DELHI SALES TAX CASES

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HIGHLIGHTS

"Lawyers are the only persons
in whom ignorance of the law
is not punishable"

– Jermy Bentham

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From the Desk of President

Esteemed Members

Namaskar,

First and foremost, I express my gratitude to all of you for electing me as the President of the Sales Tax Bar Association, the most prestigious and significant Bar in Asia for tax professionals.

The primary objective of our professional bar revolves around imparting knowledge, as highlighted in our Holy scriptures:

"तमसो मा ज्योर्तिमय"
"Lead us from darkness to light."

We are inherently obligated to fulfill our responsibilities for dissemination knowledge by printing Delhi Sales Tax Cases (DSTC) which stands as a substantial source for information of tax decisions from Hon'ble Supreme Court to Lower Authorities. Esteemed senior members of our community have made valuable contributions in this regard. Mr. Kumar Jee Bhat, serving as the Editor-in-Chief in particular, has exerted exceptional effort in enhancing the DSTC's knowledge repository with the inclusion of the latest articles and significant judgments from the Hon'ble Supreme Court, various High Courts and Tax Tribunals.

I extend my heartiest congratulations to Mr. Ravi Chandhok and Mr. H.L. Madan for their appointments as Editors-in-Chief of DSTC.

It is my belief that under their visionary leadership, our journal will reach new pinnacles of success.

From last few years, the DSTC has been published online as well as a comprehensive compilation covering an entire year.

I remain hopeful that DSTC will continue to enrich the knowledge of our esteemed members.

With sincere appreciation,

Rakesh Kumar Aggarwal
President
Sales Tax Bar Association

DELHI SALES TAX CASES

Volume 61 Part 1

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IN THE SUPREME COURT OF INDIA

[Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice C.T. Ravikumar, JJ.]

Civil Appeal Nos. 345-350 of 2012

Anil Minda and Ors. ... Appellants

Vs.

Commissioner of Income Tax ... Respondent

Decided On: 24.03.2023

SEARCH AND SEIZURE – BLOCK ASSESSMENT – LIMITATION - WHETHER THE DATE OF LAST PANCHNAMA DRAWN IN A SEARCH CASE OR THE POST AUTHORIZATION WILL BE RELEVANT DATE FOR STARTING POINT OF LIMITATION–

Held *– The date of the punchnama last drawn would be relevant date for considering the period limitation.*

For Appellant/Petitioner/Plaintiff	:	Rakesh Gupta, Adv., Ambhoj Kumar Sinha, AOR and Somil Aggarwal, Adv.
For Respondents/Defendant	:	N. Venkatraman, A.S.G., Raj Bahadur Yadav, AOR, Rekha Pandey, Sansriti Pathak, Vishkha, Shetty Udai Kumar Sagar and H.R. Rao, Advs.

Case Category:

Direct Taxes Matters - Matters Under Income Tax Act, 1961

JUDGMENT

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 14.09.2010 passed by the High Court of Delhi at New Delhi in ITA No. 582 of 2009 and other allied appeals, by which the Division Bench of the High Court has allowed the said appeals preferred by the Revenue and set aside the orders passed by the Income Tax Appellate Tribunal, New Delhi (for short, 'ITAT') holding that the assessment orders passed in the case of the respective Assessees were time barred as the assessments were not completed within two years from the end of the month in which the last authorisation for search Under Section 132 of the

Income Tax Act, 1961 (hereinafter referred to as the 'Act') was issued, the respective Assessees have preferred the present appeals.

2 . For the sake of convenience, the facts arising out of the impugned judgment and order passed by the High Court in ITA No. 582/2009 are narrated, which in nutshell are as under:

2.1 That the two warrants of authorization Under Section 132(1) of the Act for carrying out the search at bank locker with Canara Bank, Kamla Nagar were issued on 13.03.2001 and 26.03.2001. Warrants which were executed on 13.03.2001 were executed on various dates, which are as under:

1.	13.03.2001	1st Authorization/search warrant issued
2.	19.03.2001, 20.03.2001, 26.03.2001, 27.03.2001, 28.03.2001 11.04.2001	Panchnama drawn/executed and search completed in regard to 1st search warrant

2.2 During the execution of the search warrants dated 13.03.2001, the Income Tax authorities got the information about a locker belonging to the Assessee in a bank. Therefore on 26.03.2001, second authorization was issued for searching the said locker and the same was executed on 26.03.2001 itself. Therefore, the first authorization came on 13.03.2001 was for search at the office and residence of the Assessee and it continued for some time and culminated only on 11.04.2001 and the second search authorization dated 26.03.2001 came to be executed on the same date and the Panchnama was drawn on 26.03.2001.

2.3 Thereafter, notice Under Section 158BC for filing block assessment was issued. The Assessee filed his return and the assessment was completed by passing assessment order in April, 2003. Similar assessment orders were passed in case of other Assessees. The Respondents - Assessees filed appeals challenging the assessment orders, inter alia, on the ground that the assessment was time barred. According to the Assessees, limitation of two years as prescribed Under Section 158BE of the Act, which was to be computed when Panchnama in respect of the second authorization was executed, i.e., on 26.03.2001. Since that Panchnama was drawn on 26.03.2001, two years period as prescribed Under Section 158BE(b) of the Act came to an end by March, 2003 and the assessment order was passed in April, 2003, which according to the Assessee was thus time barred. On the other hand, the plea of the department was that since the last

Panchnama through related to search authorization dated 13.03.2001 was executed on 11.04.2001, limitation of two years was to be computed from that date and therefore the assessment was passed was well within the prescribed limitation.

2.4 The CIT(A) dismissed the appeals. However, the ITAT allowed the appeals and held that the respective assessment orders were barred by limitation since the Panchnama with respect to last authorization was drawn on 26.03.2001. Against the order passed by the ITAT setting aside the assessment orders on the ground that the same were beyond the period of two years, the Revenue preferred the present appeals before the High Court. By the impugned common judgment and order, the Division Bench of the High Court has allowed the said appeals and has set aside the order passed by the ITAT by holding that as the last Panchnama though related to search authorization dated 13.03.2001 was executed on 11.04.2001, limitation of two years was to be computed from 11.04.2001. The impugned common judgment and order passed by the High Court is the subject matter of present appeals.

3 . Dr. Rakesh Gupta, learned Counsel has appeared on behalf of the Appellants - Assessees and Shri Balbir Singh, learned ASG has appeared on behalf of the Revenue.

3.1 Learned Counsel appearing on behalf of the respective Assessees has vehemently submitted that in the facts and circumstances of the case, the High Court has erred in holding that the respective assessment orders were within the period of two years and therefore not barred by limitation.

3.2 It is submitted that in the present case the last authorization was on 26.03.2001 and therefore as per Explanation 2 to Section 158BE of the Act the last authorization would be the starting point of limitation. It is submitted that therefore even if the first authorization dated 13.03.2001 was executed on a later date i.e., on 11.04.2001, that would be of no consequence and for the purpose of reckoning the limitation period, the first authorization is irrelevant and it is the “last of the authorization” which has to be kept in mind. It is submitted that in the present case, the last authorization is dated 26.03.2001 which was executed on the same date and therefore the period of two years is to be counted from that date.

3.3 Learned Counsel appearing on behalf of the respective Assessees has relied upon the decision of the Karnataka High Court in the case of C. Ramaiah Reddy v. Assistant Commissioner of Income Tax, MANU/

KA/1803/2010 : (2011) 244 CTR 126 (Karn.) (para 47) in support of his submission.

4. Shri Balbir Singh, learned ASG appearing on behalf of the Revenue has vehemently submitted that as per Explanation 2 of Section 158BE of the Act, when it is a case of search, period of limitation is to be counted from the date on which the last Panchnama was drawn. It is submitted that in the present case, the last Panchnama on conclusion of the search was drawn on 11.04.2001 and therefore the limitation period of two years would start from 11.04.2001. It is submitted that if the submission on behalf of the Assessees is accepted, in that case, the Explanation 2 to Section 158BE would become nugatory and redundant.

4.1 It is further submitted by the learned ASG appearing on behalf of the Revenue that Explanation 2 to Section 158BE has been specifically inserted with a view to give last of the Panchnama as the starting point of limitation. It is submitted that the time for completion of the block assessment Under Section 158BC/158BE is the conclusion of search/ drawing of last Panchnama which will be relevant and not the dates of issuance of various authorizations. It is submitted that in a given case where number of authorizations are issued and relevant material/s is/are collected during the search on different dates on the basis of the different authorizations, ultimately the assessment proceedings would be on the basis of the entire material collected during the search and on the basis of the Panchnama drawn. It is submitted that therefore the date on which the last Panchnama was drawn is the relevant date for the purpose of block assessment. In support of his submission, Shri Balbir Singh, learned ASG has heavily relied upon the decision of this Court in the case of VLS Finance Limited and Anr. v. Commissioner of Income Tax and Anr., MANU/ SC/0481/2016 : (2016) 12 SCC 32 (paragraphs 26 to 28).

5. Having heard learned Counsel for the respective parties, the short question which is posed for the consideration of this Court is, whether the period of limitation of two years for the block assessment Under Section 158BC/158BE would commence from the date of the Panchnama last drawn or the date of the last authorization?

6 . While considering the aforesaid issue, Section 158BE which provides for time limitation for commencement of block assessment is required to be referred to, which is as under:

Section 158BE

Time Limit for Completion of Block Assessment

(1) The order Under Section 158-BC shall be passed--

(a) within one year from the end of the month in which the last of the authorisations for search Under Section 132 or for requisition Under Section 132-A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997;

(b) within two years from the end of the month in which the last of the authorisations for search Under Section 132 or for requisition Under Section 132-A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997. (2) The period of limitation for completion of block assessment in the case of the other person referred to in Section 158-BD shall be--

(a) one year from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997; and

(b) two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

[Explanation 1.--In computing the period of limitation for the purposes of this section,--

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii) the period commencing from the day on which the Assessing Officer directs the Assessee to get his accounts audited Under Sub-section (2-A) of Section 142 and ending on the day on which the Assessee is required to furnish a report of such audit under that Sub-section; or

(iii) the time taken in reopening the whole or any part of the

proceeding or giving an opportunity to the Assessee to be reheard under the proviso to Section 129; or

(iv) in a case where an application made before the Settlement Commission Under Section 245-C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order Under Sub-section (1) of Section 245-D is received by the [Principal Commissioner or Commissioner] Under Sub-section (2) of that section, shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in Subsection (1) or Sub-section (2) available to the Assessing Officer for making an order Under Clause (c) of Section 158-BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.]

[Explanation 2.--For the removal of doubts, it is hereby declared that the authorisation referred to in Sub-section (1) shall be deemed to have been executed,--

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;

(b) in the case of requisition Under Section 132-A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.]

7 . In the present case, the first authorization was issued on 13.03.2001 which ultimately and finally concluded and/or culminated into Panchnama on 11.04.2001. However, in between there was one another authorization dated 26.03.2001 with respect to one locker and the same was executed on 26.03.2001 itself and Panchnama for the same was drawn on 26.03.2001. However, Panchnama drawn with respect to authorization dated 13.03.2001 was lastly drawn on 11.04.2001. As observed and held by this Court in the case of VLS Finance Limited (supra), the relevant date would be the date on which the Panchnama is drawn and not the date on which the authorization/s is/are are issued. It cannot be disputed that the block assessment proceedings are initiated on the basis of the entire material collected during the search/s and on the basis of the respective

Panchnama/s drawn. Therefore, the date of the Panchnama last drawn can be said to be the relevant date and can be said to be the starting point of limitation of two years for completing the block assessment proceedings.

8. If the submission on behalf of the respective Assessees that the date of the last authorization is to be considered for the purpose of starting point of limitation of two years, in that case, the entire object and purpose of Explanation 2 to Section 158BE would be frustrated. If the said submission is accepted, in that case, the question which is required to be considered is what would happen to those material collected during the search after the last Panchnama. It cannot be disputed that there may be number of searches. Thus, the view taken by the High Court that the date of the Panchnama last drawn would be the relevant date for considering the period of limitation of two years and not the last date of authorization, we are in complete agreement with the view taken by the High Court.

9. In view of the above and for the reasons stated above, all these appeals fail and the same deserve to be dismissed and are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

IN THE SUPREME COURT OF INDIA

[Hon'ble Mr. Justice Krishna Murari and Hon'ble Mr. Justice V. Ramasubramanian, JJ.]

Special Leave Petition Civil Diary No. 34646/2022

Date of Order: 02.01.2023

Assistant Commissioner of Income Tax and Ors. ... Appellants

Vs.

Godrej And Boyce Manufacturing Co. Ltd. ... Respondent

REASSESSMENT – WHETHER A SANCTION U/S 151 OF THE I.T. ACT, 1962 CAN BE GRANTED ON A POINT, ALREADY CONSIDERED BY PR. COMMISSIONER IN HIS REVISIONAL ORDER U/S 263.

Held – *NO – Where the High Court already allowed the petition holding that when Pr. CIT had already accepted the explanation of the assessee and rejected the Audit Objection – Approval for re-assessment and notice U/s 148 and the order passed thereafter were quashed and set aside –*

The Supreme Court has dismissed the Special Leave Petition filed by the Department.

ORDER

We have heard Mr. Balbir Singh, learned ASG at length. Delay condoned.

We are not inclined to interfere with the judgment and order impugned in this petition. The special leave petition accordingly stands dismissed. Pending application(s), if any, shall stand disposed of.

IN THE HIGH COURT OF BOMBAY
[Hon'ble Mr. Justice K.R. Shriram and Hon'ble Mr. Justice N.R. Borkar, JJ.]

Writ Petition No. 3555 of 2019

Godrej and Boyce Manufacturing Co. Ltd. ... Appellants

Vs.

Assistant Commissioner of Income Tax, Circle 14 (1)(2) and Ors. ... Respondent

Decided On: 13.01.2022

REASSESSMENT – SANCTION FOR REOPENING OF ASSESSMENT WHETHER TO BE ACCORDED MECHANICALLY.

Held *– NO – If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.*

The SLP dismissed.

For Appellant/Petitioner/Plaintiff : Percy Pardiwalla, Senior Advocate and Atul K. Jasani

For Respondents/Defendant : Suresh Kumar

Case Category:

Direct Taxes Matters - Matters Under Income Tax Act, 1961

DECISION

1. Petitioner had filed its return of income for Assessment Year 2012-2013 on 26th November 2012 declaring total income at Rs. 5,23,81,63,452/- and book profit under Section 115JB of the Income Tax Act, 1961 (the said Act) of Rs. 9,85,40,05,783/-. The assessment was completed under Section 143(3) of the said Act dated 20th March 2015 determining the total income at Rs. 5,37,56,77,667/- and the tax is calculated on the book profit under Section 115JB of the said Act of Rs. 10,07,45,28,003/-.

