in ICES for the processing and sanctioning of the eligible differential IGST refund. The facility would be officer interface based and is similar to the procedure for processing certain SB005 refund claims refer Circular No 05/2018-Customs dated 23.02.2018. This facility would be available only for cases where Shipping Bills have been filed till 15.11.2018. However, exporters need to be cautious while filing details in Shipping Bill as a similar facility may not be available in future for the same mistake for referred shipping bill. Also, Customs Officers while processing claims using officer interface should exercise due diligence so that mistakes are not repeated again.

6. In order to claim the differential amount, the exporter is required to submit a duly filled and signed Revised Refund Request (RRR) annexed to this circular to the designated AC/DC A scanned copy of the RRR may also be mailed to dedicated email address of Customs locations from where exports took place. The designated/concerned AC/DC will then proceed to sanction the revised amount after due verification through the option provided in ICES, a detailed advisory on which will be communicated by DG Systems to all the System Managers shortly. Once the revised amount is approved by the designated AC/DC in the system, a fresh scroll will be available for generation for the differential amount only.

7. It may be noted that only those SBs which have already been scrolled shall be available in this facility. Further, this facility can be used only once for each eligible SB to sanction the revised IGST amount. Thus, utmost care may be taken by the exporter while submitting the RRR as well as the sanctioning officer while sanctioning the revised amount as no further provision will be available for revising the refund sanction again.

8. With this facility, it is hoped that the eligible exporters will come forward for rectification of the mistakes to enable sanction of balance refund amount. Field formations are accordingly requested to give wide publicity to this circular including public notice, publication in local dailies, Customs house website, social media etc. and sensitize the trade and organised outreach programmes with major export associations/stakeholders within the stipulated time i.e.15.11.2018. Customs officers under your charge dealing with IGST refund may also be given suitable instructions to proactively and expeditiously process the revised refund requests.

9. Difficulties, if any, should be brought to the notice of the Board. Hindi version follows.

Encl. Format of Revised Refund Request (RRR). Yours faithfully,

(Zubair Riaz)
Director (Customs)

**Annexure: Revised Refund Request (RRR)**

SB Number: S B Date: Port Code:

GSTIN: IEC: Exporter Name:

| Sl No | GST Invoice Number/ Date | IGST Amount | Sl No | Corresponding SB Invoice No. /Date | IGST Amount as declared per SB | Final (corrected) IGST Amount as per actual exports* |
|---|---|---|---|---|---|---|
| 1 | | | 1 | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| 4 | | | 2 | | | |
| 5 | | | 3 | | | |
| 6 | | | | | | |
| 7 | | | 4 | | | |

* after reducing amount pertaining to Short shipment etc.

IGST Refund already received (A): Total Revised IGST Claim (B):

Differential IGST Refund (B-A):

I declare that all the details declared given above are true to my knowledge and all the items contained in the above invoices have been exported out of India.

I further declare that all the GST invoices pertaining to this Shipping Bill have been filed as part of GSTR1/ 6A in Common portal and is available for verification and refund.

Place: Exporter or his

Date: Authorised Signatory

## Cases where IGST refund have not been granted due to claiming higher rate of drawback or where higher rate and lower rate were identical

**Circular No. 37/2018-Customs**

Room No. 229 A, North Block
New Delhi, Dated, the 9th October, 2018

To,

All Principal Chief Commissioner/Chief Commissioner of Customs/ Customs & Central Tax I Customs (Preventive)

All Principal Commissioner/Commissioner of Customs/ Customs & Central Tax / Customs (Preventive)

All Director Generals under CBIC.

**Subject: Cases where IGST refunds have not been granted due to claiming higher rate of drawback OR where higher rate and lower rate were identical -reg**

Madam/Sir,

Numerous representations have been received from exporters /export associations, regarding cases where IGST refunds have not been granted because higher rate of drawback has been claimed or where higher rate and lower rate were identical.

2.0 The issue has been examined extensively in this Ministry. The legal provisions related to Drawback claims are as under:

2.1 Notes and condition (11) of Notf. No.131/2016-Cus(NT) dated 31.10.2016 (as amended by Notf. No.59/2017-Cus(NT) dated 29.6.2017), under which All Industry Rates of Drawback had been notified and which were applicable for availing composite rates during period in question (i.e. 1.7.2017 to 30.9.2017), prescribed that '*The rates and caps of drawback*

*specified in columns (4) and (5) of the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is -*

...

(d) exported claiming refund of the integrated goods and services tax paid on such exports.'

2.2 Notes and Condition (12A) of Notfn. No.131/2016-Cus(NT) dated 31.10.2016 (as amended by Notfn.No.59/2017-Cus(NT) dated 29.6.2017 and 73/2017-Cus(NT) dated 26.7.2017) prescribed that 'The rates and caps of drawback specified in columns (4) and (5) of the said Schedule shall be applicable to export of a commodity or product if the exporter satisfies the following conditions, namely:-

... ... ...

(ii) If the goods are exported on payment of integrated goods and services tax, the exporter shall declare that no refund of integrated goods and services tax paid on export product shall be claimed; ..... .'

2.3 In terms of Rules 12 and 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the shipping bill itself is treated as claim for drawback in terms of the declarations made on the shipping bill.

2.4 The declarations required in terms of above Notes and Conditions and provisions of the Drawback Rules are made electronically in the EDI System. When composite drawback rate was claimed (by declaring suffix A or C with Drawback serial number), exporter was required to tick DBK002 and DBK003 declarations in the shipping bills. In fact, for period 1.7.2017 to 26.7.2017, a manual declaration was also required to be given as the changes made on 26.7.2017 were made applicable for exports made from 1.7.2017 onwards.

2.5 By declaring drawback serial number suffixed with A or C and by making above stated declarations, the exporters consciously relinquished their IGST/ITC claims.

3. It has been noted that exporters had availed the option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made aforesaid declaration while claiming the higher rate of drawback, it has been decided that it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback. There is no justification for re-opening the issue at this stage.

4. Field formations may, therefore, take necessary steps to bring these changes to the knowledge of exporters.

5. Difficulties, if any, may be brought to the notice of the Board. Hindi version will follow.

Yours faithfully,

(Maninder Kumar)
O.S.D.(Cus-IV)

## Sanction of pending IGST refund claims where the records have not been transmitted from GSTN to DG (System)

**Circular No. 33/2018-Customs**

Room No. 229 A, North Block
New Delhi, dated the 19th September, 2018

To,

All Principal Chief Commissioner/Chief Commissioner of Customs/ Customs & Central Tax I Customs (Preventive)

All Principal Commissioner/Commissioner of Customs/ Customs & Central Tax I Customs (Preventive)

All Director Generals under CBIC.

**Subject: Sanction of pending IGST refund claims where the records have not been transmitted from the GSTN to DG Systems-reg**

Madam/Sir,

It may be recalled that vide Circular 12/2018-Customs dated 29-05-2018, Board had provided interim solution to the problem faced by the exporters whose records were not transmitted from GSTN to Customs due to mismatch in GSTR 1 and GSTR 3B. The interim solution was subject to undertakings/ submission of CA certificates by the exporters as given in Circular 12/2018-Customs and post refund audit scrutiny.