2 . After the assessment was completed and the assessment order was passed, the Principal Commissioner of Income Tax - 14 issued a notice dated 29th June 2016 under Section 263 of the said Act for Assessment Year 2012-2013 and it reads as under:

.....

> 2 . In the instant case, return of income for A.Y. 2012-13 was filed on 26.11.2012 declaring Total Income of Rs. 5,23,81,63,542/- and book profit of Rs. 9,85,40,05,783/-. Further, order u/s. 143(3) of the Act, was passed on 23.03.2015 determining the total income of Rs. 5,37,56,77,667/- under the normal provisions of the Act.
>
> 3 . On perusal of the records it is observed that the assessee has debited an amount of Rs. 43,02,00,000/- on account of Diminution in the value of investment in a subsidiary. The diminution in the value of investment is adjusted where the loss (the difference between the purchase price and the value as on the valuation date) is booked in accounts and this loss is a notional loss as no sale has taken place and the asset continues to be owned by the company.
>
> 4. As per Income tax Act-1961, there is no provision to recognize a decline in the value of investments. Only if the investment is disposed of, the profit/loss on account of the same is recognized. In the instant case, the assessee company has added back this deduction under normal provisions of the Act but the same was not added while computing income under MAT provisions u/s. 115JB of the Act. Hence, the Assessing Officer has erred while making addition in the assessment order.

.....

3 . Petitioner responded by a letter dated 21st July 2016 through its Chartered Accountants and explained to the Principal Commissioner

of Income Tax - 14 as to why his opinion that there was an error in the assessment order passed under Section 143(3) of the said Act was erroneous. After considering the reply and also a personal hearing, the Principal Commissioner of Income Tax - 14 passed an order dated 18th August 2016, which reads as under:

> .....
>
> In connection with the above, I am directed to inform that the proceedings initiated u/s. 263 of the I.T. Act in the above case for the A.Y. 2012-13 are dropped.
>
> Further, I am directed to request that Revenue Audit may accordingly be informed that the objection raised is not accepted and may be requested to withdraw the objection on the basis of facts of the case which is different than that of the judicial pronouncement relied upon by the audit party.
>
> .....

4. Subsequently, petitioner received a notice under Section 148 of the said Act stating that the Jurisdictional Assessing Officer has reasons to believe that petitioner's income for Assessment Year 2012-2013 has escaped assessment. On petitioner's request, reasons were provided as also the approval granted under Section 151 of the said Act by the Principal Commissioner of Income Tax - 14. Two grounds have been raised in the reasons. One is regarding fair value of land/transferable development rights relating to 24,872.83 sq. mtrs. of land and the second one is the diminution in the value of investment in a subsidiary and debit by petitioner from the profit and loss account an amount of Rs. 43,02,22,000/-.

5. As could be seen from what is noted by us earlier, the second point in the reasons for reopening has already been considered by the Principal Commissioner of Income Tax - 14 when he wished to review the assessment order under Section 263 of the said Act and the Principal Commissioner of Income Tax - 14 has also passed an order directing the proceedings initiated under Section 263 of the said Act to be dropped and the Revenue Audit to be accordingly informed that the objection raised was not accepted. Notwithstanding this order passed by the Principal Commissioner of Income Tax - 14, a notice is issued under Section 148 of the said Act and one of the ground is the same point which was directed to be dropped by the Principal Commissioner of Income Tax - 14 and the same Principal Commissioner of Income Tax - 14 has accorded the approval under Section 151 of the said Act on 30th March 2019. Therefore,

this only shows that there has been total non application of mind by the Principal Commissioner of Income Tax - 14 while according the approval. If the Principal Commissioner of Income Tax - 14 had only applied his mind and considered all documents including his own order passed on 18th August 2016, he would not have granted the approval for the reasons as recorded. Mr. Suresh Kumar submitted that there are two reasons for reopening which are distinct. One is regarding the fair market value of land/transferable development rights and the other regarding diminution in the value of investment in a subsidiary and both can be segregated. It is true that both are totally different points but the fact, which is indisputable, is how could the Principal Commissioner of Income Tax - 14 grant approval for reopening relying on the reasons one of which is on an issue which the Principal Commissioner of Income Tax - 14 himself has passed an order saying that the objection raised was not correct.

6. Mr. Pardiwalla relied on judgment of this Court in German Remedies Ltd. Vs. Deputy Commissioner of Income-Tax MANU/MH/0861/2005 : [2006] 287 ITR 494 (Bom) to submit that to grant or not to grant approval under Section 151 of the said Act to reopen an assessment is coupled with a duty and the commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. Mr. Pardiwalla submitted that such power cannot be exercised casually, in a routine and perfunctory manner.

7. We have to note that in the affidavit in reply also respondents admit that the PCIT is required to accord approval on reasons recorded by the Assessing Officer after having satisfied himself that such reasons were on the basis of the technical information in possession. As held in German Remedies Ltd. (Supra) to grant or not to grant approval under Section 151 of the said Act to re-open an assessment is coupled with a duty and the Commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. Such power cannot be exercised casually, in a routine and perfunctory manner. We have to observe that if only the PCIT had read the file, he would not have been satisfied with the reasons.

8 . In the circumstances, on this ground alone, without going into the other grounds, which Mr. Pardiwalla raised for quashing the notice as well as the order on objections, the petition is allowed in terms of prayer clause - (a), which reads as under:

(a) this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order

or direction under Article 226 of the Constitution of India calling for the records of the petitioner's case and after examining the legality and validity thereof quash and set aside the notice dated 30th March 2019 (Exhibit A) issued by respondents under Section 148 of the Act seeking to reopen the assessment for the assessment year 2012-13; and order rejecting objections (Exhibit X) dated 1st November 2019.

9. Petition disposed.

IN THE SUPREME COURT OF INDIA

[Hon'ble Mr. Justice A. S. Bopanna and Hon'ble Mr. Justice Hima Kohli JJ.]

Ratnambar Kaushik ... Petitioner

V.

Union of India ... Respondent

December 5, 2022

Section(s): Central Goods and Services Tax Act, 2017, ss. 132(1)(a), 132(1)(h), 132(1)(k), 132(1)(l), 132(5); Code of Criminal Procedure, 1973, s. 439

Favouring: Assessee, person

GOODS AND SERVICES TAX – OFFENCES AND PROSECUTION – EVASION OF TAX – BAIL – PETITION SEEKING BAIL – ALLOWED SUBJECT TO CONDITIONS TO BE IMPOSED BY TRIAL COURT – CENTRAL GOODS AND SERVICES TAX ACT (12 OF 2017), S. 132(1)(A), (H), (K), (L), (5) – CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974), SECTION 439

Facts

The High Court has dismissed the application filed by the petitioner hereunder under section 439 of the Code of Criminal Procedure seeking bail in the proceedings for the offence alleged against him under section 132(1)(a), (h), (k) and (l) read with section 132(5) of the Central Goods and Services Tax Act, 2017.

Held

In considering the application for bail, it is noted that the petitioner was arrested on July 21, 2022 and while in custody, the investigation has been completed and the charge sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under section 132(1)(l)(i), the punishment provided is, imprisonment which

may extend to five years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner. Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial court.

Present for petitioner	:	Anirban Bhattacharya.
Present for the respondent	:	Balbir Singh, Additional Solicitor General and Arijit Prasad, Senior Advocate, (Rupender Sinhmar, Naman Tandon, Samarvir Singh, Prasenjit Mohpatra, Shyam Gopal, Prahlad Singh and Mukesh Kumar Maroria, Advocates, with them)

ORDER

1. The petitioner is before this court, assailing the order dated October 21, 2022, passed by the High Court of Judicature at Rajasthan, Bench at Jaipur in S. B. Criminal Miscellaneous Bail Application No. 12475 of 2022*. Through the said order the High Court has dismissed the application filed by the petitioner hereunder under section 439 of the Code of Criminal Procedure** seeking bail in the proceedings for the offence alleged against him under section 132(1)(a), (h), (k) and (l) read with section 132(5) of the Central Goods and Services Tax Act, 2017***

2. Heard Shri Mukul Rohatgi, Shri C. S. Vaidyanathan, Shri Maninder Singh learned senior counsel for the petitioner and Shri Balbir Singh learned Additional Solicitor General for the respondent. In that light, we have perused the petition papers as also the counter-affidavit filed on behalf of the respondent.

3. The gist of the allegations against the petitioner in the prosecution initiated against him is that the petitioner had clandestinely transported raw unmanufactured tobacco brought from Gujarat by 7 trucks weighing

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* Reported as Ratnambar Kaushik v. Union of India [2023] 108 GSTR 1 (Raj).
** For short “Cr. P. C.”.
*** For short “GST”.

90,520 kgs. It is alleged that raw tobacco was cleared in the name of M/s. Maa Ambey Enterprises, Bakoli from M/s. Arihant Traders, Kheda, Gujarat, but the said trucks went to Patparganj Area to M/s. Galaxy Tobacco in Delhi. It is further alleged that the said quantity of unmanufactured tobacco has been apparently used in the clandestine manufacture and supply of chewing tobacco without payment of leviable duties and tax. The petitioner contends that even if the tax is levied at 28 per cent., the value would be around Rs. 10,30,824. However, as per the case of the respondent, the total tax/duty and cess involved would be Rs. 15,57,28,345. The said contention has been raised on the basis of the projected manufacture of zarda pouches from the said quantity of unmanufactured tobacco. Thus on the projected number of pouches, the tax amount if taken into consideration, would be to that extent. It is further contended on behalf of the respondent that in the course of the investigation it has also come to light, apart from the 7 trucks, 287 more trucks loaded with raw unmanufactured tobacco has been transported as per the details obtained from the toll/RFID data of NHAI, which shows the movement of the trucks.

4. Insofar as the allegations made against the petitioner are concerned, learned senior counsel for the petitioner while rebutting the same would contend that at this juncture, such allegations made by the respondent against the petitioner are far-fetched. Even if one accepts as correct, the allegation on which the proceedings is predicated, wherein 90,520 kgs. of raw/unmanufactured tobacco in 7 trucks is taken note of, the GST, if reckoned, comes to only Rs. 1,93,26,020. It is contended that the sum of Rs. 11,04,34,400 shown as cess by the respondent is even without the proof of manufacture of zarda and it has been done only to indicate the projected value of more than Rs. 15 crores. Learned senior counsel for the petitioner therefore disputed the allegations and contended that such allegations have been made only to allege cognizable and non-bailable offence against the petitioner so as to deny bail and take him into custody.

5. Though allegations and counter-allegations are made, at this stage, it would not be necessary for us to advert to the details of the rival contentions, since the matter in any event is at large before the trial court and any observations on merits herein would prejudice the case of the parties, therein. However, for the limited purpose of answering the prayer for the grant of bail, the contentions are taken note of. It is no doubt true, that an allegation is made with regard to the transportation of unmanufactured tobacco and it is alleged that such procurement of unmanufactured tobacco is for clandestine manufacture and supply of zarda without payment of leviable duties and taxes. Though it is further contended that in the process of the investigation, the transportation of a larger quantity of unmanufactured tobacco weighing about 35,57,450 kgs.

is detected, these are all matters to be established based on the evidence, in the trial.

6. In considering the application for bail, it is noted that the petitioner was arrested on July 21, 2022 and while in custody, the investigation has been completed and the charge sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under section 132(1)(l)(i), the punishment provided is, imprisonment which may extend to five years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner.

7. Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial court, which among others, shall also include the condition to direct the petitioner to deposit his passport. Further, such other conditions shall also be imposed by the trial court to secure the presence of the petitioner to diligently participate in the trial. It is further directed that the petitioner be produced before the trial court forthwith, to ensure compliance of this order.

The special leave petition is allowed accordingly.

Pending applications, if any, shall stand disposed of.

[IN THE BOMBAY HIGH COURT]

[Hon'ble Mr. Justice K. R. Shiriram and Hon'ble Mr. Justice A. S. Doctor JJ.]

Writ Petition (L) No. 17591 of 2022.

Sheetal Dilip Jain ... Petitioner

v.

State of Maharashtra and Others ... Respondent

September 20, 2022.

Section(s): Maharashtra Goods and Services Tax Act, 2017, s. 73

Favouring: Assessee

GOODS AND SERVICES TAX – NOTICE OF DEMAND – SHOW-CAUSE NOTICE MINIMUM PERIOD OF 30 DAYS TO BE GRANTED TO PAY TAX OR FILE REPLY NOTICE GIVING SEVEN DAYS' TIME – NOT SUSTAINABLE – MAHARASHTRA GOODS AND SERVICES TAX ACT (43 OF 2017), S. 73

Facts

Maharashtra Goods & Services Tax – Section 73(8) permits a person chargeable with tax a period of 30 days from the issuance of show cause notice to make payment of such tax along with interest, if he does not wish to make payment, then within the 30 days he could file a reply to the show cause notice. This period cannot be reduced to seven days by Assessing Authority – Petition allowed with the cost of Rs. 10000/-.

By the court

Such orders without application of mind are being passed contrary to the basic provisions of the Act and the Rules framed thereunder. These acts and omissions of officers add to the already overburdened dockets of the court. The Central Board of Indirect Taxes and Customs and the Chief Commissioner could hold some kind of training or orientation session to educate its officers on the prevailing law and rules framed thereunder and also explain to them what "principles of natural justice" mean. This would ensure that otherwise meritorious cases are not defeated on technicalities. It is also necessary that the authorities must be mindful of the grave prejudice that is caused to the assessees on account of such patently illegal orders. Authorities must be sensitive to this fact. The observations have been only made keeping in mind the larger picture and the problems that the citizens of this country have to face.

Present for petitioner	:	Rahul C. Thakar instructed by C. B. Thakar
Present for respondent-State	:	Ms. Jyoti Chavan with Himanshu Takke, Additional Government Pleaders Ms. Anagha Prashant Kand, State Tax Officer (C-812), (Girgaon-705), Nodal-II, Mumbai

JUDGMENT

1. One of the primary grievance raised in the petition, in which an order dated March 10, 2022 is impugned, is that when a notice under section 73 of the Maharashtra Goods and Services tax Act, 2017 is issued, minimum 15 days time to reply should be given.

2. Ms. Chavan, in fairness, states that the period of seven days given in the notice dated March 2, 2022 to respond by March 9, 2022, issued to the petitioner is contrary to what the MGST Rules, 2017 prescribes. According to Ms. Chavan, minimum 15 days should have been given. Mr. Thakar states that no time is prescribed, but since under section 73(8) of the MGST Act, a period of 30 days of issue of show-cause notice is given to a person chargeable with tax under sub-section (1) or sub-section (3) of section 73 to pay the amount, the show-cause notice should provide minimum 30 days to file a reply.

3. We are in agreement with Mr. Thakar because section 73(8) of the MGST Act in terms permits a person chargeable with tax under sub-section (1) or sub-section (3) a period of 30 days from issuance of the show-cause notice to make payment of such tax along with interest payable under section 50. If he does not wish to make payment, then within the 30 day period he could file a reply to the show-cause notice. This statutory period cannot be arbitrarily reduced to seven days by assessing officer. In our view, this is also understanding of the Department because in the impugned order itself in paragraph 1 it is stated as under :

> "A show-cause notice/statement referred to above was issued to you under section 73 of the Act for reasons stated therein. Since, no payment has been made within 30 days of the issue of the notice by you ; therefore, on the basis of documents available with the Department and information furnished by you, if any, demand is created for the reasons and other details attached in annexure."
>
> (emphasis supplied)

4. On instructions from the officer concerned, Ms. Chavan, in fairness, states that the order is erroneous because in the show-cause notice only seven days was given to reply to the notice and on the eighth day the impugned order came to be passed. Therefore, the question of not paying within 30 days of the issue of the notice will not arise. Hence, Ms. Chavan has instructions to withdraw the impugned order dated March 10, 2022. Ordered accordingly.

5. We are constrained to note that such orders without application of mind are being passed contrary to the basic provisions of the Act and the Rules framed thereunder. These acts/omissions of respondents' officers is adding to the already overburdened dockets of the court. Valuable judicial time is wasted because such unacceptable orders are being passed by respondents' officers. The officers do not seem to understand or appreciate the hardship that is caused to the general public. In this

case, the petitioner could afford (we have assumed) to spend on a lawyer and approach this court but for every petitioner, we would hazard a guess, atleast ten would not be able to afford a lawyer and approach the court and their registrations may get cancelled by the very same officers who have passed such patently illegal orders.

6. In this case, in our view, it will only be fit and proper that respondents are saddled with costs. The respondents shall pay a sum of Rs. 10,000 as donation to PM Cares Fund and this amount shall be paid within two weeks from the date this order is uploaded. The account details are as under :

Name of the Account : PM CARES
Account Number : 60355358964
IFSC : MAHB0001160
Branch : UPSC - New Delhi

7. A copy of this order shall be forwarded to the CBIC and to the Chief Commissioner of State Tax, Maharashtra, so that they could at least hold some kind of training and/or orientation session/course, etc., to apprise and educate its officers on the prevailing law and rules framed thereunder and also explain to them what “principles of natural justice” mean. This would in fact be in the interest of the authorities, because this would then ensure that otherwise meritorious cases are not defeated on technicalities. It is also necessary that the authorities must be mindful of the grave prejudice that is caused to the assessees on account of such patently illegal orders. Authorities must be sensitive to this fact and the impact and consequences that their orders have on the public.

8. We would hasten to clarify that the observations above should not be taken as observations personally against the officer concerned, but have been only made keeping in mind the larger picture and the problems that the citizens of this country have to face. If only the officers are efficient and accountable, the Government’s vision of ease of doing business in India may fructify.

The petition disposed.

[IN THE CALCUTTA HIGH COURT]
[Hon'ble Mr. Justice T. S. Sivagnanam and Hon'ble Mr. Justice Hiranmay Bhattacharyya JJ.]

Ideal Unique Realtors Private Limited And Another ... Appellant

v.

Union of India and Others ... Respondent

April 22, 2022.

Favouring: Assessee, person

GOODS AND SERVICES TAX — AUDIT — IF THERE IS IRREGULARITY IN AVAILMENT OF CREDIT, APPROPRIATE PROCEEDINGS SHOULD BE INITIATED AND AFTER DUE OPPORTUNITY TO ASSESSEES, TAKEN TO LOGICAL END — FROM 2018 FOR SAME TRAN–1 ISSUE ASSESSEES REPEATEDLY SUMMONED, ISSUED NOTICES, ETC. — SPOT MEMOS COMMUNICATED TO ASSESSEES WITH COMMUNICATIONS ALSO FOR VERY SAME PURPOSE — DIFFERENT WINGS OF SAME DEPARTMENT ISSUING NOTICES AND SUMMONS TO ASSESSEES WITHOUT TAKING EARLIER PROCEEDINGS TO LOGICAL END — COMMUNICATIONS DATED MARCH 22, 2021 DID NOT REFER TO ANY EARLIER PROCEEDINGS INITIATED AGAINST ASSESSEES — SPOT MEMOS QUASHED AND ADDITIONAL ASSISTANT DIRECTOR TO CONSIDER REPLIES SUBMITTED BY ASSESSEES, AFFORD ASSESSEE OPPORTUNITY OF PERSONAL HEARING AND TAKE DECISION ON MERITS IN ACCORDANCE WITH LAW.

Facts

The appellant's/writ petitioners challenged the jurisdiction, the Senior Audit Officer in issuing two communications both dated March 22, 2021 enclosing a memo called as "spot memo". The appellants questioned the action of the respondent in the writ petition, firstly, on the ground that there is no jurisdiction for the Audit Department to issue such a notice and the Central Excise Revenue cannot conduct audit of records of a private entity apart from stating that the appellants have pointed out that for the self-same reason three earlier proceedings were commenced firstly by CGST Department, Park Street Division, Kolkata vide letter dated May 15, 2018 for which the appellants had submitted their reply on June 15, 2018 along with the documents called for. For the very same purpose, the Director General of Goods and Services Tax, DGGI, Kolkata, Zonal Unit had issued summons dated July 11, 2018 for which the appellants had submitted their reply on July 24, 2018. Thereafter, DGGI issued notice dated November 15, 2019 and thereafter another notice dated November 18, 2019 was issued by the fifth respondent and summons dated January 2, 2020 for which the appellants have responded and submitted the requisite documents.

The question would be whether the appellants can be dealt with in such a fashion by the Respondents - Department. From the records placed before us, we find that none of the proceedings initiated by the Department has been shown to have been taken to the logical end. If, according to the Respondents - Department, there is an irregularity in the availment of credit, then appropriate proceedings under the Act should be initiated and after due opportunity to the appellants, the matter should be taken to the logical end.

Held

Therefore, on that ground, we are of the view that the spot memos, which have been furnished along with the communications dated March 22, 2021 cannot be enforced. However, we make it clear that the issue whether CERA audit can be conducted against a private entity as contended by the appellants is not gone into as this court is of the view that it is too premature for the court to give a ruling on the said issue. This is more so because the authorities have not taken forward the proceedings, which they have initiated earlier from May, 2018.

Therefore, it is appropriate for the concerned authority to take the proceedings to the logical end after affording an opportunity of personal hearing to the appellants.

For the above reasons, the writ appeal is allowed to the extent indicated. The spot memos enclosed with the communications dated March 22, 2021 are quashed and there will be a direction to the fifth respondent, namely, Additional Assistant Director, DGGI, Kolkata, Zonal Unit to consider the reply submitted by the appellants dated January 14, 2020 along with the earlier reply given by the appellants dated June 15, 2018 and July 24, 2018. The authorised representative of the appellants shall be afforded an opportunity of personal hearing and a decision be taken on merits and in accordance with law.

Present for the Appellants	:	Sandip Choraria, Rajarshi Chatterjee and Himangshu Kr. Ray
Present for the Respondent	:	Vipul Kundalia, Sukalpa Seal and Anurag Roy for respondent Nos. 2 and 3.

JUDGMENT

1. T. S. Sivagnanam J.—This intra court appeal is directed against the order dated November 22, 2021 in W. P. A. No. 15695 of 2021 (Ideal

Unique Realtors Private Limited v. Union of India). The appellants/writ petitioners challenged the jurisdiction of the seventh respondent, the Senior Audit Officer/SSCA-FAP-4 in issuing two communications both dated March 22, 2021 enclosing a memo called as “spot memo”. The appellants questioned the action of the seventh respondent in the writ petition, firstly, on the ground that there is no jurisdiction for the Audit Department to issue such a notice and in this regard, places reliance on the decision of the High Court of Bombay in Kiran Gems Private Limited v. Union of India reported in [2021] 87 GSTR 250 (Bom) ; [2021] SCC OnLine Bom 98. This decision was relied on for the proposition that the Central Excise Revenue Audit (CERA) cannot conduct audit of records of a private entity apart from stating that the appellants have pointed out that for the self-same reason three earlier proceedings were commenced firstly by CGST Department, Park Street Division, Kolkata vide letter dated May 15, 2018 for which the appellants had submitted their reply on June 15, 2018 along with the documents called for. For the very same purpose, the Director General of Goods and Services Tax, DGGI, Kolkata, Zonal Unit had issued summons dated July 11, 2018 for which the appellants had submitted their reply on July 24, 2018. Thereafter, DGGI issued notice dated November 15, 2019 and thereafter another notice dated November 18, 2019 was issued by the fifth respondent and summons dated January 2, 2020 for which the appellants have responded and submitted the requisite documents.

2. The appellants appeared before the authority in response to the sum mons on January 14, 2020 and stated to have submitted the requisite documents. In spite of the same, the Superintendent, Range III, Park Street Division, CGST and CX, Kolkata South Commissionerate had issued two communications dated March 22, 2021 enclosing two spot memos.

3. The question would be whether the appellants can be dealt with in such a fashion by the respondents-Department. From the records placed before us, we find that none of the proceedings initiated by the Department has been shown to have been taken to the logical end. If, according to the respondents-Department, there is an irregularity in the availment of credit, then appropriate proceedings under the Act should be initiated and after due opportunity to the appellants, the matter should be taken to the logical end.

4. We find that such a procedure had not been adopted in the instant case and the appellants appears to have been dealt with in a most unfair manner in the sense that from the year 2018 for the very same TRAN-1 issue the appellants have repeatedly been summoned, issued notices, etc.

The spot memos, which have been communicated to the appellants along with the communications dated March 22, 2021 is also for the very same purpose.

5. Thus, it is not clear as to why different wings of the very same Depart ment have been issuing notices and summons to the appellants without taking any of the earlier proceedings to the logical end.

6. Therefore, on that ground, we are of the view that the spot memos, which have been furnished along with the communications dated March 22, 2021 cannot be enforced. However, we make it clear that the issue whether CERA audit can be conducted against a private entity as contended by the appellants is not gone into as this court is of the view that it is too premature for the court to give a ruling on the said issue. This is more so because the authorities have not taken forward the proceedings, which they have initiated earlier from May, 2018.

7. Therefore, it is appropriate for the concerned authority to take the proceedings to the logical end after affording an opportunity of personal hearing to the appellants.

8. From the records placed before us, we find that there is no allegation against the appellants that they have not cooperated with the Department in not responding to the summons issued earlier. Conveniently, the communications dated March 22, 2021 issued by the Superintendent, Range III, Park Street Division, CGST and CX does not refer to any of the earlier proceedings, which have been initiated against the appellants.

9. For the above reasons, the writ appeal is allowed to the extent indicated. The spot memos enclosed with the communications dated March 22, 2021 are quashed and there will be a direction to the fifth respondent, namely, Additional Assistant Director, DGGI, Kolkata, Zonal Unit to consider the reply submitted by the appellants dated January 14, 2020 along with the earlier reply given by the appellants dated June 15, 2018 and July 24, 2018. The authorised representative of the appellants shall be afforded an opportunity of personal hearing and a decision be taken on merits and in accordance with law.

The appeal along with connected application are disposed of.

No costs.

12. Urgent photostat certified copy of this order, if applied for, be

furnished to the parties expeditiously upon compliance of all legal formalities.

Hiranmay Bhattacharyya J.—I agree.

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
[Hon'ble Shri Justice Sheel Nagu & Hon'ble Shri Justice Hirdesh]

Writ Petition No. 20600 Of 2020

BETWEEN:-

M/S Kia Motors India Private Ltd.
Authorized Signatory Prachi Trehan
Aged 29 Asst. Manager (Legal)
Sy. No. 134-151 Penukonda Dist. Anantapur
(Andhra Pradesh) ... Petitioner

And

1. The State of Madhya Pradesh Thr.
   Principal Secretary Law and Legislative Affairs Vallabh
   Bhawan Bhopal (M.P.) (Madhya Pradesh)
2. Commissioner (GST) State Tax
   Indore Indore (Madhya Pradesh)
3. Appellate Authority And Joint
   Commissioner State Tax Bhopal (Madhya Pradesh)
4. State Tax Officer Anti Evasion Bureau
   State Tax Office Bhopal (Madhya Pradesh)
5. The Union of India Through its Secretary
   Ministry of Finance
   North Block, New Delhi (Delhi) ... Respondents

On 1st of May, 2023

E-WAY BILL – WHETHER E-WAY BILL OF A DEMO-VEHICLE TRANSPORTED IN THE STATE OF MADHYA PRADESH WHICH IS NOT FOR SALE – IS NECESSARY OR NOT –

Held *– Yes - Bare perusal of the relevant statutory rule i.e. Rule 138(1)(ii) makes it clear that the causing of movement of a goods exceeding*

the value of Rs.50,000/- even for the reasons other than supply, makes it incumbent upon the supplier to inform about the supply of goods in Form-A GST, EWB-01 electronically on the common portal alongwith other information as required.

Section 129 of CGST Act – Rule 138 of CGST Rules

Present for Petitioner : Shri Himanshu Khemuka, Advocate

Present for Respondent : Shri A.D. Bajpai - Govt. Advocate and
Shri Pushpendra Yadav - Assistant Solicitor General

This petition coming on for admission this day, JUSTICE SHEEL NAGU passed the following:

ORDER

This petition filed under Article 226 of the Constitution of India assails the order passed by Appellate Authority (Joint Commissioner, State Tax, Bhopal Division) on 23.12.2019 vide Annexure P-5, partly allowing the appeal of petitioner-assessee by reducing the tax levied from Rs.8,40,000/- to Rs.5,40,000/- and the corresponding penalty from Rs.8,40,000/- to Rs.5,40,000/- while setting aside the Cess of Rs.6,60,000/- and penalty of Rs.6,60,000/-.