2. Representation has been received from the Cost Accountant Association for authorizing them also to give certificates to the exporters on said subject. The matter has been examined in the Board and it has en observed that under CGST Act, 2017, Cost Accountants have also been recognized for various certifications/representations like in Section 35, Section 66, Section 116 and Section 48 read with rule 24 of Return rules.

3. Hence, it has been decided that Cost Accountants are also authorized to provide the requisite certificates as envisaged under Circular 12/2018-Customs dated 29.05.2018

4. Field formations may, therefore, take necessary steps to bring these changes to the knowledge of exporters.

5. Difficulties, if any, may be brought to the notice of the Board. Hindi version will follow.

Yours faithfully,

(Maninder Kumar)
O.S.D.(Cus-IV)

## Refund of IGST on export of goods on payment of duty-Clarification in case of SB003 errors and extension of date in SB005 & other cases using officer Interface for rectification of errors-reg.

**Circular No. 22/2018-Customs**

Room No.227-B, North Block,
New Delhi dated 18th July, 2018

To,

All Principal Chief Commissioner/Chief Commissioner of Customs/ Customs & Central Tax / Customs (Preventive)

All Principal Commissioner/Commissioner of Customs/ Customs & Central Tax / Customs (Preventive)

All Director Generals under CBIC.

**Subject: Refund of IGST on export of goods on payment of duty-Clarification in case of SB003 errors and extension of date in SB005 & other cases using officer Interface for rectification of errors-reg.**

Madam/Sir,

It may be recalled that in circular 15/2018-Customs dated 06.6.2018, CBIC has provided for the resolution of SB003 error in certain cases through the utility developed by the Directorate of Systems in a similar manner as SB005 error. It has been brought to the knowledge of the Board that in several cases, the exporters have mentioned PAN instead of GSTIN in the Shipping Bills, even though GSTIN has been correctly mentioned while filing the GST returns. Due to this mismatch, the IGST refund claims are not getting processed.

2. The matter has been examined. As PAN is embedded in the GSTIN, CBIC has decided to accord similar treatment to such cases also as are already covered under Para 2 of Circular 15/2018-Customs. The conditions prescribed in para 2 of the said circular shall apply mutat is mutandis.

3. CBIC has issued circulars 05/2018-Customs dated 23.02.2018, 08/2018-Customs dated 23.03.2018 and 15/2018-Customs dated 06.06.2018 wherein an alternative mechanism with an officer interface to resolve invoice mismatches (SB005 error) was provided for the shipping bills filed till 30.04.2018. Despite wide publicity and outreach programmes to make exporters aware about the need to have identical details in invoices given in shipping Bills and GST returns, it has been observed that a few exporters continue to commit such errors. Therefore, in view of the ongoing Refund Fortnight, giving high priority to the interests of exporters, it has been decided by the Board to extend the rectification facility to Shipping Bills filed up to 30.06.2018.

4. Further, the facility of rectification through Officer Interface is also extended in case of other errors mentioned in circulars (8/2018-Customs and 15/2018-Customs) for shipping bills filed up to 30.06.2018. However, at the same time, exporters are advised to henceforth ensure due diligence and discipline to avoid such mismatch errors as such extensions are not likely to be considered in future.

5. Field formations may, therefore, take necessary steps to bring these changes to the knowledge of exporters.

6. Difficulties, if any, may be brought to the notice of the Board. Hindi version follows.

Yours faithfully

(Zubair Riaz)
Director(Customs )

## Refund of IGST on export of Goods on payment of duty- Setting up of Help Desks -reg.

**Circular 21/2018-Customs**

Room No. 227B, North Block,
New Delhi dated 18thJuly, 2018

To,

All Principal Chief Commissioner/Chief Commissioner of Customs/ Customs & Central Tax / Customs (Preventive)

All Principal Commissioner/Commissioner of Customs/ Customs& Central Tax / Customs (Preventive)

All Director Generals under CBIC.

**Subject: Refund of IGST on export of Goods on payment of duty- Setting up of Help Desks -reg.**

Sir/Madam,

Various representations have been received in the Board wherein micro, small and medium enterprise exporters have informed that their IGST refunds are held up and that they are unable to approach Customs port of exports due to factors like distance, lack of information/knowledge etc. As part of the ongoing Refund Fortnight, it has been decided to set up Help Desks at the offices of FIEO and AEPC for expeditious resolution of IGST refund related issues.

2. The Help Desks would be located at the locations mentioned in Annexure A, and would function for a period of 2 weeks till 1st August, 2018. They will be manned by officers of Customs, who shall be nominated by the jurisdictional Customs zone. The necessary infrastructure like Computer, Scanner/Printer, Internet, Cabin Space etc. would be made available to the officers by FIEO/AEPC.

3. The Directorate of Systems shall provide the status of each pending IGST refund claim with specific error due to which it is being held up, on Antarang. The icegate email ID of the officer(s) deputed at the Help Desk may immediately be informed to Team.ICES@icegate.gov.in to enable access to the data. The officers deputed at Help Desks would use this data to inform the exporters about the documents required, if any, and guide them to resolve the errors. The exporters can provide details related to any port of export at the Help Desk near their location. The Help Desk shall act as an extended office of the Port of export and collect documents/ information on behalf of the port of export. The details provided by the exporters to the Help Desk shall be transmitted by ICEGATE e-mail to the nodal officers at the port of export. The ICEGATE e-mail ID of the nodal officer of each port of export shall immediately be informed to Team.ICES@ icegate.gov.in. The Customs officers at the port of export shall process the refund claim after all the necessary details/documents submitted at the Help Desks have been forwarded to the nodal officer at the port of export. There shall be no need for the exporters to visit any port of export once all the requisite documents/information have been submitted at the Help Desks.

4. Field formations may, therefore, take necessary steps to bring these changes to the knowledge of exporters.

5. Difficulties, if any, may be brought to the notice of the Board.

6. Hindi version follows.

Yours faithfully

(Zubair Riaz)
Director (Customs)

**Annexure A**

1. FIEO offices in the following locations
   - (i) Ahmedabad
   - (ii) Bangalore
   - (iii) Chennai
   - (iv) Cochin
   - (v) Coimbatore
   - (vi) Delhi
   - (vii) Hyderabad
   - (viii) Kolkata
   - (ix) Ludhiana
   - (x) Mumbai
2. AEPC office, Tirupur.

## Refund of IGST on export of Goods-Extension of date in SB005 alternate mechanism cases and Clarification in other cases - reg.

**Circular No.15/2018-Customs**

Room No.227-B, North Block,
New Delhi dated 6th June, 2018

To,

All Principal Chief Commissioner/Chief Commissioner of Customs/ Customs & Central Tax / Customs (Preventive)

All Principal Commissioner/Commissioner of Customs/ Customs & Central Tax / Customs (Preventive)

All Director Generals under CBIC.

**Subject: Refund of IGST on export of Goods-Extension of date in SB005 alternate mechanism cases and Clarification in other cases -reg.**

Sir/Madam,

CBIC has issued Circular No's 05/2018-Customs dated 23.02.2018 and 08/2018- Customs dated 23.03.2018 wherein an alternative mechanism with officer interface to resolve invoice mismatches was provided for the shipping bills filed till 28.02.2018. Although the cases having SB005 error have now ebbed due to continuous outreach done by the Board and increased awareness amongst the trade, however, some exporters nevertheless, continue to make errors in filing invoice details in the shipping bill and the GST returns. Therefore, keeping in view the difficulties faced by the exporters in respect of SB005 errors, Board has decided to extend the facility of officer interface to Shipping bills filed up to 30.04.2018. However, the exporters are advised to align their export invoices submitted to Customs and GST authorities for smooth processing of refund claims.