2. The sole argument of petitioner is that the demo vehicle was transported in the State of Madhya Pradesh not for sale and therefore, was not exigible to GST.

3. Learned counsel for petitioner has taken this Court to the definition of the term “supply” vide Section 7 of GST Act to contend that bringing of demo vehicle into the State of Madhya Pradesh would not render the transaction exigible to GST since no financial consideration is involved in the absence of sale or purchase. Learned counsel has also drawn the attention of this Court to CBDT circular dated 07.07.2017 (Annexure P-6) and dated 22.11.2017 (Annexure P- 7).

4. On the other hand, learned counsel for the respondent/State has relying upon the provisions of Section 129 of GST Act and Rule 138 of GST Rules contends that movement of goods exceeding the value of Rs.50,000/-, even if they do not qualify the definition of supply become exigible to GST.

5. Section 129 of GST Act and Rule 138 of GST Rules are reproduced below for ready reference and convenience:

"Section 129 - Detention, seizure and release of goods and conveyances in transit.— (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment penalty equal to the fifty per cent. of the value of the goods or two hundred percent. of the tax payable on such goods whichever is higher, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twentyfive thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) [***]

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detaining or seizure specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

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

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt copy of the order passed under sub-Section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section(3): Provided that the convyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of [fifteen days]89 may be reduced by the proper officer.

Rule 138 - Information to be furnished prior to commencement of movement of goods and generation of e-way bill .-

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees —

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal.

Explanation 1.***
Explanation 2.***
(2) ****
(2A) ***
(3) ****
Explanation 1. ***
Explanation 2.***
(4) ****
(5) ****
(5A) ***
(6) ****

(7) ****
(8) ****
(9) ****
(10) ****
(11) ****
(12) *****

(emphasis supplied)

5.1. Bare perusal of the relevant statutory rule i.e. Rule 138(1)(ii) makes it clear that the causing of movement of a goods exceeding the value of Rs.50,000/- even for the reasons other than supply, makes it incumbent upon the supplier to inform about the supply of goods in Form-A GST, EWB-01 electronically on the common portal alongwith other information as required.

6. It is not disputed at the Bar that no such information as mandatory in Rule 138(1) of GST Rules, was given by the petitioner supplier.

7. In view of the above, it is obvious that in the absence of information given, the entry of demo car into the State of Madhya Pradesh renders it exigible to GST.

8. This Court does not find any fault or jurisdictional error in the order of appellate authority dated 23.12.2019. Therefore, this writ petition stands dismissed sans cost.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice Vibhu Bakhru and Hon'ble Mr. Justice Amit Mahajan]

W.P.(C) 5698/2023 & CM APPL. 22331/2023

SRG Plastic Company ... Petitioner

Versus

The Commissioner Delhi Goods and Services Tax Trade and Tax Department & Ors. ... Respondents

Date of Order : 02.05.2023

REFUND – REJECTION OF REFUND APPLICATION BY PROPER OFFICER FOR NEITHER PROVIDING RELEVANT DOCUMENTS NOR APPEARING BEFORE THE CONCERNED OFFICER. THE PETITIONER HAVING FILLED ALL THE REQUIRED DOCUMENTS UNDER RULE 89 OF CGST RULES, 2017, WHETHER REJECTION WAS JUSTIFIED.

Held – NO –The petitioner shall furnish all documents available with the petitioner, as sought for by the Proper Officer, within a period of three weeks. The Proper Officer is requested to adjudicate the petitioner's claim as expeditiously as possible and preferably within a period of four weeks.

Present for Petitioner	:	Mr. Rakesh Kumar, Adv.
Present for Respondent	:	Mr. Rajeev Aggarwal, ASC.

O R D E R

1. Issue notice.

2. Mr. Rajeev Aggarwal, learned counsel for the respondent accepts notice.

3. The petitioner has filed the present petition impugning an order dated 09.11.2022 / 21.11.2022, whereby the petitioner's appeal against an order dated 07.03.2022, passed by the Proper Officer, was rejected.

4. By the said order dated 07.03.2022, the Proper Officer had rejected the petitioner's refund for an amount of ₹ 4,99,880/-, inter alia, on the ground that the petitioner had not provided the relevant documents and had not appeared before the concerned officer.

5. It is the petitioner's case that he had filed all documents as required under Rule 89 of the Central Goods and Services Tax Rules, 2017 (hereafter '**the Rules**') and therefore, was not required to provide any further documents.

6. He also relies on the Circular No. 125/44/2019 – GST dated 18.11.2019, in support of the aforesaid contention.

7. Undeniably, if an application for refund is accompanied by all relevant documents as prescribed under Rule 89 of the Rules, the said application cannot be rejected as incomplete and is required to be processed. However, that does not preclude the concerned officer from calling upon the applicant to furnish any other relevant documents that he considers necessary for processing the application for refund.

8. In the aforesaid circumstances, we are unable to accept that the petitioner was not required to submit the documents as sought for by the Proper Officer.

9. Considering that the petitioner had provided most of the relevant documents as also the fact that if the Appellate Tribunal was constituted, the petitioner would be entitled to seek an opportunity to furnish the

relevant documents before the Tribunal; this Court considers it apposite to set aside the impugned order and remand the matter to the Proper Officer to adjudicate the petitioner's claim for refund afresh.

10. The petitioner shall furnish all documents available with the petitioner, as sought for by the Proper Officer, within a period of three weeks from today.

11. The Proper Officer is requested to adjudicate the petitioner's claim as expeditiously as possible and preferably within a period of four weeks thereafter.

12. It is clarified that this Court has not expressed any view on the merits of the petitioner's claim, which shall be considered on its own merits.

13. The petition is disposed of in the aforesaid terms.

14. Pending application is also disposed of.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
[Hon'ble Mr. Justice J.B. Pardiwala, J.]

R/Special Civil Application No. 5568 of 2021

Gopi Enterprise ... Appellants

Vs.

Union of India ... Respondent

Decided On: 30.03.2022

WHETHER ANY LIABILITY WITH RESPECT TO TAX CAN BE FIXED WITHOUT ANY ASSESSMENT PROCEEDINGS I.E. ISSUANCE OF SHOW CAUSE NOTICE U/S 73 OR 74 OF THE ACT AND AN OPPORTUNITY OF BEING HEARD TO THE ASSESSEE, AND THEREAFTER THE FINAL ORDER IS PASSED.

Held – NO – For the aforegoing reasons, we quash and set aside the impugned communication dated 13.11.2020, Annexure - D, Page-25, reserving the liberty for the respondents to initiate fresh proceedings in accordance with law so far as the alleged liability of the writ applicants under the Act is concerned.

For Appellant/Petitioner/Plaintiff : Kuntal A. Parikh

For Respondents/Defendant : Nikunt K. Raval

Nature of Issue Involved:

ITC Claim

ORDER

J.B. Pardiwala, J.

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

"(a) That this Honourable Court be pleased to issue a Writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the letter, dated 13.11.2020 annexed as Annexure D passed by the Respondent No. 2; and

(b) That this Honourable Court be pleased to issue a Writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the action of blocking of input tax credit by the Respondent No. 2; and

(c) This Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, direction or order directing the Respondents to unblock/release the input tax credit; and

(d) Pending notice, admission and final disposal of this Petition, this Hon'ble Court by way of ad-interim and/or interim relief be pleased direct the respondent authorities to unblock/release the input tax credit; and

(e) Ex parte ad-interim relief in terms of Prayer 9(d) be granted; and

(f) For Costs; and

(g) That this Honourable Court be pleased to grant such other and further relief/s as are deemed just and proper in the facts and circumstances of this case."

2 . The writ applicant No. 1 is a partnership firm registered under the Partnership Act. The writ applicant No. 2 is one of the partners of the firm. The firm is engaged in the business of supply of home appliances. The writ applicants are here before this Court aggrieved by two fold action on the part of the respondent No. 2. First, blocking of the ITC credit and secondly, passing an order dated 13.11.2020 raising a demand of Rs. 61,47,499/- (Rupees Sixty One Lac Forty Seven Thousand Four Hundred Ninety Nine) towards tax.

3 . Today, when the matter was taken up for further hearing, Mr. Nikunt Raval, the learned Standing Counsel appearing for the respondent No. 2 submitted that the electronic credit ledger, which was blocked, has now been unblocked.

4. Mr. Kuntal Parikh, the learned counsel appearing for the writ applicants would submit that the unblocking of the ITC credit would not bring to end the dispute. He would submit that the impugned letter dated 13.11.2020, Annexure-D, Page-25, is nothing but, a final assessment order passed without any assessment proceedings. In such circumstances, Mr. Parikh would submit that although, the ITC credit might have been unblocked yet the department may now straight way proceed to recover the amount mentioned in the letter.

5 . To a certain extent, Mr. Kuntal Parikh, the learned counsel appearing for the writ applicants is right. If any liability is to be fixed with respect to payment of tax, it has to first start with issuance of a show cause notice under Section 73 or Section 74 of the Act as the case may be. Thereafter, full fledged assessment proceedings are to be undertaken wherein the assessee is given an opportunity of hearing and thereafter, the final order is passed. In the case on hand, it appears that although, the subject matter was unblocking of the ITC credit yet, the final liability has also been fixed.

6. For the aforegoing reasons, we quashed and set aside the impugned communication dated 13.11.2020, Annexure - D, Page-25, reserving the liberty for the respondents to initiate fresh proceedings in accordance with law so far as the alleged liability of the writ applicants under the Act is concerned.

7. With the aforesaid, this writ application stands disposed of.

8. Direct service is permitted.

ALLAHABAD HIGH COURT
HIGH COURT OF JUDICATURE AT ALLAHABAD
[Hon'ble Mr. Justice Saumitra Dayal Singh

Case : Writ Tax No. - 258 of 2022
Court No. - 38

M/s Shanu Events vs State Of U P And 2 Others ... Petitioner

Vs.

State Of U P And 2 Others ... Respondent

5 August, 2022

E-WAY BILL – WHETHER AN INADVERTENT ERROR IN AN E-WAY BILL MENTIONING THE PLACE OF SHIPMENT TO "KUMBHA MELA HARIDWAR, UTTARAKHAND" THE WORDS "MADHYA PRADESH" WERE FILLED UP AND PIN CODE OF KATRI, MP WAS FILLED. PROMPTED BY SUCH FAULT ON FILING DETAILS, SOFTWARE GENERATED THE VALIDITY PERIOD OF THE E-WAY BILL TO ONE DAY OCCASIONED SOLELY BY THAT OCCURANCE, GOODS WERE SEIZED, TAX AND PENALTY DEMANDED.

Held – In absence of any allegation or material found of ill-intent on part of the assessee to transport the goods for the purposes of sale, the imposition of tax and demand of penalty is wholly unfounded. The goods are old. The breach was technical and not real.

Counsel for Petitioner : Tanmay Sadh, Aishwarya Pratap Singh

Counsel for Respondent : C.S.C.

Order

Hon'ble Saumitra Dayal Singh,J.

1. Heard Shri Tanmay Sadh, learned counsel for the petitioner and Shri Neeraj Kumar Singh, learned Standing Counsel for the State.

2. Present petition has been filed by the petitioner against the order of the appellate authority dated 5.3.2021 in appeal no. 05/2021 for A.Y. 2020-21 (U.P.) arising from proceeding under Section 129(3) of the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as the Act). By that order, the first appeal authority has dismissed the appeal and confirmed the order dated 28.12.2020 imposing tax Rs. 2,16,000/- and equal amount of penalty, totaling Rs. 4,32,000/- on the petitioner.

3. Present petition has been entertained and is being decided upon exchange of affidavits as no Tribunal has been constituted till date.

4. Having heard learned counsel for the parties and having perused the record, it transpires, there is no doubt to the fact that the petitioner is an event management firm having its head office at Katni, Madhya Pradesh. It is also not in dispute that the petitioner was awarded some contract at Kumbh Mela, Haridwar, in the State of Uttarakhand. For that purpose, it was transporting LED panels on truck bearing registration no. HR-55-V-5014. While in transit through State of U.P., the vehicle was stopped for inspection. It was found accompanying with the e-way bill disclosing

transportation of LED panels from the petitioner's place of business at Katni to the petitioner's other place of business at Haridwar, Uttarakhand.

5. Perusal of the e-way bill reveals, the petitioner made an inadvertent error in applying for the e-way bill. After mentioning the place of shipment to "Kumbh Mela, Haridwar, Uttarakhand", the words "Madhya Pradesh - 483501" were filled up. The address having been thus wrongly filled up and the pin code having been filled up of Katni, Madhya Pradesh, the software was forced to commit an error by filling up the destination of transportation to 100 kms thought it should have auto-generated that field, at about 1000 kms. Prompted by that, the software then generated the validity period of the e-way bill to one day. It thus expired on 24.12.2020. Occasioned solely by that occurrence, goods were seized, tax and penalty demanded.

6. In view of such facts, there appears no doubt to the genuineness of the explanation furnished by the assessee that the mistake was inadvertent. Once the assessee had disclosed the place of shipment at Haridwar, Uttarkhand, there survived no occasion to fill up the place of destination at Madhya Pradesh with the pin code of the petitioner's office at Katni, Madhya Pradesh. Clearly, the mistake was bonafide as sometime occurs.

7. In absence of any allegation or material found of ill-intent on part of the assessee to transport the goods for the purposes of sale, the imposition of tax and demand of penalty is wholly unfounded. The goods are old. The breach was technical and not real.

8. In view of the above, the order dated 28.12.2020 passed under Section 129(3) of the Act and the appeal order dated 5.3.2021 found to be perverse and are set aside. Let the amount of security and penalty that may have been deposited by the petitioner-assessee, may be returned to it, in accordance with law.

9. Accordingly, the present petition is allowed.

OFFICE OF THE APPELLATE AUTHORITY (DELHI GST)/
IN THE COURT OF SPECIAL COMMISSIONER-II
DEPARTMENT OF TRADE & TAXES
GOVT. OF N.C.T. OF DELHI
ROOM NO. 307, III FLOOR, VYAPAR BHAWAN
I.P. ESTATE, NEW DELHI-110002

APL-04

Ref. No: 2074-2077 Date: 25.05.2023

M/s Sapry Marketing Pvt Ltd
Basement, 1-65, Jalvihar Road,
Lajpat Nagar-1, South Delhi-110024.