2. Apart fromSB005 errors, IGST refunds are also stuck on account of SB003 error on the customs side. This error occurs when there is a mismatch between GSTIN entity mentioned in the Shipping bill and the one filing GSTR-1/GSTR-3B. Board has examined the issue and it has been decided to provide a correction facility in cases where although GSTIN of both the entities are different but PAN is same. This happens mostly in cases where an entity filing Shipping bill is a registered office and the entity which has paid the IGST is manufacturing unit/other office or vice versa. However, in all such cases, entity claiming refund (one which has filed the Shipping bill) will give an undertaking to the effect that its other office (one which has paid IGST) shall not claim any refund or any benefit of the amount of IGST so paid. The undertaking shall be signed by authorized persons of both the entities. This undertaking has to be submitted to the Customs officer at the port of export. CBIC had some time back requested Directorate of Systems to develop a correction tool, on lines of one developed for SB005, for sanction of refund in cases where PAN provided in Shipping Bill is same as PAN of GSTR 1. DG Systems have developed this utility now which would facilitate processing of IGST refund claims stuck due to SB003 error in the manner similar to SB005 error.

3. Field formations may, therefore, take necessary steps to bring these changes to the knowledge of exporters.

4. Difficulties, if any, may be brought to the notice of the Board. Hindi version follows.

Yours faithfully

(Zubair Riaz)
Director (Customs)

## Sanction of pending IGST refund claims where the records have not been transmitted from the GSTN to DG Systems -reg.

**Circular No. 12/2018-Customs**

Room No. 227-B, North Block,
New Delhi dated 29th May, 2018

To,

All Principal Chief Commissioner/Chief Commissioner of Customs/ Customs & Central Tax / Customs (Preventive)

All Principal Commissioner/Commissioner of Customs/ Customs & Central Tax / Customs (Preventive)

All Director Generals under CBIC.

**Subject: Sanction of pending IGST refund claims where the records have not been transmitted from the GSTN to DG Systems -reg.**

Sir/Madam,

A number of representations have been received from the exporters / trade associations seeking resolution of problems which have hindered sanction of refund of IGST paid on exports. From time to time, Board has provided solutions to a number of issues because of which refunds were held up. However, there is still one major hindrance because of which GSTN could not transmit data to Customs EDI system and consequently refunds could not be sanctioned. A validation has been introduced in the GSTN system to ensure that the IGST paid on the export goods in any particular month [3.1(b)] is not less than the refund claimed by the exporter [Table 6A]. However, data provided by GSTN has revealed that this validation has failed in number of cases.

2. Representations received from trade / exporters coupled with the analysis of data received from GSTN indicates that the exporters have committed mistakes while filing GSTR-1 and GSTR-3B. It has been observed that the exporters have inadvertently misdeclared IGST paid on

export supplies as IGST paid on interstate domestic outward supplies while filing GSTR-3B. The exporters have also in certain cases short paid IGST vis-à-vis their liability declared in GSTR1. As a result of these mismatches in the amount of IGST paid on export goods between GSTR-1 and GSTR-3B, the transmission of records from GSTN to Customs EDI system has not happened and consequently IGST refunds could not be processed. The problem is compounded by the fact that the facility to adjust GSTR-3B in subsequent months is not available in all cases.

3. In view of the above following procedure is being prescribed to overcome the problem of refund blockage. This would be an interim solution subject to undertakings/ submission of CA certificates by the exporters as given below and post refund audit scrutiny. The proposed procedure is as under:

**A. Cases where there is no short payment:**

(i) The Customs policy wing would prepare a list of exporters whose cumulative IGST amount paid against exports and interstate domestic outward supplies, for the period July' 2017 to March' 2018 mentioned in GSTR-3B is greater than or equal to the cumulative IGST amount indicated in GSTR-1 for the same period. Customs policy wing shall send this list to GSTN.

(ii) GSTN shall send a confirmatory e-mail to these exporters regarding the transmission of records to Customs EDI system.

(iii) The exporters whose refunds are processed/ sanctioned would be required to submit a certificate from Chartered Accountant before 31st October, 2018 to the Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018. In case there are exports from multiple ports, the exporter is at liberty to choose any of the ports of export for submission of the said certificate.

(iv) A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/ State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.

(v) Non submission of CA certificate shall affect the future IGST refunds of the exporter.

(vi) The list of exporters whose refunds have been processed as above shall be sent to DG (Audit)/ DG (GST) by the Board.

**B. Cases where there is short payment:**

(i) In cases where there is a short payment of IGST i.e. cumulative IGST amount paid against exports and interstate domestic outward supplies together, for the period of July' 2017 to March' 2018 mentioned in GSTR-3B is less than the cumulative IGST amount indicated in GSTR-1 for the same period, the Customs policy wing would send the list of such exporters to the GSTN and all the Chief Commissioner of Customs.

(ii) e-mails shall be sent by GSTN to each exporter referred in para (i) above so as to inform the exporter that their records are held up due to short payment of IGST. The e--mail shall also advise the exporters to observe the procedure under this circular.

(iii) The exporters would have to make the payment of IGST equal to the short payment in GSTR 3B of subsequent months so as to ensure that the total IGST refund being claimed in the Shipping Bill/GSTR-1(Table 6A) is paid. The proof of payment shall be submitted to Assistant/Deputy Commissioner of Customs in charge of port from where the exports were made. In case there are exports from multiple ports, the exporter is at liberty to choose any of the ports of export.

(iv) Where the aggregate IGST refund amount for the said period is upto Rs. 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST payment to the concerned Customs office at the port of export. However, where the aggregate IGST refund amount for the said period is more than Rs. 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST to the concerned Customs office at the port of export along with a certificate from chartered Account that the shortfall amount has been liquidated.

(v) The exporter would give an undertaking they would return the refund amount in case it is found to be not due to them at a later date.

(vi) The Customs zones shall compile the list of exporters (GSTIN only), who have come forward to claim refund after making requisite payment of IGST towards short paid amount and complied with other prescribed requirements.

(vii) The compiled list may be forwarded to Customs policy wing, DG (Audit) and DG (GST). Customs policy wing shall forward the said

list of GSTINs to GSTN. On receipt of the list of exporters from Customs policy wing, GSTN shall transmit the records of those exporters to Customs EDI system.

(viii) The exporters whose refunds are processed/ sanctioned as above would be required to submit another certificate from Chartered Accountant before 31st October, 2018 to the same Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018. A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/ State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.

(ix) Non submission of CA certificate shall affect the future IGST refunds of the exporter. Post refund audit

4. The exporters would be subjected to a post refund audit under the GST law. DG (Audit) shall include the above referred GSTINs for conducting Audit under the GST law. The inclusion of IGST refund aspects in Audit Plan of those units may be ensured by DG (Audit). In case, departmental Audit detects excess refunds to the exporters under this procedure, the details of such detections may be communicated to the concerned GST formations for appropriate action.

5. DG (GST) shall send the list of exporters to jurisdictional GST officers (both Centre / State) informing that these exporters have taken benefit of the procedure prescribed in this circular. The jurisdictional GST formations shall also verify the payment particulars at their end.