Date of Impugned Order : 10.06.2022

REFUND – REJECTION OF – WHETHER APPLICATION FOR REFUND CAN BE REJECTED FOR NON-SUBMISSION OF DOCUMENTS AND NON-FURNISHING OF REPLY REGARDING LIMITATION.

***Held** – NO – The Appellant shall file the refund application afresh, and accordingly, after filing the same, the proper officer is directed to process the refund application of the Appellant after providing the opportunity of personal hearing, strictly in accordance with the provisions of CGST / DGST Act and rules made therein under.*

The proper officer is also directed to verify and examine the other tax liability of the Appellant, if any, and in case any tax is due to be recovered from him, then appropriate action shall be taken in accordance with provision of the DGST Act and rules made there under.

Order

1. This instant order shall dispose of the appeal filed by M/s. Sapry Marketing Pvt Ltd (GSTIN:07AAACS2100G1Z1) in FORM GST APL -01 dated 27.08.2022 under Section 107 of the CGST/ DGST Act and rules made therein under against the GST RFD-06 dated 10.06.2022, whereby the Proper officer has rejected the refund of Rs. 9,10,395/- claimed by the Appellant under sub-section

(5) of Section 54 of the CGST Act for the tax period January, 2020 to March, 2020 on the ground that *"Supporting documents nor provided by the dealer. No reply submitted regarding the lapse of time of 2 years in respect of most of the invoices."*

2. Before going to the merits of present Appeal, at the first instance it is necessary to examine whether the Appeal has been filed by the Appellant within the statutory period as envisaged under Section 107 of the CGST Act. Section 107 of the CGST Act reads as under:

> "(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
>
> (2) The Commissioner may, on his own motion, or upon request from the Commissioner of Union Territory State tax or the Commissioner of Union territory tax, call for and examine the record of an proceedings in which an adjudicating authority has passed any decision or order under Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order specified the determination of such points arising out of the said decision or order as may be by the Commissioner in his order.
>
> (3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.
>
> (4) The Appellate Authority may, if he is satisfied that the appellant was prevented by, sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."

In this instant matter the order of the Proper officer was issued on 10.06.2022 whereas the appeal was filed by the Appellant on 27.08.2022. As per the said Section, the Appeal is to be filed within the period of three months which may be further extended for up to one month upon showing the sufficient cause of not filing the appeal within the said period of three months. In the instant case, the appeal has been filed within the period of three months. Accordingly, this Appeal is now being disposed of on merits herein below.

Brief facts:

3. The facts of the case in brief are as under:

a) That M/s Sap Marketing Pvt. Ltd, (hereinafter referred to as "Appellant"), is a dealer of Ward-86, registered vide GSTIN: 07AAACS2100G1Z1, DG ST, Vyapar Bhawan, Department of Trade & Taxes, Delhi, having office at Basement, I-65, Jalvihar Road, Lajpat Nagar-1, South Delhi-110024.

b) As per the records available, the Appellant has filed an online appeal in FORMAPL 01 dated 27.08.2022 against the Refund Rejection order issued by the Proper officer in RFD-06 dated 10.06.2022 with respect to refund applied in RFD-01 under Section 54 of the CGST/ DGST Act on account of ITC on Export of Goods and Services without payment of tax for the tax period January, 2020 to March, 2020.

c) The Appellant had filed the refund claim application in RFD-01 dated 21.03.2022 for the said tax period amounting to Rs. 9,10,395/-arising on account of ITC on Export of Goods and Services without payment of tax

d) The Appellant claimed that his refund claim was in accordance with the provisions of section 54 of the CGST Act,2017. Thereafter, the Proper Officer has issued the Show Cause Notice in GST RFD-08 dated 07.04.2022 for the rejection for refund for the reason "documents as per GST circular 125/44/2019 required Various export invoices in Statement 3 does not pertains to related period Further, 2 years' time of applying refund as per Section 54 of DGST Act, 2017 has already lapsed in r/o most of export invoices 'and accordingly, directed the Appellant to file the reply to the above Show Cause Notice on or before 22.04.2022 and further directed to appear before the Proper Officer failing which the case of the Appellant will be decided ex parte on the basis of available records and on merits. The Appellant has filed the reply to the said Show Cause

Notice in form GST RFD-09 dated 27.04.2022. Taking into account the reply of the Appellant filed in GST RFD-09, the Proper Officer thereafter rejected the refund claim by issuing the impugned GST RFD-06 dated 10.06.2022for the reason mentioned herein above, which the appellant disputes and hence the present appeal.

4. During the course of hearing, the Ld. AR of the Appellant Sh. Sunil Minocha, GST Practitioner has appeared and made oral/written submissions in support of the claim. After hearing the Ld. AR of the Appellant at length and taking his submissions on record, the instant case has been reserved for orders accordingly.

Submissions of the Ld. AR on behalf of the Appellant

5. The Ld. AR of the Appellant in the course of hearing has categorically argued and submitted that the reply to the Show Cause Notice dated 27.04.2022 had not been considered by the Proper Officer while passing the impugned refund rejection order in GST RFD-06 10.06.2022. In this context, he has further submitted that in response to the discrepancies being pointed out by the Proper officer in Show Cause Notice in GST RFD-08, the Appellant has furnished all relevant documents as per the Circular No.125/44/2019 i.e. Statement-3A, Declarations and undertakings in support of the claim for Export except the GSTR-2A for the relevant period which could not be uploaded due to some technical glitch on the GST Portal and also stated that these documents and other remaining documents would be submitted manually to the Jurisdictional Proper Officer.

6. The Ld. AR of the Appellant has also assailed the impugned Rejection Order on the ground that the Proper Officer while rejecting the refund claim for the Appellant has not appreciated that the Hon'ble Supreme Court of India vide order dated 10.01.2022 in Suo Motto Writ Petition No. 3 of 2020 has held that the period between 15.03.2020 till 28.02of.2022 shall be excluded for the purpose of limitation. Further, the Ld. AR has placed reliance the decision passed by the Hon'ble Madras High Court in M/s. GNC Infra LLP vs. Assistant Commissioner wherein the refund order was set aside solely on the ground that reasons for rejecting the refund have not been recorded in writing in accordance with Rule 92 of the Central Goods and Services Tax Rules, 2017 and accordingly, remanded the matter to revenue department for reconsideration.

7. Further, on the contention that the Export Invoices does not pertain to the relevant period, the Ld. AR has submitted that no opportunity

of being heard/personal hearing in terms of proviso to Rule 92 of the CGST Rules was afforded to the Appellant before rejecting the impugned refund order. He further submitted that the Proper Officer should have followed the due process of law by granting the personal hearing to the Appellant and in event of such default, there is a complete violation to the principles of natural justice.

Analysis and findings:

8. I have heard the submissions of the Ld. AR for the Appellant and also gone through the impugned rejection order issued by the Proper Officer along with all the other documents placed on record. After having perused the aforesaid RFD-06 rejection order along with submissions made by the Ld. AR and records available,it is ascertained that the Proper Officer has rejected the refund claim of the Appellant by issuing GST RFD-06 for not providing the supporting documents and also no reply regarding the lapse of time of 2 years in respect of the most of the invoices was submitted. The Ld. AR of the Appellant has contested the findings of the Proper Officer on various grounds as mentioned herein above. The Ld. AR has primarily stated that the Proper Officer has arbitrarily rejected the refund claim of the Appellant without taking into consideration the reply furnished by him in GST RFD-09 wherein all the required documents in support of the Export claim for refund were furnished except GSTR-2A which could not be uploaded due to a technical glitch. However, the Ld. AR though has not placed on record the said documents but stated that the Appellant is in possession of all the relevant documents in support of the claim. It is also observed that the Appellant has furnished the reply in GST RFD-09 on 27.04.2022 which was after the due date i.e. 22.04.2022 as mentioned in the GST RFD-08 therein.

9. It is also observed that the CBIC has issued the Notification No. 13/2022 dated 05.07.2022 whereby it has been specifically stated that the period from 01.03.2020 till 28.02.2022 shall stand excluded for calculating of period of limitation for filing refund application under section 54 or section 55 of the said Act. The said Notification No. 13/2022 dated 05.07.2022is reproduced herein for ready reference:

> *(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.*

10. Further, on the contention of not following the principles of natural justice, it is observed that the Proper Officer has not properly complied with the proviso to Rule 92 of the CGST Rules which clearly provides that no application for refund shall be rejected, without giving the applicant an opportunity of being heard. Perusal of the GST RFD-08 shows that the Proper Officer has not indicated therein the date and time for personal hearing which ought to have been afforded to the Appellant before passing the impugned rejection order. Thus, there is a merit in the contentions of the Ld. AR and Proper Officer was not justified in rejecting the refund claim of the Appellant.

11. In light of above submissions, observations, findings and law position, the instant Appeals is accordingly disposed of on following terms:

a) The instant appeal is allowed and the impugned Order dated 10.06.2022 is hereby set aside as per the reasons mentioned herein above.

b) The Appellant shall file the refund application afresh, and accordingly, after filing the same, the Proper officer is directed to process the refund application of the Appellant after providing of personal hearing, strictly in accordance with the provisions of CGST/DGST Act and rules made therein under.

c) The proper Officer is also directed to verify and examine the other tax liability of the Appellant, if any, and in case any tax is due to be recovered from him, then appropriate action shall be taken in accordance with provisions of the DGST Act and rules made there under.

12. It is made clear that the instant order is being passed on the basis of peculiar facts of the case.

13. The present appeal is accordingly allowed and disposed of in aforesaid terms.

Ordered Accordingly.

(Tapasya Raghav)
Appellate Authority (Delhi Gst)/
Special Commissioner-1

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[Shri Diwan Chand, Member (A) and Shri M. S. Wadhwa: Member (J)]

Appeal Nos.216/ATVAT/16-17
Assessment Period: 3rd Quarter 2011-12
(Default Assessment of Tax, Interest & Penalty)

M/s Sai Ram Enterprises,
3133/2, Ranjeet Nagar,
Delhi-110008 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi. ... Respondent

Date of Order: 28.06.2018

STATUTORY FORMS – C FORM – CLAIM OF EXEMPTION OF CONCESSIONAL RATE OF TAX WHETHER THE CLAIM OF CONCESSIONAL RATE OF TAX CAN BE REJECTED IF BILLS OF 2ND QRT. ARE CLUBBED IN "C" FORMS ISSUED FOR 3RD QTR.

Held *– NO – It is not the case of revenue that "C" Form presented is not genuine nor is the case of revenue that the transaction reflected in "C" form are not genuine. Accordingly, appeal allowed and the matter is remanded back to the VATO to reframe the assessment in accordance with legal position stated above.*

Present for the Appellant : Sh. Rakesh Kumar Aggarwal, Adv.,

Present for the Respondent : Sh. CM Sharma, Govt. Counsel

ORDER

1. This order shall dispose of the above noted appeals filed by the Appellant challenging the impugned orders dated 16.09.2016 passed by VATO, hereinafter called the Objection Hearing Authority (in short the OHA).

2. Facts of the case briefly stated are that the appellant is doing trading of cosmetic goods. VATO ward-102 passed a default assessment order dated 31.03.2016 and created a demand of Rs.2,70,922/- for 2nd quarter 2011-2012 under CST Act for non-filing of statutory forms.

3. Aggrieved with the default assessment orders the appellant preferred objections and during the course of hearing before Ld. OHA had

submitted that clubbing of 2nd quarter bills of Rs. 2,43,381/- in 3rd quarter 'C' form does not invalidate the claim of the appellant and the exemption of concessional rate of tax cannot be denied to the appellant solely on this ground alone. The appellant has also cited judgment of this Tribunal in case of M/s Indian Petrochemicals Corporation Limited Vs CST, Delhi Appeal No.48/STI/04-05 on 12.10.2006.

4. The Ld. Objection Hearing Authority rejected the objections vide orders dated 16.09.2016 by observing as under:-

> "Rule.12(1) of Central Sales Tax (Registration & Turnover) Rules, 1957 provides that a single declaration form may cover all transactions of sale, which take place in quarter of financial year between the same two dealers. Therefore, in the light of Rule 12(1), since the C-form for these four bills was received in 3rd quarter but the bills belonged to IInd quarter, the exemption as sought by the dealer cannot be allowed in the IInd quarter. Now, missing C forms of Rs.232806/- is to be taxed @ 10.5% under CST with interest."

5. Aggrieved with the impugned orders the appellant has come in appeal before the Tribunal and assailed these on the following grounds:-

(i) That the objection hearing authority has erred in law and on facts while passing the impugned order.

(ii) That the impugned order is illegal, unwarranted and uncalled for.

(iii) That the rejection of exemption at concessional rate of tax to the amount of Rs.2,43,381/- in 2nd quarter is not as per law.

(iv) That the C Form has been rejected solely on technical ground.

(v) That the Central sale and C Form has not been disputed.

(vi) That Rule 12(1) of Central Sales Tax (Registration and Turnover) Rules, 1957 is directory and not mandatory.

(vii) That it is settled law that rule of procedure is not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice.

(viii) That it is settled law that denial of concessional rate of taxation

conferred' under the statute by prescribing a requirement under the Rules having the force of defeating the object of the statute cannot be considered to be either reasonable or justifiable.

(ix) That it is settled law that the ultimate requirement was the actual production of the C Forms as such to establish the genuineness of the transactibn and the fact that it satisfied the category of sales entitled to concessional rate of tax as prescribed in law.

(x) That the Ld OHA has not considered and appreciated the judgment of this Hon'ble Tribunal in case of M/s Indian Petrochemicals Corporation Limited vs CST, Delhi in Appeal No.48/STT/04-05 decided on 12.10.2006.

(xi) That the interest levied to the amount of Rs.17,991/- is not as per law. Interest cannot be imposed when the C forms have been received by the appellant.

6. We have heard Sh R K Aggarwal, Adv., Ld Counsel for the Appellant and Sh C M Sharma, Adv., Ld Counsel for the Revenue and gone through the record of the case.

7. Ld Counsel for the Revenue supporting the impugned orders has submitted that the 'C' forms filed covered transactions of 2 Quarters and has been rejected correctly and the decision cited by the Appellant are not applicable as the facts are distinguishable. In the case of M/s Indian Petrochemicals Corporation Ltd Vs Commissioner of Sales Tax, Delhi (Appeal No.48 /STT/ 04-05, Appeal No.433/STT/ 03-04 Assessment year 1996-97 & 1997-98 (Central) Order dated 12/10/2006, the monetary limit imposed was violated whereas in the present case the 'C' form issued for one quarter contains the transaction of another quarter. Further, in the cited case the sales and form in the said ruling were duly verified and found genuine by the revenue whereas in the present case, there is no such verification report etc in existence and no proof of genuineness of transaction.