6. This Circular deals only with the cases where the records have not been transmitted by GSTN to Customs EDI system. Once the records are transmitted by GSTN to Customs System based upon the above mentioned procedure, the usual procedure adopted in case of sanction of IGST refunds would have to be followed. In cases where the errors like SB005, SB002, SB006 etc are encountered with the records so transmitted, the provisions of Circulars issued by Board earlier shall apply to them.

7. Field formations may, therefore, take necessary steps to bring these changes to the knowledge of exporters. Difficulties, if any, may be brought to the notice of the Board. Hindi version follows.

Yours faithfully

(Zubair Riaz)
Director (Customs)

# Refund of IGST on Export-Extension of date in SB005 alternate mechanism cases & clarifications in other cases

**Circular No. 08/2018-Customs**

Room No. 227B, North Block, New Delhi
Dated, the 23rd March, 2018

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)

All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)

All Principal Commissioners/Commissioners of Customs & Central Excise

**Subject: Refund of IGST on Export-Extension of date in SB005 alternate mechanism cases & clarifications in other cases-reg.**

Madam/Sir,

CBEC has issued Circular No 5/2018-Customs dated 23-02-2018 which provided for an alternative mechanism with officer interface to resolve invoice mismatch cases. In the said circular, it was provided that the mechanism would be available for the shipping bills filed till 31.12.2017. Although the cases having SB005 error have now greatly reduced due to continuous outreach done by the Board and increased awareness amongst the trade, but some exporters have nevertheless, have committed errors in filing invoice details in shipping bill and GST returns. Therefore, keeping in view the difficulties likely to be faced by the exporters in case SB005 are allowed to be corrected through officer interface for SBs filed up to 31.12.17, It has been decided to extend this facility to those shipping bills filed till 28.02.2018.

2. Further, representations have also been received from:

(i) field formations seeking resolution of SB006 errors due to discontinuance of transference copy of shipping bill. It has been proposed by the field formations that in lieu of transference copy either the final Bill of Lading issued by the shipping lines or written confirmation from the custodian of the gateway port , may be treated as valid document for the purposes of integration with the EGM. The proposal from the field formation

has been examined in the Board. The proposal sent from field formation in such EGM error cases has been agreed.

(ii) exporters that by mistake they have mentioned the status of IGST payment as "NA" instead of mentioning "P" in the shipping bill. In other words, the exporter has wrongly declared that the shipment is not under payment of IGST, despite the fact that they have paid the IGST. As a one-time exception, it has been decided to allow refund of IGST through an officer interface wherein the officer can verify and satisfy himself of the actual payment of IGST based on GST return information forwarded by GSTN. DG (Systems) shall open a physical interface for this purpose.

3. Difficulties if any should be brought to the notice of the Board.

4. Hindi version follows.

Yours faithfully

(Zubair Riaz)
Director (Customs)

Refund of IGST on Export-EGM Error related cases.

**Cirtul:ar No. 06/2018-Customs**

Room No. 227B. North Block. New Delhi
Dated, the 16th March 2018

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)

All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)

**Subject: Refund of IGST on Export-EGM Error related cases–reg.**

Sir/Madam,

IGST Refund module for export is operational in ICES from 10.10.2017. The module has an inbuilt procedure to automatically grant refund after validating the Shipping Bill data available with Customs against the GST Returns data available with GSTN. The procedure also returns error/response codes in case there is any discrepancy. A number

of representations have been received from the stakeholders seeking resolution of various problems encountered in sanction of refund of IGST paid on exports of goods. To address the problems related to IGST refund, CBEC has already issued Circular No. 42/2017-Customs dated 07-11-2017 which highlighted the common errors and combination of errors that hindered the sanction and disbursal of refund of IGST paid against exports. Vide circular No. 5/2018-Customs dated 23.2.2018, an officer interface in case of invoice mis-match errors. Which accounted for the largest proportion of errors, was introduced. The other main category of errors holding up the refunds in Inland Container Depots (ICDs) is related to either non-filing of Export General Manifest at the gateway port or information mis-match between local and gateway EGMs.

2. As per Rule 96 of the CGST Rules 2017, the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India, once both the Export General Manifest (EGM) and valid return in Form GSTR-3 or Form GSTR-3B, as the case may be, has been filed. In other words, filing of EGM, apart from filing of shipping bill and GSTR 3B is a mandatory requirement for processing refund claim. The Shipping lines/agents have been filing EGM electronically for exports originating from gateway ports. However, for cargo originating from ICDs, the Shipping lines/agents were filing EGM in manual mode. Absence of electronic EGMs and their integration with local EGMs has been the major obstacle in processing of refund claims in the case of exports from ICDs.

3. In order to overcome this issue, the Shipping lines have been mandated to include the shipping bills originating from ICDs while filing the electronic EGMs at the gateway ports. In cases where the EGMs have not incorporated the shipping bills pertaining to ICDs, the Shipping lines/agents have been asked to file supplementary EGMs. While the Shipping lines have been largely cooperative in filing regular or supplementary EGMs for cargo originating from ICDs, there are still many instances where no EGMs have been filed or EGMs have been filed with errors. This causing avoidable delay in processing of refund claims. The jurisdictional officers at the gateway port may initiate swift penal action against Shipping lines / agents who fail to file either regular or supplementary EGMs electronically for the cargo originating from ICDs.

4. In order to ensure a hassle-free processing of refund claims, the following steps may be ensured by the jurisdictional officers in ICDs: (a) filing of local EGM i.e. train or truck summary, as the case may be, immediately

after cargo leaves the port, (b) liaising with jurisdictional officers at gateway port for incorporation of Shipping Bills pertaining to the cargo originating in ICDs, in the EGMs filed at gateway port by the Shipping lines/agents (c) rectification of errors in local and gateway EGM, wherever necessary.

5. The jurisdictional officer at the Gateway port should strictly monitored the EGM pendency and error reports available in ICES. The officers at the gateway port have to resolve the EGM errors in an expeditious manner by asking the shipping lines/agents to file requisite amendments and approving those amendments on ICES. In cases where there are errors either in the shipping bill or in the local EGM (i.e. is truck or train summary), the remedial action has to be taken by jurisdictional officer Officer in ICT.

6. It has been observed that mis-match of information provided in local and gateway EGM mainly occurs because of (i) incorrect gateway port code in local EGM (error M), (ii) change in container for LCL cargo or mistakes committed while entering container number (error C), (iii) incorrect count of containers (error N), (iv) mistakes in entering the nature of cargo – LCL or FCL (ERROR 'I'). (v) the let export order is given in ICES after sailing date of the vessel (error L). ICES has provision to correct all aforementioned errors. The procedure to be followed for each type of error has been clearly delineated in the step-by-step guide issued by the Directorate of Systems for dealing with the errors. In case of specific difficulties, the same may be taken up with Directorate of Systems.

7. There is a shared responsibility between officers working at ICDs and gateway ports in ensuring an error free filing and integration of local and gateway EGMs. The officers at both locations should also ensure swift rectification of errors and effective coordination between the domestic carriers, who file local EGMs, and Shipping lines/agents, while file gateway EGMs. The error free filing and integration of EGMs is a pre-requisite for smooth processing of refunds. Recognizing this necessary outreach may be done to sensitize domestic carriers as well as Shipping lines/agents with regards to due diligence that is required in filing of EGMs and its critical importance in hassle free processing of IGST refunds.

8. Difficulties if any should be brought to the notice of the Board.

9. Hindi version follows.

Yours faithfully

(Zubair Riaz)
Director (Customs)

# Refund of IGST on Export– Invoice mis-match Cases –Alternative Mechanism with Officer Interface - reg.

**Circular No. 05/2018-Customs**

Room No. 227B, North Block, New Delhi.
Dated the 23rd February, 2018

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)

All Principal Chief Commissioners/Chief Commissioners of Central Tax and Central Excise

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)

All Principal Commissioners/Commissioners of Central Tax and Central Excise

**Subject: Refund of IGST on Export– Invoice mis-match Cases – Alternative Mechanism with Officer Interface - reg.**

Madam/Sir,

1. Numerous representations have been received from exporters / trade associations seeking resolution of various problems which have hindered the sanction of refund of IGST paid on exports. CBEC has issued Circular No 42 / 2017 dated 07-11-2017 which highlighted the common errors that hindered the sanction and disbursal of refund of IGST paid against exports. Subsequent to the said Circular, outreach programmes have been undertaken and advisories, advertisements and FAQs have been issued to create awareness amongst the exporter community regarding the common mistakes and errors which hold up the refund process. Information is being made available to exporters on a real-time basis with regard to the errors status on ICEGATE website for registered users. Details of refund sanctioned is being sent through SMS on registered mobile phones. A positive gain of these efforts has been that errors are steadily decreasing, which has enabled CBEC to sanction more than Rs. 4000 crores of refund, so far. The matter is being closely coordinated with GSTN, which has also been tasked to provide feedback to the exporter about any failed validations to enable corrective action on their part.

2. The analysis of data post October 2017 indicates that while the quantum of errors is decreasing significantly, exporters are still committing mistakes in the information furnished to (i) GSTN while filing GSTR 1 / Table 6A or GSTR 3B and (ii) Customs EDI system while filing Shipping

Bill. The pre-requisites and precautions that need to be taken for successful processing of refund claims are as follows:

(i) Exporters have to file GSTR 3B with taxable value for export and IGST paid against exports indicated in appropriate fields.

(ii) Exporters have to file GSTR 1 or Table 6A for the exports made with correct details such as Invoice number, Taxable value, IGST paid, Shipping Bill number, Shipping Date and Port Code. Large number of exporters have filed incomplete GSTR 1 or Table 6A where shipping bill number or date or port code are missing. These records are not processed / forwarded to Customs by GSTN. E-mails have been sent to exporters asking them to correct their records through amendment process of GSTR 1 i.e through Table 9 of GSTR 1 of the following month.

(iii) The aggregate IGST paid amount claimed in GSTR 1 or Table 6A should not be greater than the IGST paid amount indicated in Table 3.1(b) of GSTR 3B of the corresponding month. This check is put in the GSTN system to ensure that the refund claimed is not more than the IGST paid by the exporter. Analysis of GSTN return data indicates that this condition has failed in a large number of cases, consequently, the information filed by exporters is not forwarded to Customs by GSTN. In these cases also, e-mails have been sent to exporters asking them to correct their records through amendment process of GSTR 1 i.e. through Table 9 of GSTR 1 of the following month.

(iv) The analysis of data further indicates that only about 32% records of GSTR 1 / Table 6A have been transmitted from GSTN to Customs. In other words, a majority of refund claims are held up either due to insufficient information or lack of due diligence on the part of exporter while filing GST returns.

(v) Exporters may be advised to use Table 9 of GSTR 1 of the following month to amend the records of previous month so as to take care of issues mentioned in paras (ii) and (iii) above. In cases where exporters have already filed information through Table 9 of GSTR 1, the said information is being validated by GSTN. The validated information is expected to be forwarded by GSTN to Customs by mid-March 2018 for further processing.

(vi) The records (i.e GSTR 1 or Table 6A) which have been forwarded by GSTN to Customs after validations mentioned at (ii) and (iii)

above are processed by the Customs EDI system. In cases where the information forwarded by GSTN tallies with the information furnished in Shipping bills, refunds are automatically sanctioned by Customs EDI system. As mentioned earlier, till date about Rs. 4000 Crore has been sanctioned as refund of IGST paid.

(vii) However, there are many instances where refunds are held up on Customs EDI system due to certain errors which have been clearly brought out in the Circular No 42/2017- Customs. The major errors that are committed by the exporters are (a) incorrect Shipping bill numbers in GSTR 1 (b) GSTIN declared in the shipping bill does not match with the GSTIN used to file the corresponding GST Returns (c) the most common error hampering refund is due to mismatch of invoice number, taxable value and IGST paid in the Shipping Bill vis-à-vis the same details mentioned in GSTR 1 / Table 6A which is the most common error hampering refund. Another reason attributable to carriers is the non-filing or incorrect filing of electronic Export General Manifest (EGM).

(viii) Exporters may be advised to track the refund status and errors pertaining to their shipping bills on the ICEGATE website. The registration process demo, advisory and the needed IT configurations are hosted on the ICEGATE website under the following links.

Registration Demo link:

https://www.icegate.gov.in/Download/New_Registration_Demo_Updated_APPROVED.pdf

Registration Advisory link:

https://www.icegate.gov.in/Download/v1.2_Advisory_Registration_APPROVED.pdf

Java set up for the DSC upload:

https://www.icegate.gov.in/Download/JavaSetupForDSC.pdf

Once the registration is obtained, the exporters can check the status of IGST refunds associated with their exports and the corresponding error message, if any. This enquiry takes GSTIN Number, Port-code and Return Month as inputs and based on the input, Shipping Bill Number, Shipping Bill Date, Return Month, Invoice Number, Invoice Date, Response Code and Processed

date is displayed as a result of the enquiry. The records displayed are those that have been received from GSTN and processed by the Customs Automated System.

(ix) The analysis of Customs data indicates that while most of the errors mentioned in para (vi) above are decreasing, the error mentioned at (c) in para (vii) is most prevalent. The error mentioned at (c) in para (vii) is about invoice mis-match. This error is because of the fact that exporters are using two sets of invoices, one invoice for GST and another invoice for Customs which is resulting in mismatch of invoice numbers, including mis-match in taxable value and IGST paid in those invoices. It is once again reiterated that exporters may be advised to take due care to ensure that the details of invoice such as invoice number, taxable value and IGST paid mentioned in GSTR 1 and shipping bill match with each other and the invoice issued is compliant with the GST Invoice Rules, 2017.