8. In the case of M/s Indian Petrochemicals Corporation Ltd where the C Form was rejected on the ground that the total amount of the bills exceed the monetary limit prescribed in this regard, the Tribunal allowing the appeal of the appellant held as under:

"In the light of the law laid down in the aforesaid authority and other rulings relied upon by the appellant's counsel, we are of the view that

when no defect whatsoever in the transaction has been pointed out and when the C forms have been verified, then we do not see any reason to deprive the petitioner the benefit of concessional rate of tax on the sole ground that the forms comprised the transaction in excess of the monetary limit. Even otherwise, the Hon'ble Supreme Court in State of Bombay and Others V. United India Motors Ltd. reported in 4 STC 133, our own High Court in the case of Kirloskar Electric Company Ltd. V. Commissioner of Sales Tax reported in 83 STC page 485 and similarly various other High Courts have held "that the State is entitled to tax which is legitimately due to it only and that it is expected of the Revenue to ensure that correct tax as ordained by the State by other assessable person no more no less."

9. In the light of the aforesaid discussions and the law on the points, we are of the view that though the monetary limit of the C form at the relevant time was Rupees one lakh only, still in view of the genuineness of the transaction certified by the Revenue, we find that such limit imposed is only a directory requirement and does not affect the legality and validity of the two C forms in question. We, therefore, hold that the petitioner shall be entitled to the concessional rate in respect of the two C Forms mentioned in the order; the Ld. Assessing Authority shall give effect to this order and reduce the tax liability accordingly.

9. Ld Counsel for the Revenue has tried to distinguish this case on the ground that in that case the transactions had bene verified and the genuineness of the transactions was not in question and that in that the issue was of exceeding the monetary limit while in the instant case the issue was of 2nd quarter bills having been clubbed and claimed in the C Form issued for the 3rd quarter.

10. We do not find any force in the submission of the Revenue. In our considered view the ratio of the aforesaid decision of the Tribunal that requirement under the rules was a directory one and it did not affect the legality or validity of the C Form applies to the facts of the case and the issue of genuineness of the transactions in question is not there. Authorities below have denied to grant the concessional rate of tax only on the ground that C Form for the 3rd quarter also contained the bills for the 3rd quarter and this cannot be allowed in view of the provisions of the CST Rules. It is—ribt the case of the Revenue that C Form presented is not genuine nor is the case of the Revenue that the transactions reflected in the C

Form are not genuine. Accordingly the appeal is allowed and the matter is remanded back to the VATO to reframe the assessment in accordance with legal position stated above. Appellant should appear before the VATO on' 30.07.2018.

11. Order announced in the open court.

12. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

REGISTRATION UNDER GOODS AND SERVICES ACT, 2017

By Sh. Kumar Jee Bhat, Advocate

Registration under the Goods and Services Tax Act,2017 is provided under sections 22-30 read with Rules 8-26 of GST Rules, 2017. Different types of registrations have been provided for different set of people i.e., dealer's comparingly registration, casual dealer, Non-resident dealers, Suo moto registration, E-Commerce Operators and so on. The application for registration is to be filed within 30 days from the date on which person becomes liable to registration, where it is mandatory and 5 days prior to commencement of business for a casual dealer and like that other limitations have been provided in the Act and Rules.

Every supplier is liable to get himself registered under the Goods and Services Act, who is making a taxable supply of goods or services or both if his aggregate turnover is more than 20/40 lakhs and 10 lakhs in special category States. There is a general exemption from obtaining registration by any person, who is exclusively engaged in supply of goods and who's aggregate turnover in a financial year does not exceed 40 lakhs. Section 23 of CGST Act has specified the circumstances when a person is exempt from obtaining registration under the Act.

Notwithstanding anything contained in section 22(1) some categories of persons are mandatorily required to be registered even if their turnover is within exemption limits. Registration is PAN based. Hence, every person who supplies goods or services from different States has to get himself registered in each State, where from supply is made within 30 days from the date he becomes liable to be registered in every State/union Territory.

Process of registration takes place as per Rule 8(4A). There is no fees payable for filing of application for registration. Approval for grant of Certificate & Registration shall be under Rule 9 where it is found correct within 7 days from the date of filing/submitting of application and registration shall be granted within 30 days after the physical verification of the premises conducted in the manner prescribed under Rule 25.

There is a set procedure of law, from the filing of application to the grant of registration under the Act and Rules whether Central, State or Union Territory. The expression "procedure established by law" means procedure laid down by statute or procedure prescribed by the law of the

State. Accordingly, first, there must be a law justifying interference with the person's life or personal liberty, and secondly, the law should be a valid law, and thirdly, the procedure laid down by the law should be strictly followed.

In our legal system, Acts of Parliament and the Ordinances and other laws made by the President and Governors in so far as they are authorized to do so under the Constitution are supreme legislation. Thus, a power is granted to the Proper Officer under the statute to exercise them for the proper use of the suppliers. This Rule is a statutory Rule. Since the dawn of GST Act, this power of grant of registration has either been misinterpreted or misutilised by the Officers of the Department.

Necessity to do the Act in the Manner Prescribed and No Other

The method and modality of grant of Registration is clearly delineated by the Legislature. It is well known principle of law that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in Nazir Ahmad vs. King Emperor , a Bench of three Judges of this Court made following observations in State of Uttar Pradesh vs. Singhara Singh and others.

> "7. In Nazir Ahmed case, 63 Ind App 372; (AIR 1936 PC 253 (2)) the Judicial Committee observed that the principle applied in Taylor v. Taylor [(1875) 1 Ch D 426, 431] to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves".
>
> 8. The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this

were not so, the statutory provision might as well not have been enacted. AIR 1936 Privy Council 253.

In J.N. Ganatra vs. Morvi Municipality, exercise of power of dismissal having not been done in conformity of the Act, the same was set aside.

It was stated:-

"4. We have heard the learned counsel for the parties. We are of the view that the High Court fell into patent error in reaching the conclusion that the dismissal of the appellant from service, in utter violation of Rule 35 of the Rules, was an "act done in pursuance or execution or intended execution of this Act ...". It is no doubt correct that General Board of the Municipality had the power under the Act to dismiss the appellant but the said power could only be exercised in the manner indicated by Rule 35 of the Rules. Admittedly the power of dismissal has not been exercised the way it was required to be done under the Act. It is settled proposition of law that a power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. In view of the categorical finding given by the High Court to the effect that the order of dismissal was on the face of it illegal and void, we have no hesitation in holding that the dismissal of the appellant was not an act done in pursuance or execution or intended execution of the Act. The order of dismissal being patently and grossly in violation of the plain provisions of the Rules. It cannot be treated to have been passed under the Act."

In Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala, a Constitution Bench of Court stated the normal rule of construction in such cases as under: -

It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."

In Babu Verghese & Ors vs Bar Council of Kerala & Ors (1999) AIR 1281 SC, Para 31, 32, it is the basic principle of law long settled that if the

manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor vs. Taylor (1875) 1 Ch. D 426 which was followed by Lord Roche in Nazir Ahmad vs. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under :

> "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

This rule has since been approved by this Court in Rao Shiv Bahadur Singh & Anr. vs. State of Vindhya Pradesh 1954 SCR 1098 = AIR 1954 SC 322 and again in Deep Chand vs. State of Rajasthan 1962(1) SCR 662 = AIR 1961 SC 1527. These cases were considered by a Three-Judge Bench of this Court in State of Uttar Pradesh vs. Singhara Singh & Ors. AIR 1964 SC 358 = (1964) 1 SCWR 57 and the rule laid down in Nazir Ahmad's case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.

(See also Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd., AIR 2007 SC 2458)

Dharvi Sugar & Chemicals Ltd vs Union of India (2019) 5 DCC 480, Dipak Babaria & Ors vs State of Gujrat, 2014,

Necessity to Pass Speaking Order

It was held by Supreme Court in Siemens Eng & Mfg Co vs Union of India, AIR 1976 SC 1785, that If an Authority in the exercise of quasi judicial function, makes an order, it must record reasons before initiation of any action. Non-Speaking orders for Cancellation of Registration have been quashed by various High Courts of the country.

Keeping in view the above said fundamental principles of law the courts decided various cases which arose after the implementation of the Goods and Services Tax Act, 2017. In most of the cases either registration was not granted on frivolous grounds or registration was cancelled without providing any opportunity to put forward his case. Controversies started over various issues raised by the Proper Officer during approval and final permission of grant of registration. Questions regarding authenticity of business premises, on filing of electricity bill of business premises, Aadhar, space and other issues were raised and people aggrieved took various forums and High Courts to challenge such orders. Some of the judgments pronounced have been highlighted in this article for the benefit of the readers.

There can be multiple issues/reasons for rejection of registration, for cancellation / suspension of Registration and Revocation of cancellation of Registration.

1. Non-Filing Of Electricity Bill

In RANJANA SINGH VS COMMISSIONER (Allahabad High Court) Writ Tax No. 1084 of 2021, it was held;

Although the required documents as specified in the Act were submitted but, Rule 8 requires the submission of electricity bill or house tax receipt which were not submitted and therefore order of non-compliance was passed Judgment:

The validation of the orders passed stands rejected. Respondents are at liberty to charge the cost from erring officer.

Important Points given by the Hon'ble Judges:

1) Authorities rejected the application without specifying the reasons for rejection;

2) after giving a choice in the SCN they cannot insist for submission of electricity bill without stating any defect in the submitted house tax receipt;

3) once petitioner has satisfied the requirements of law it cannot be insisted to submit electricity bill;

4) in the absence of any shortcoming or defect in the reply submitted the petitioner has every right to carry on the business lawfully.

2. Non-Filing of No Objection Certificate for the Business Premises

PARVEZ AHMAD BABA VS UNION TERRITORY OF JK AND OTHERS, **(J & K High Court) LPA No. 197/2022.**

On cancellation of registration and on application for revocation of the registration the High Court of Jammu, Kashmir and Ladhal held as under;

The application pending before the Deputy Commissioner (Appeals) Sales Tax Department, Kashmir Division, Srinagar, shall also be considered and decided after affording an opportunity of hearing to the respondent no. 5 also. Till the time the license is granted in favour of the rightful party by the competent authority, the Samci Restaurant shall not be operated/ run by any of the party.

3. Show Cause Notice Issued But Without Waiting For The Reply, Registration Cancelled.

A. ASHWANI AGGARWAL VS UNION OF INDIA, (Allahabad High Court), Writ Tax No. 451 of 2020 AND

B. MAHADEV TRADING CO VS UNION OF INDIA, (Gujarat High Court at Ahmedabad), R/Special Civil Application No. 11262/2020

(A) After hearing counsels for the parties and perusing the record, it is apparent that while giving the reason for cancellation of the registration, it is mentioned that no reply has been received from the petitioner whereas in the same order in the very beginning there is a specific reference in the said order that has taken into the reference the reply dated 25.02.2020 of the petitioner which is in response to the notice to show cause dated 14.02.2020, which is contrary in itself.

In view of the same, the order dated 14.04.2020 passed by the Superintendent, Kanpur Sector 12, Central Goods and Services Tax (Annexure 5 to the writ petition), is set aside with liberty to respondent no. 2 to pass a fresh order in accordance with law.

The writ petition is accordingly allowed. No order as to costs.

(B) It was held by the court as under;

Show Cause Notice for Cancellation of Registration read, whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Mr. Dave, without fixing a date for hearing and without waiting for any reply to be filed by the petitioner, the cancellation order was passed on 30.07.2020 whereby registration of the petitioners with GST department was cancelled. Although the cancellation order refers to a reply submitted by the petitioner and also about personal hearing, but according to Mr.

Dave neither he had submitted any reply nor afforded any opportunity of hearing. This fact is not disputed by Mr. Bhatt.

Mr. Bhatt, learned counsel for the respondent No.2 has sought to explain that some discrepancy occurred on account of some technical glitch in the system (on-line portal). The reply filed by the respondent is on record.

We are not entering into the merits of the impugned order as we are convinced that the show cause notice itself cannot be sustained for the reasons already recorded above. Therefore, the cancellation of registration resulting from the said show-cause notice also cannot be sustained.

In S M CIVIL LABOUR CONTRACTOR VS THE ASSTT. COMMISSIONER, (Madras High Court), W.P. No. 17610 of 2021.

Notice was issued for public holiday and registration was cancelled for not attending the proceedings.

The order was set aside.

DEVENDER PRASAD VS ASSTT COMMISSIONER, STATE GST, DEHRADUN, (Uttarakhand High Court), Writ Petition No. 3263 of 2022.

It was held as under;

4. Since, the petitioner failed to furnish returns for a continuous period of six months and show cause notice has been sent to him, it is directed that the petitioner shall file an application for revocation under Section 30 of the CGST Act in terms of Rule 23 of the CGST Rules. Though it is time barred, we are inclined to wave the limitation and direct the petitioner to file an application for reviving of G.S.T. registration before the Revenue within a period of 21 days. He shall also comply with other provisions of Section 30 of the U.K. GST Act, that is submission of returns for the defaulted six months and any further completed months after the revocation. In such case, if dues are found to be due from the petitioner and he pays the same, then his case shall be considered liberally by the revenue and shall be disposed of within a period of 30 days.

Accordingly, the writ petition is disposed of.

4. No Reason given in the Show Cause Notice still Registration Cancelled.

Cancellation should not be on flimsy grounds and sufficient opportunity should be given to the applicants to explain the issues raised.

In **SHAKTI SHIVA MAGNATS PVT LTD**, **(W.P.(C) NO. 1559 / 2022)** the Delhi High Court, held that there was no reason given in the show cause notice for cancellation of registration, the order was quashed and ordered for restoration of registration certificate.

Raj Kishore Engg. Construction Pvt. Ltd vs Joint Commissioner Appeals-II, **W.P. No. 32740 of 2022**, Madras High Court held that without Cancellation of registration without any explanation and only reason that the returns were filed late is not sustainable.

Pitchiah Venkateshprumal vs Superintendent of CGST, **WP No. 19848 dt.14-11-2022**.

5. Registration at Co-Working Space.

SPACELANCE OFFICE SALUTIONS PVT LTD

If the landlord permits sub-leasing as per the agreement, separate registration may be allowed to multiple companies to function in a 'co-working' space.