3. Recognizing that invoice mis-match has been the major reason why the refunds have been held, it has been decided to provide an alternative mechanism to give exporters an opportunity to rectify such errors committed in the initial stages. This envisages an officer interface on the Customs EDI System through which a Customs officer can verify the information furnished in GSTN and Customs EDI system and sanction refund in those cases where invoice details provided in GSTR 1/ Table 6A are correct though the said details provided in the shipping bill were at variance. It is pertinent to note that refund claims would be processed in only those cases where the error code is mentioned as SB005. Further, it may also be noted that all refunds shall continue to be credited electronically through the PFMS system, and no manual payment / cheque should be issued. The procedure for processing of IGST refund claims in these cases would be as follows:

a. The exporter shall provide a concordance table indicating mapping between GST invoices and corresponding Shipping Bill invoices, as annexed in support of the refund claim to the designated officer in the Custom house. A scanned copy of concordance table may also be sent to dedicated email address of Customs location from where exports took place.

b. Customs EDI system shall display list of all the invoices pertaining to such SBs vis-a-vis the invoice data received from GSTN. The officer shall verify the following:

i. Duly certified concordance table submitted by the exporter as per Annexure A indicating mapping between GST invoice and corresponding Shipping Bill invoice;

ii. IGST taxable value and IGST amount declared in the Shipping Bill.

iii. IGST details declared in the Shipping Bill should be in proportion to the goods actually exported.

c. After determining the correct refund amount, the officer need to enter the same into the Customs EDI system. The officer has the facility to edit the IGST paid details in case of short shipment or incorrect calculation by the exporter. The officer shall complete the verification by accepting or rejecting or amending the same.

d. Once all the invoices pertaining to Shipping Bill are verified by the officer, the system shall calculate the scroll amount against a shipping bill, after subtracting the drawback amount for each invoice where applicable, and display the refund amount to the officer for approval.

e. Invoices in any particular GSTR 1 where refund is sanctioned shall be disabled in the system to prevent refund against same invoice in future.

f. Once refund is sanctioned by the officer, the shipping bills would be available for generating scroll as per normal process.

4. In order to ensure smooth operation of the prescribed procedure, Custom Houses may open a dedicated cell and e-mail address for the purpose of IGST refund and give wide publicity.

5. This procedure is available only for Shipping Bills filed till 31st December 2017. All Chief Commissioners are requested to issue Public Notice and Standing Orders, in this regard. Difficulties, if any, may be brought to the notice of the Board. It is again emphasized that Board is taking all possible steps to alleviate the difficulties associated with IGST refunds. However, ultimately it is the responsibility of the exporters to ensure careful and correct filing of returns for hassle free sanction of IGST refunds.

6. Hindi version will follow.

Yours faithfully

(Zubair Riaz)
Director (Customs)

## Annexure A

The Concordance between GST Invoice and Export Invoice declared in Shipping Bill is as follows:

Name of the Exporter: -

GSTIN:-

| | | | | | |
|---|---|---|---|---|---|
| Port Code : | | SB No: | | SB Date: | |

Concordance Table

| Sl. No. | GST Invoice No / Date | Taxable Value as per GST | IGST Amount as per GST | Sl. No | Correspond-ing SB Invoice No. /Date | Taxable Value as per SB | IGST Amount as declared per SB | Final (correct-ed) IGST Amount as per actual exports* |
|---|---|---|---|---|---|---|---|---|
| 1 | | | | 1 | | | | |
| 2 | | | | | | | | |
| 3 | | | | | | | | |
| 4 | | | | 2 | | | | |
| 5 | | | | 3 | | | | |

* after reducing amount pertaining to Short shipment etc.

I declare that all the details declared here are true to my knowledge and all items contained in the invoices have been exported out of India.

I further declare that all the GST invoices pertaining to this Shipping Bill have been filed as part of GSTR1/ 6A in Common portal and is available for verification and refund.

Place:

Date: Authorised Signatory

# Applicability of IGST / GST on goods transferred / sold while being deposited in a warehouse –reg. (superseded by Circular 3/1/2018-IGST dated 25th May 2018 w.e.f 1st April 2018.)

**Circular No. 46/2017-Customs**

North Block, New Delhi
Dated 24th November 2017

To,

All Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Customs

**Subject: Applicability of IGST / GST on goods transferred / sold while being deposited in a warehouse. -reg.**

References have been received from the trade regarding levy of IGST/ GST on sales of goods deposited in a customs bonded warehouse.

2. Ch IX of the Customs Act provides for deposit of goods into a customs bonded warehouse licensed under section 57 or 58 or 58A without payment of duty and the procedures to be followed with respect to the warehoused goods. Sub-section (5) of section 59 provides that the importer is at liberty to transfer the ownership of such goods to another person while the goods remain deposited in the warehouse.

3. It is to be noted that the value of imported goods, for purposes of charging customs duty, is determined as per section 14 of the Customs Act, 1962 at the time of import i.e. at the time of filing of the into-bond Bill of Entry. Any costs incurred after the import of goods, such as, port charges / port demurrage charges or costs for customs clearing or transporting the goods from the port to the customs bonded warehouse or costs of storage at the customs bonded warehouse, cannot be added to the value of the goods, for the purpose of levy of duties of customs at the stage of ex-bonding. Further, clause (b) of sub-section (1) of Section 15 of the Customs Act provides that the rate of duty or tariff valuation for an ex-bond Bill of Entry shall be the date on which it is filed. There is no provision to vary the assessable value of the goods at the ex-bond stage unless they are such goods on which tariff valuation applies. Therefore, duties of customs (BCD + IGST) shall be paid on the imported goods at the stage of ex-bonding on the value determined under section 14 of the Customs Act.

4. However, the transaction of sale / transfer etc. of the warehoused goods between the importer and any other person may be at a price higher than the assessable value of such goods. Such a transaction squarely falls within the definition of “supply” as per section 7 of the Central Goods and

Services Tax Act, 2017 (hereinafter referred to as, "CGST Act") and shall be taxable in terms of section 9 of the CGST Act read with section 20 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as, "IGST Act"). It may be noted that as per sub-section (2) of section 7 of the IGST Act, any supply of imported goods which takes place before they cross the customs frontiers of India, shall be treated as an inter-State supply. Thus, such a transaction of sale/transfer will be subject to IGST under the IGST Act. The value of such supply shall be determined in terms of section 15 of the CGST Act read with section 20 of the IGST Act and the rules made thereunder, without prejudice to the fact that customs duty (which includes BCD and applicable IGST payable under the Customs Tariff Act) will be levied and collected at the ex-bond stage.

5. Thus, in respect of goods stored in a customs bonded warehouse, there is a possibility that certain cases may involve an additional taxable event, if a transfer of ownership of warehoused goods takes place between the importer and another person, before clearance of the goods, whether for home consumption or for export.

5.1 In other words, when goods remain deposited in a customs bonded warehouse and are transferred by the importer to another person, the transaction will be subject to payment of IGST at the value determined as per section 20 of the IGST Act read with section 15 of the CGST Act, 2017 and the rules made thereunder and the tax liability shall be reckoned as per section 9 of the CGST Act, 2017.

5.2 However, it may be noted that so long as such goods remain deposited in the warehouse the customs duty to be collected shall remain deferred. Further, it is only when such goods are ex-bonded under section 68, shall the deferred duty be collected, at the value as had been determined under section 14 of the Customs Act, 1962 in addition to IGST leviable, as indicated at Para 5.1 above. [Illustrative charts A, B and C are attached to the circular to facilitate better understanding][1].

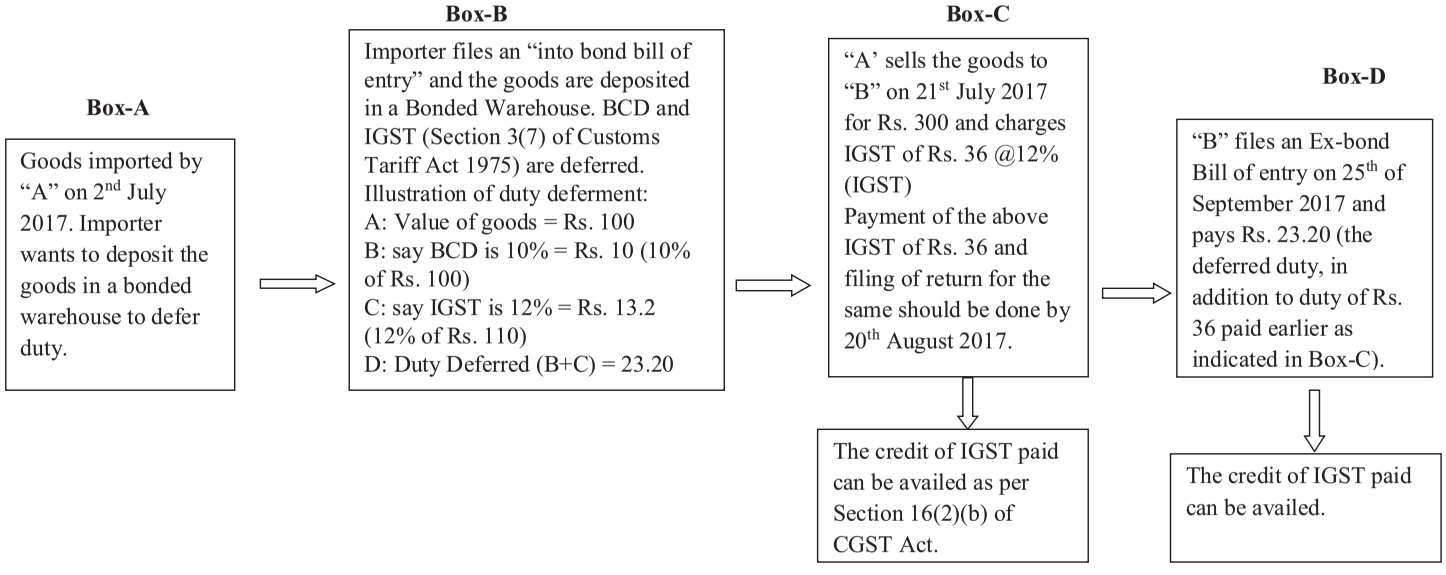
6. Difficulties in implementation, if any, may be brought to the notice of the Board1

7. Hindi version follows.

(Temsunaro Jamir)
Officer On Special Duty (ICD)

**ILLUSTRATIVE CHART- A**

**Goods imported, bonded and sold while in the Bonded Warehouse and clearance thereof:**



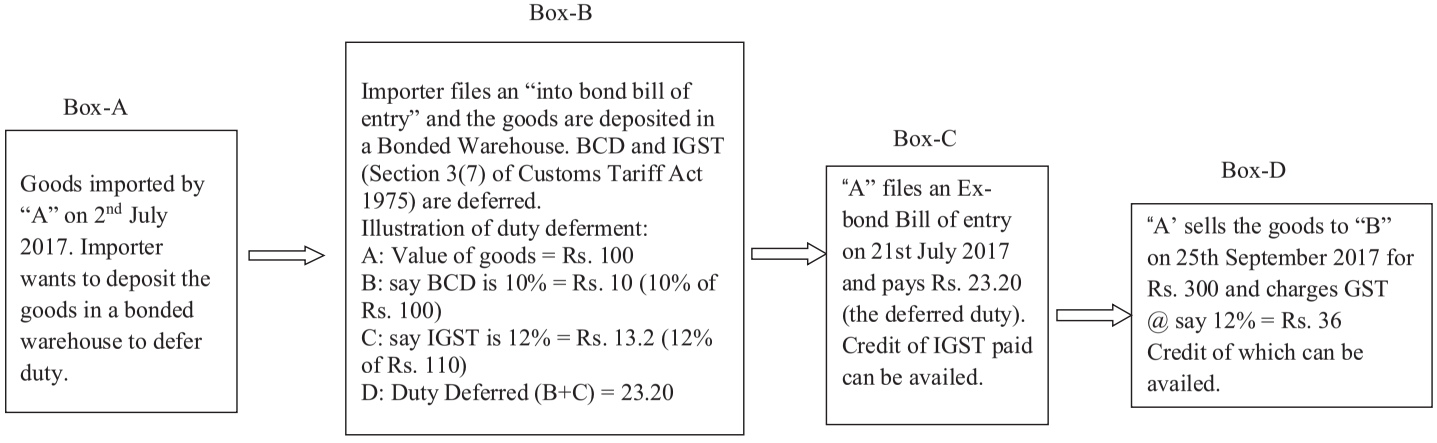

**Total duty paid: 23.20+36= Rs.59.2**

[Note: In this case, when 'A' sells the goods to 'B', 'A' becomes the supplier of the goods as per IGST Act and is therefore liable to pay IGST under section 5 of IGST Act, as explained in Box-C. 'B' in turn becomes the importer and is therefore liable to pay the duties deferred as in Box-B, on ex-bonding, as explained in Box-D above.]

**ILLUSTRATIVE CHART- B**

**Goods imported, bonded and cleared for home consumption and subsequent sale thereof:**

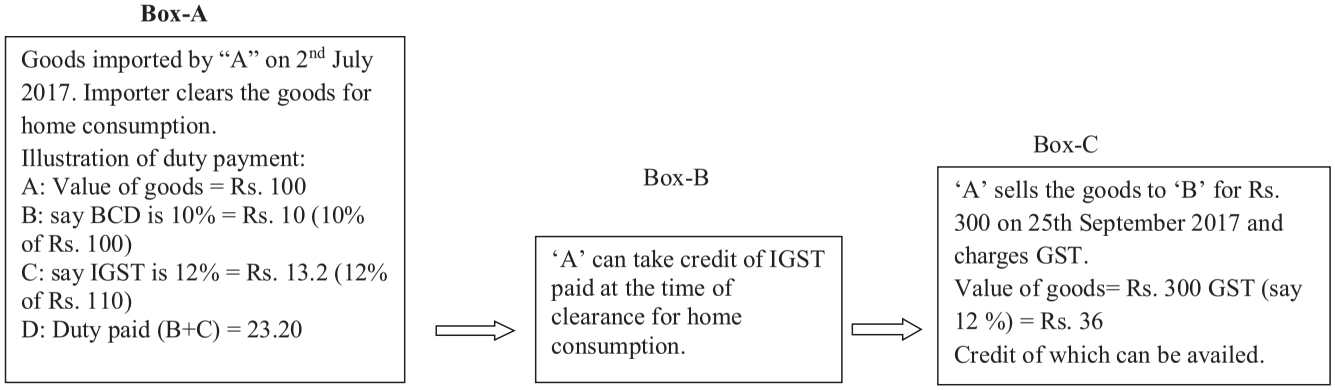
**ILLUSTRATION**




**Total duty paid: 23.20+36= Rs.59.2**

**ILLUSTRATIVE CHART- C**

**Goods imported and cleared for home consumption and subsequent sale thereof:**




**Total duty paid: 23.20+36= Rs.59.2**

# Refund of IGST paid on export of goods under rule 96 of CGST Rules, 2017

**Circular No. 42/2017-Customs**

Room No.229-A, North Block,
New Delhi,1 November, 2017

To,

All Principal Chief Commissioners of Customs / Customs (Prey.).
All Chief Commissioners of Customs / Customs (Prey.).
All Principal Commissioners of Customs / Customs (Prey.).
All Commissioner of Customs of Customs / Customs (Prey.).