ASIA (CHENAI) ENGINEERING VS ASSTT.COMMESSIONER STATE TAX, **(W.P. (MD) Nos. 13851 of 2022),** the Madras High Court held that filing of reply to the Show Cause Notice in form GST DRC-06 is not mandatory under section 73(9),74(9) and 76(3) of the CGST2017, and the reply so filed through post to be treated as valid.

6. No Notice Served Prior to Inspection of the Premises

MICRO FOCUS SOFTWARE SOLUTION INDIA PVT LTD VS UNION OF INDIA, **(W.P.C. No. 8451 of 2021),** it was held by the Delhi High Court that when no notice is served for inspection of the premises as provided under Rule 25, the order of cancellation of registration on the ground of non functioning is not justified.

CURIL TRADEX PVT LTD VS UNION OF INDIA, W.P.C. NO. 10408 / 2022, Delhi High Court.

This aspect of the matter, that is, an inspection was carried out on 05.07.2021 was not put to the petitioner-consortium, when SCN dated 08.07.2021 was issued. Although the petitioner-consortium claims, that it had submitted a reply dated 23.11.2021; evidently, the same was not uploaded on the designated portal. It is Mr. Jain's contention though, that the reply was uploaded on the website of the respondent/revenue. That in the appeal preferred by the petitioner, information was submitted, which alluded to the fact that PIL had relocated itself. In the impugned order

dated 22.02.2022 passed by the Joint Commissioner, CGST-I, Delhi there was no discussion with regard to assertions made in that behalf by the petitioner-consortium. Given these facts, Court was of the view, that the impugned order cannot be sustained.

In sum, the entire proceedings, right up to the stage of passing of the order-in-appeal was legally flawed. Accordingly, the impugned order is set aside. Liberty is, however, given to the respondent/revenue, to issue a fresh SCN, if deemed necessary, with regard to the registration certificate, issued under the Act. However, in the meanwhile, the registration of the petitioner shall be restored.

Aditya Narayan Ojha (Amit Associates) Vs Principal Commissioner, CGST, Delhi North & Anr., **W.P.C. No. 8508/2022,** dated August 2, 2022, the Hon'ble Delhi High Court has directed the Department to restore GST registration of the assessee within one week upon filing of pending returns along tax and other dues. Held that, notice is needed to be served to the assessee under Rule 25 of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") before physical inspection is carried out.

Drs Wood Products Lucknow Thru. ... vs State of U.P. Thru. Prin. Secy. Tax, Writ C No. 21692 of 2021 (Allahabad High Court) on 5 August, 2022, the court held as under;

21. I have no hesitation in recording that the said authorities while passing the order impugned have miserably failed to act in the light of the spirit of the GST Act. The stand of the Central Government before this Court is equally not appreciable as on the one hand, they are alleging that excess goods were found for which the petitioner is liable to pay duty and on the other hand there is justification to the order passed and impugned in the present petition.

22. Finding the orders contrary to the mandate of Section 29 and 30 of the Act as well as the principles of adjudication by the quasi-judicial authorities, the orders impugned dated 18.01.2021 (Annexure - 19) and 15.07.2020 (Annexure - 16) cannot be sustained and are set aside.

23. The registration of the petitioner shall be renewed forthwith.

24. In the present case, the arbitrary exercise of power cancelling the registration in the manner in which it has been done has not only adversely affected the petitioner, but has also adversely affected the revenues that could have flown to the coffers of GST in case the petitioner was permitted to carry out the commercial activities. The actions are clearly not in

consonance with the ease of doing business, which is being promoted at all levels. For the manner in which the petitioner has been harassed since 20.05.2020, the State Government is liable to pay a cost of Rs.50,000/- to the petitioner. The said cost of Rs.50,000/- shall be paid to the petitioner within a period of two months, failing which the petitioner shall be entitled to file a contempt petition.

25. The writ petition is allowed in above terms.

7. Cancellation for Non-Filing of Returns

DEVENDER PRASAD VS ASSTT COMMISSIONER, STATE GST, DEHRADUN, (Uttarakhand High Court), Writ Petition No. 3263 of 2022.

It was held by the Uttaranchal High Court as under:

Since, the petitioner failed to furnish returns for a continuous period of six months and show cause notice has been sent to him, it is directed that the petitioner shall file an application for revocation under Section 30 of the CGST Act in terms of Rule 23 of the CGST Rules. Though it is time barred, we are inclined to wave the limitation and direct the petitioner to file an application for reviving of G.S.T. registration before the Revenue within a period of 21 days, hence. He shall also comply the other provisions of Section 30 of the U.K. GST Act that is submission of returns for the defaulted six months and any further completed months after the revocation. In such case, if dues are found to be due from the petitioner and he pays the same, then his case shall be considered liberally by the revenue and shall be disposed of within a period of 30 days. Accordingly, the writ petition is disposed of.

After going through all these judgments, I suggest that the readers should also read judgment of Madras High Court in **SUGNA CUTPIECE CENTRE**, **2022-TOIL-261-MAD-GST**.

Some basic / fundamental principles

1. A thing must be done only in the manner prescribed.

2. Necessity to pass speaking order

To Assign Powers of Superintendent of Central Tax to Additional Assistant Directors in DGGI, DGGST and DG Audit

Notification
No 01/2023-Central Tax

New Delhi, dated the 4th January, 2023

G.S.R (E).– In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017(13 of 2017), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 14/2017-Central Tax, dated the 1st July, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 818(E), dated the 1st July, 2017, namely: -

In the said notification, in the Table, after Sl. No. 8 and the entries relating thereto, the following Sl. No. and entries shall be inserted namely:-

Sl. No.	Officers	Officers whose powers are to be exercised
(1)	(2)	(3)
"8A.	Additional Assistant Director, Goods and Services Tax Intelligence or Additional Assistant Director, Goods and Services Tax or Additional Assistant Director, Audit	Superintendent"

[F. No.CBIC-20006/17/2022-GST]
(Raghvendra Pal Singh)
Director

Note: The principal notification No. 14/2017- Central Tax, dated the 1st July, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 818(E), dated the 1st July, 2017.

Amnesty to GSTR-4 Non-filers

Notification
No. 02/2023 – Central Tax

New Delhi, the 31st March, 2023

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)

(hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, 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 sixth proviso, the following proviso shall be inserted, namely: —

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived 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 fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023.".

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 73/2017– Central Tax, dated the 29th December, 2017 was 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 and was last amended, vide notification number 12/2022 – Central Tax, dated the 5th July, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 515(E), dated the 5th July, 2022.

Extension of Time Limit for Application for Revocation of Cancellation of Registration

Notification
No. 03/2023 – Central Tax

New Delhi, dated the 31st March, 2023

G.S.R.....(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies that the registered person, whose registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act on or before the 31st day of December, 2022, and who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act as the class of registered persons who shall follow the following special procedure in respect of revocation of cancellation of such registration, namely:–

(a) the registered person may apply for revocation of cancellation of such registration upto the 30th day of June, 2023;

(b) the application for revocation shall be filed only after furnishing the returns due upto the effective date of cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount payable towards interest, penalty and late fee in respect of the such returns;

(c) no further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases.

Explanation: For the purposes of this notification, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of section 30 of the said Act.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Amendment in CGST Rules

Notification
No. 04/2023 – Central Tax

New Delhi, dated the 31st March, 2023

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, 2023.

(2) They shall be deemed to have come into force from the 26th day of December, 2022.

2. In the Central Goods and Services Tax Rules, 2017 in rule 8,-

(i) for sub-rule (4A), the following sub-rule shall be substituted, 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), 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.

Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation 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 proviso.";

(ii) in sub-rule (4B), for and words, "provisions of", the words "proviso to", shall be substituted.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated

the 19th June, 2017, published, vide number G.S.R. 610(E), dated the 19thJune, 2017 and were last amended, vide notification No. 26/2022 -Central Tax, dated the 26th December 2022, vide number G.S.R. 902 (E), dated the 26th December 2022.

Seeks to Amend Notification No. 27/2022 dated 26.12.2022

Notification
No. 05/2023- Central Tax

New Delhi, dated the 31st March, 2023

G.S.R.…(E).— In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India, the Ministry of Finance (Department of Revenue) No. 27/2022-Central Tax, dated the 26th December, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022, namely:-

In the said notification, for the words, “provisions of”, the words “proviso to” shall be substituted.

2. They shall be deemed to have come into force from the 26th day of December, 2022.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Note: - The principal Notification No. 27/2022- Central Tax, dated the 26th December, 2022, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022.

Amnesty Scheme for Deemed Withdrawal of Assessment Orders Issued under Section 62

Notification
No. 06/2023 – Central Tax

New Delhi, the 31st March, 2023

S.O.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies that the registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act, as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,-

(i) the registered persons shall furnish the said return on or before the 30th day of June 2023;

(ii) the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act,

irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Rationalisation of Late Fee for GSTR-9 and Amnesty to GSTR-9 Non-filers

Notification
No. 07/2023 – Central Tax

New Delhi, dated the 31st March, 2023

S.O.....(E).– In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the said Act in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards, which is in excess of amount as specified in Column (3) of the Table below, for the classes of registered persons mentioned in the corresponding entry in Column (2) of the Table below, who fails to furnish the return by the due date, namely:—

Table

S. No.	Class of registered persons	Amount
(1)	(2)	(3)
1.	Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year.	Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.
2.	Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.

Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Amnesty to GSTR-10 Non-filers

Notification
No. 08/2023 – Central Tax

New Delhi, dated the 31st March, 2023

S.O.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the Act, which is in excess of five hundred rupees for the registered persons who fail to furnish the final return in FORM GSTR-10 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Extension of Limitation under Section 168A of CGST Act

Notification
No. 09/2023- Central Tax

New Delhi, dated the 31st March, 2023

S.O.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter 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 the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, 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 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:–

(i) for the financial year 2017-18, up to the 31st day of December, 2023;

(ii) for the financial year 2018-19, up to the 31st day of March, 2024;

(iii) for the financial year 2019-20, up to the 30th day of June, 2024.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Seeks to Implement E-invoicing for the Taxpayers having Aggregate Turnover Exceeding Rs. 5 Cr from 1st August 2023

Notification
No. 10/2023 – Central Tax

New Delhi, the 10th May, 2023

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 August, 2023, for the words "ten crore rupees", the words "five crore rupees" shall be substituted.

[F. No. CBIC- 20021/1/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated the 21st March, 2020 and was last amended vide notification No. 17/2022-Central Tax, dated the 1st August, 2022, published vide number G.S.R. 612(E), dated the 1st August, 2022.

Seeks to Extend the Due Date for Furnishing FORM GSTR-1 for April, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur.

Notification
No. 11/2023- Central Tax

New Delhi, the 24th May, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

In the said notification, after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the tax period April, 2023, for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act whose principal place of business is in the State of Manipur, shall be extended till the thirty-first day of May, 2023.".

2. This notification shall be deemed to have come into force with effect from the 11th day of May, 2023.

[F. No. CBIC- 20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 25/2022 –Central Tax, dated the 13th December, 2022, published in the Gazette of India, Extraordinary vide number G.S.R. 877(E), dated the 13th December, 2022.

Seeks to Extend the Due Date for Furnishing FORM GSTR-3B for April, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 12/2023 – Central Tax

New Delhi, the 24th May, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of April, 2023 till the thirty-first day of May, 2023, for the registered persons whose principal place of business is in the State of Manipur and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall be deemed to have come into force with effect from the 20th day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Seeks to extend the due date for furnishing FORM GSTR-7 for April, 2023 for registered persons whose principal place of business is in the State of Manipur

Notification
No. 13/2023–Central Tax

New Delhi, the 24th May, 2023

G.S.R.....(E).– In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, after the fourth proviso, the following proviso shall be inserted, namely: –

"Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the month of April, 2023, whose principal place of business is in the State of Manipur, shall be furnished electronically through the common portal, on or before the thirty-first day of May, 2023.".

2. This notification shall be deemed to have come into force with effect from the 10th day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 26/2019 –Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 20/2020 –Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 203(E), dated the 23rd March, 2020.

Seeks to Extend the Due Date for furnishing FORM GSTR-1 for April and May, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 14/2023- Central Tax

New Delhi, the 19th June, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

In the said notification, in the fourth proviso:-

(i) for the words, letter and figure — tax period April, 2023‖ the words, letter and figure — tax periods April 2023 and May 2023‖ shall be substituted;

(ii) for the words, letters and figure —thirty-first day of May, 2023‖, the words, letter and figure —thirtieth day of June, 2023‖ shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 11/2023 –Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 384(E), dated the 24th May, 2023.

Seeks to Extend the Due Date for Furnishing FORM GSTR-3B for April and May, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 15/2023 – Central Tax

New Delhi, the 19th June, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2023 – Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 385(E), dated the 24th May, 2023, namely: — (i) for the words, letter and figure — month of April, 2023‖ the words, letter and figure — months of April, 2023 and May, 2023‖ shall be substituted; (ii) for the words, letters and figure —thirty-first day of May, 2023‖, the words, letter and figure — thirtieth day of June, 2023‖ shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 12/2023 –Central Tax, dated the 24th May, 2023 was published in the Gazette of India, Extraordinary vide number G.S.R. 385(E), dated the 24th May, 2023.

Seeks to Extend the Due Date for furnishing FORM GSTR-7 for April and May, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur.

Notification
No. 16/2023–Central Tax

New Delhi, the 19th June, 2023

G.S.R.....(E).–In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax

Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, in the fifth proviso:- (i) for the words, letter and figure " month of April, 2023" the words, letter and figure " months of April 2023 and May 2023" shall be substituted; (ii) for the words, letters and figure "thirty-first day of May, 2023", the words, letter and figure "thirtieth day of June, 2023" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F.No.CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 26/2019 –Central Tax, dated the 28thJune, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 13/2023 –Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 386(E), dated the 24th May, 2023.

Extension of Due Date for Filing of Return in FORM GSTR-3B for the Month of May 2023 for the Persons Registered in the Districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the State of Gujarat upto 30th June 2023.

Notification
No. 17/2023 – Central Tax

New Delhi, the 27th June, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of May, 2023 till the thirtieth day of June, 2023, for the registered persons whose principal place of business is in the the districts of Kutch,

Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall be deemed to have come into force with effect from the 20th day of June, 2023.