**Subject: Refunds of IGST paid on export of goods under Rule 96 of CGST Rules, 2017**

The GST Council in its 22nd Meeting had approved a major relief package for exporters. The Council was unanimous that it is in the national interest to take all possible measures to support the exporting community, which earns valuable foreign exchange and provides significant employment especially in the small and medium sector. The Council approved that by 10.10.2017 the refund of IGST paid on goods exported in July would begin to be paid and refunds for subsequent months would be handled expeditiously. In line with the government's commitment, CBEC has already issued suitable instructions to expeditiously disburse the refund of IGST paid on goods exported out of India. Also, with effect from 10th October, 2017, the refund is getting disbursed for the export of goods made in July 2017. In cases where the exporter has filed GSTR 3B and the information furnished by the exporters in the GSTR 1 and GSTR 3B is matching with the details filed by them in Shipping bills, the refunds have already been disbursed. But there are many cases where the refund of IGST could not be done due to errors in the EGM /GSTR 1 return/Shipping Bill. The analysis of the common errors that are hindering the disbursal of IGST refund, and decisions taken to address such errors are as follows:

**A. IGST refunds for the exports of goods in the month of July, 2017:**

***i) incorrect SB number in GSTR 1***

There are cases where the shipping bill number quoted in GSTR 1 either does not exist or it pertains to another exporter. In respect of these

claims, the only way out is to amend the GSTR I (Amendments to taxable outward supply details furnished in returns for earlier tax periods) and enter the correct shipping bill number. In these cases, the amendments for information furnished in GSTR 1 for July 2017 need to be filed in Table 9A of GSTR 1 for August 2017. GSTN has been asked to provide for immediate implementation of this Table so that all such claims can be processed once amendment is filed.

***ii) Invoice number and IGST paid amount mis-match***

Analysis of data revealed that exporters have quoted different invoice numbers for GST and Customs purposes. Also, IGST paid amount indicated in GSTR 1 is not tallying with IGST paid amount indicated in shipping bill. As the same transaction is being reported under GST Act and under Customs Act, the exporters may take care to ensure the details of invoice, such as Invoice number, IGST paid etc, under GSTR 1 and shipping bill match with each other.

***iii) EGM Error***

Due to either mismatch in information furnished in Export General Manifest (EGM) vis-à-vis shipping bill or non-filing of EGM in certain cases, the compliance of 'exported out of India' requirement in Rule 96 (2) of Central Goods and Services Tax (CGST) Rules, 2017 remained unfulfilled. It is also noticed that Gateway EGM in case of many ICD's Shipping Bills have been manually filed, due to which the system is unable to match the EGM details. Hence, it is to be ensured that all the shipping lines operating in ICDs/Gateway ports file EGM online. All ICDs and Gateway ports have already been instructed to ensure that shipping lines file supplementary EGM online for the consignments exported in July 2017 by 31stOctober. For subsequent months also, the ICDs must ensure that the shipping lines invariably file the Gateway EGM online. In cases where supplementary EGM have been filed successfully, refunds are already being given.

***iv) Wrong Bank Account given to Customs***

In some cases, bank account details available with Customs have been invalidated by PFMS. Reports on such accounts / IECs have been provided to the Commissionerates by the Directorate of Systems in ICES and by email. Exporters may be advised that if the account has not been validated by PFMS, they must get their details corrected in the EDI system. Exporters are also advised not to change their bank account details frequently so as to avoid delay in refund payment.

**B. IGST Refunds for the export of goods in the month of August, 2017:**

GSTN has provided the utility to declare Table 6A in GSTR1 for exporters to fill in information related to Zero Rated Supplies. Once exporters file Table 6A, it would be possible to sanction refunds for the exports made in August 2017. Thus Public/Trade notices may be issued emphasizing the need to fill Table 6A online by exporters to claim refunds against exports made in August 2017. Exporters have already been provided an option to view their Shipping Bill data online on ICEGATE website, so that they can ensure filing of their Table 6A without any error. All necessary steps may be taken to make exporters aware that the common errors that hindered disbursal of IGST refunds in July are not repeated in subsequent months.

2. The GST council in its 22" meeting has also approved the GST rate of 0.1% for supplies to merchant exporters and Notification No. 41/2017-Integrated Tax (Rate), Notification No. 40/2017- CGST (Rate) and Notification No. 40/2017 - UT GST (Rate), all dated 23rd October, 2017 have been issued to that effect. The said benefit is subject to the conditions mentioned in aforementioned notifications. The merchant exporters are advised to take following precautions to avail the benefit of the scheme:

i) The Name and GSTIN of the Registered Supplier should be provided against each item in Third Party details column of Shipping Bill. The GST Invoice details of the registered supplier of each item should be declared in the ARE Certificate and Date columns in the Shipping Bill format. Necessary changes have already been done in ICES application. The third party details would be printed in the shipping bill copies for fulfilment of the notification conditions.

ii) Further in case of an export consignment containing multiple supplies by registered suppliers, the registered recipient (merchant exporters) need to provide details of all registered suppliers and corresponding invoices against each item in the Shipping bills.

iii) For the purpose of above mentioned notifications concerning supply to registered recipient at concessional GST, registered principal place of business or registered additional place of business shall be deemed to be a "registered warehouse".

iv) Registered recipients (Merchant exporters) may, if required, exclude commercially sensitive information while providing copies of Shipping Bills to registered suppliers.

3. Difficulties if any should be brought to the notice of the Board.

4. Hindi version follows.

(Maninder Kumar)
OSD (Cus-IV)

## Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods and point of collection thereof

**Circular No. 33 /2017-Cus**

New Delhi, dated the 1st August, 2017

To

All Principal Chief Commissioners/Chief Commissioners of Customs / Customs (Preventive),

All Principal Chief Commissioners/Chief Commissioners of Customs and Central Excise/ GST,

All Principal Commissioners/Commissioners of Customs / Customs (Preventive),

All Principal Commissioners/ Commissioners of Customs and Central Excise/GST.

Sir /Madam,

**Subject: Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods and point of collection thereof-reg.**

Reference has been received in the Board regarding clarity on Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods.

2. The issue has been examined in the Board. 'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale. In the past, CBEC has issued various instructions regarding high sea sales appropriating the contract price paid by the last high sea sales buyer into the Customs valuation [Circular No. 32/2004-Cus., dated 11-5-2004 refers].

3. As mentioned earlier, all inter-state transactions are subject to IGST. High sea sales of imported goods are akin to inter-state transactions. Owing to this, it was presented to the Board as to whether the high sea sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance under sub-section (7) of section 3 of Customs Tariff Act, 1975 and also separately under Section 5 of The Integrated Goods and Services Tax Act, 2017.

4. GST council has deliberated the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

5. The above decision of the GST council is already envisioned in the provisions of sub-section (12) of section 3 of Customs Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes, cessess etc shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules.

6. Field formations are requested to decide the cases of high sea sales of imported goods accordingly. Difficulties, in the implementation of this circular may be brought to the knowledge of the Board.

Yours faithfully

(Zubair Riaz)
Director (Customs)