[F. No. CBIC-20006/16/2023-GST]
(Alok Kumar)
Director

Seeks to Extend the Due Date for furnishing FORM GSTR-1 for April, May and June, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 18/2023- Central Tax

New Delhi, the 17th July, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

In the said notification, in the fourth proviso:-

(i) for the words, letter and figure “tax periods April 2023 and May 2023”, the words, letter and figure “tax periods April 2023, May 2023 and June 2023” shall be substituted;

(ii) for the words, letters and figure “thirtieth day of June, 2023”, the words, letter and figure “thirty-first day of July, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 14/2023 –Central Tax, dated the 19th June, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 448(E), dated the 19th June, 2023.

Seeks to Extend the Due Date for Furnishing FORM GSTR-3B for April, May and June, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 19/2023 – Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2023 – Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 385(E), dated the 24th May, 2023, namely: — (i) for the words, letter and figure "months of April, 2023 and May, 2023" the words, letter and figure "months of April, 2023, May, 2023 and June, 2023" shall be substituted; (ii) for the words, letters and figure "thirtieth day of June, 2023", the words, letter and figure "thirty-first day of July, 2023" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 12/2023 –Central Tax, dated the 24th May, 2023 was published in the Gazette of India, Extraordinary vide number G.S.R. 385(E), dated the 24th May, 2023 and was last amended by notification No. 15/2023 –Central Tax, dated the 19th June, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 449(E), dated the 19th June, 2023.

Seeks to Extend the Due Date for Furnishing FORM GSTR-3B for Quarter ending June, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 20/2023 – Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the quarter ending June, 2023 till the thirty-first day of July, 2023, for the registered persons whose principal place of business is in the State of Manipur and are required to furnish return under proviso to sub-section (1) of section 39 read with clause (ii) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Seeks to Extend the Due Date for Furnishing FORM GSTR-7 for April, May and June, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 21/2023–Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).–In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, in the fifth proviso:-

(i) for the words, letter and figure “months of April 2023 and May 2023” the words, letter and figure “months of April 2023, May 2023 and June 2023” shall be substituted;

(ii) for the words, letters and figure “thirtieth day of June, 2023”, the words, letter and figure “thirty-first day of July, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F.No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 26/2019 –Central Tax, dated the 28thJune, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 16/2023 –Central Tax, dated the 19th June, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 450(E), dated the 19th June, 2023.

Seeks to Extend Amnesty for GSTR-4 Non-filers

Notification
No. 22/2023 – Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, 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, in the seventh proviso, for the words, letter and figure “30th day of June, 2023” the words, letter and figure “31st day of August, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 73/2017– Central Tax, dated the 29th December, 2017 was 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 and was last amended vide notification number 02/2023 – Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 245(E), dated the 31st March, 2023.

Seeks to Extend Time Limit for Application for Revocation of Cancellation of Registration

Notification
No. 23/2023 – Central Tax

New Delhi, dated the 17th July, 2023

G.S.R.....(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 03/2023–Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 246(E), dated the 31st March, 2023, namely: — In the said notification, for the words, letter and figure “30th day of June, 2023” the words, letter and figure “31st day of August, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 03/2023– Central Tax, dated the 31st March, 2023 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 246(E), dated the 31st March, 2023.

Seeks to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62

Notification
No. 24/2023 – Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes

the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 06/2023– Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 249(E), dated the 31st March, 2023, namely: — In the said notification, for the words, letter and figure "30th day of June, 2023" the words, letter and figure "31st day of August, 2023" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 06/2023– Central Tax, dated the 31st March, 2023 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 249(E), dated the 31st March, 2023.

Seeks to Extend amnesty for GSTR-9 Non-filers

Notification
No. 25/2023 – Central Tax

New Delhi, dated the 17th July, 2023

G.S.R.....(E).– In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 07/2023– Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 250(E), dated the 31st March, 2023, namely: — In the said notification, in the proviso, for the words, letter and figure "30th day of June, 2023" the words, letter and figure "31st day of August, 2023" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 07/2023– Central Tax, dated the 31st March, 2023 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 250(E), dated the 31st March, 2023.

Seeks to Extend Amnesty for GSTR-10 Non-filers

Notification
No. 26/2023 – Central Tax

New Delhi, dated the 17th July, 2023

S.O.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 08/2023–Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1563(E), dated the 31st March, 2023, namely: —

In the said notification, for the words, letter and figure “30th day of June, 2023” the words, letter and figure “31st day of August, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 08/2023– Central Tax, dated the 31st March, 2023 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1563(E), dated the 31st March, 2023.

Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021)

Notification
No. 27/2023–Central Tax

New Delhi, dated the 31st July, 2023

S.O. …..(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2021 (13 of 2021), the Central

Government hereby appoints the 1st day of October, 2023, as the date on which the provisions of section 123 of the said Act shall come into force.

[F.No.CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Notify the Provisions of Sections 137 to 162 of the Finance Act, 2023 (8 of 2023).

Notification
No. 28/2023–Central Tax

New Delhi, dated the 31st July, 2023

S.O. …..(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2023 (8 of 2023), the Central Government hereby appoints, —

(a) the 1st day of October, 2023, as the date on which the provisions of sections 137 to 162 (except sections 149 to 154) of the said Act shall come into force;

(b) the 1st day of August, 2023, as the date on which the provisions of sections 149 to 154 of the said Act shall come into force.

[F.No.CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Notify Special Procedure to be followed by a Registered Person pursuant to the Directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018

Notification
No. 29/2023 – Central Tax

New Delhi, dated the 31st July, 2023

S.O.(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person or an officer referred to in sub-section (2) of Section 107 of the said Act who intends to file an appeal against the order passed by the proper officer under section 73 or 74 of the said Act in accordance with Circular No. 182/14/2022-GST, dated 10th of November, 2022 pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.

2. An appeal against the order shall be made in duplicate in the Form appended to this notification at ANNEXURE-1 and shall be presented manually before the Appellate Authority within the time specified in sub-section (1) of section 107 or sub-section (2) of section 107 of the said Act, as the case may be, and such time shall be computed from the date of issuance of this notification or the date of the said order, whichever is later:

Provided that any appeal against the order filed in accordance with the provisions of section 107 of the said Act with the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification.

3. The appellant shall not be required to deposit any amount as referred to in sub-section (6) of section 107 of the said Act as a pre-condition for filing an appeal against the said order.

4. An appeal filed under this notification shall be accompanied by relevant documents including a self-certified copy of the order and such appeal and relevant documents shall be signed by the person specified in sub-rule (2) of rule 26 of Central Goods and Services Tax Rules, 2017.

5. Upon receipt of the appeal which fulfills all the requirements as provided in this notification, an acknowledgement, indicating the appeal number, shall be issued manually in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the appeal shall be treated as filed only when the aforesaid acknowledgement is issued.

6. The Appellate Authority shall, along with its order, issue a summary of the order in the Form appended to this notification as ANNEXURE-2.

F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Notify Special Procedure to be followed by a Registered Person Engaged in Manufacturing of Certain Goods

Notification
No. 30/2023–Central Tax

New Delhi, dated the 31st July,2023

S.O.(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act,2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule appended to this notification, and falling under the tariff item, sub- heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, namely: —

1. Details of Packing Machines

(1) All the existing registered persons engaged in manufacturing of the goods mentioned in Schedule to this notification shall furnish the details of packing machines being used for filling and packing of pouches or containers in FORM SRM-I, within 30 days of issuance of this notification, electronically on the common portal,—

S. No.	Make and Model No. of the Machine (including the name of manufacturer)	Date of Purchase of the Machine	Address of place of business where installed	No. of Tracks	Packing Capacity of each track	Total packing capacity of machine	Electricity consumption by the machine per hour	Supporting Documents	Unique ID of the machine (to be auto populated)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
								<<Capacity certificate from Chartered Engineer>>	

(2) Any person intending to manufacture goods as mentioned in Schedule to this notification, and who has been granted registration after the issuance of this notification, shall furnish the details of packing machines being used for filling and packing of pouches or containers in

FORM SRM-I on the common portal, within fifteen days of grant of such registration.

(3) The details of any additional filling and packing machine being installed in the registered place of business shall be furnished, electronically on the common portal, by the said registered person within 24 hours of such installation in FORM SRM-IIA.

(4) Upon furnishing of such details in FORM SRM-I or FORM SRM-IIA, a unique ID shall be generated for each machine, whose details have been furnished by the registered person, on the common portal.

(5) In case, the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organization, the same shall be furnished by the said registered person in FORM SRM-IA on the common portal, within fifteen days of filing said declaration or submission:

Provided that where the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organization, before the issuance of this notification, the same shall be furnished by the said registered person in FORM SRM-IA on the common portal, within thirty days of issuance of this notification.

Serial No.	Name of Govt. Department/ any other agency or organization	Type of Declaration/ Submission	Details of Declaration/ Submission
(1)	(2)	(3)	(4)
		<<copy of declaration to be uploaded on the portal>>	

S. No.	Make and Model No. of the Machine (including the name of manufacturer)	Date of Purchase of the Machine	Date of installation of the Machine	Address of place of business where installed	No. of Tracks	Packing Capacity of each track	Total packing capacity of machine	Electricity consumption by the machine per hour	Supporting Documents	Unique ID of the machine (to be auto populated)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
									<<Capacity certificate from Chartered Engineer>>	

(6) The details of any existing filling and packing machine removed from the registered place of business shall be furnished, electronically on the common portal, by the said registered person within 24 hours of such removal in FORM SRM-IIB.

S. No.	Unique ID of the machine	Make and Model No. of the Machine <<auto-populated>>	Date of Purchase of the Machine <<auto-populated>>	Address of place of business from where the machine is removed. <<auto-populated>>	No. of Tracks <<auto-populated>>	Packing Capacity of each track <<auto-populated>>	Total packing capacity of machine <<auto-populated>>	Date of Removal	Reasons for removal/ disposal of the machine.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
									<<Sold to third party>> <<Scrap>>

2. Additional records to be maintained by the registered persons manufacturing the goods mentioned in the Schedule

(1) Every registered person engaged in manufacturing of goods mentioned in Schedule shall keep a daily record of inputs being procured and utilized in quantity and value terms along with the details of waste generated as well as the daily record of reading of electricity meters and generator set meters in a format as specified in FORM SRM-IIIA in each place of business.

(2) Further, the said registered person shall also keep a daily shift-wise record of machine-wise production, product-wise and brand-wise details of clearance in quantity and value terms in a format as specified in FORM SRM-IIIB in each place of business.

FORM SRM-IIIA
Inputs Register

Day 1	HSN of the Input	Description of the Input	Unit quantity	Opening Balance (in units)	Quantity procured (in units)	Quantity procured (value in Rs)	Qty Consumed (in units)	Closing Balance (in units)	Waste generated in respect of the said input (qty) (in units)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	HSN1								
	HSN2								
	HSN3								

	. . . . .								
Day 2	Electricity Reading								
Day 3									
.....									
Last Day of Month									

FORM SRM-IIIB
Production Register

	Electricity meter reading			Electricity meter reading		
Day 1	**Initial Meter Reading**	**Final Meter Reading**	**Consumption (kwH)**	**Initial Meter Reading**	**Final Meter Reading**	**Consumption (kwH)**
	(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
Day 2						
.....						
Last Day of Month						

Day 1		Brand B1											Brand B2	Brand Bn
		Machine M1(Mention Unique ID of the machine)								**M2**	**Mn**	**Total of all machines**		
		Total no. of Pouch P1 packed	Unit Value Of Pouch P1	Total Value Of Pouches P1 Packed (V1) (in Rs)	Total no. of Pouch …Pn packed	Value Of Pouch … Pn	Total Value Of Pouches Pn Packed (Vn) (in Rs)	Total No. of pouches Packed by Machine M1 (P1 + P2 + .. Pn)	Total value of Pouches packed By machine M1 (in Rs) (V1 + V2 + .. Vn)	…	…	Total Production value of Brand B1 by all machines (Rs)	.....	.....
	Shift 1 00:00 to 00.00 hrs													
	Shift 2 00:00 to 00.00 hrs													
	Shift 3 00:00 to 00.00 hrs													
	Total for Day 1													

Day 1														
.... Dayn of the month														
	Total for the Month													

3. Special Monthly Statement

(1) The said registered person shall submit a special statement for each month in FORM SRM-IV on the common portal, on or before the tenth day of the month succeeding such month.

FORM SRM-IV

Monthly Statement of Inputs used and the final goods produced by the manufacturer of goods specified in Schedule

PART-A

	HSN of the Input	Description of the Input	Unit quantity	Opening Balance (in units)	Quantity procured (in units)	Quantity procured (value in Rs)	Qty Consumed (in units)	Closing Balance (in units)	Waste generated qty (in units)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Total for Month	*HSN1*								
	HSN2								
	HSN3								
	...								
	HSNn								

	Electricity Reading					
	Electricity Reading			DG set meter reading		
Total for the Month	Initial Meter Reading on Day 1 of the month	Final Meter Reading on last day of the month	Consumption (kwH)	Initial Meter Reading on Day 1 of the month	Final Meter Reading on last day of the month	Consumption (kwH)
	(1)	(2)	(3)	(4)	(5)	(6)

	Brand B1											Brand B2	Brand Bn
	Machine M1								**M2**	**Mn**	**Total of all machines**		
	Total no. of Pouch P1 packed	MRP Value Of Pouch P1	Total Value Of Pouches P1 Packed (V1) (in Rs)	Total no. of Pouch Pn packed	Value Of Pouch Pn	Total Value Of Pouches Pn Packed (Vn) (in Rs)	Total No. of pouches Packed by Machine M1 (P1 + P2 + .. Pn)	Total value of Pouches packed By machine M1 (in Rs) (V1 + V2 + .. Vn)	…	– – –	Total Production value of Brand B1 by all machines (Rs)	⋮	⋮
Total for the Month													

Schedule

S. No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	**(2)**	**(3)**
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube) – bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube) – bearing abrand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	‘Hookah’ or ‘gudaku’ tobacco bearing a brand name
6.	2403 11 10	Tobacco used for smoking ‘hookah’ or ‘chilam’ commonly known as ‘hookah’ tobacco or ‘gudaku’ not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	“Homogenised” or “reconstituted” tobacco, bearing a brand name
12	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff

19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco 'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name

Explanation.–

(1) In this Schedule, "tariff item", "heading", "sub-heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 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.

(3) For the purposes of this notification, the phrase "brand name" means brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

[F.No.CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Amend Notification No. 27/2022 dated 26.12.2022

Notification
No. 31/2023- Central Tax

New Delhi, dated the 31st July, 2023

G.S.R.….(E).—In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central

Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue) No. 27/2022-Central Tax, dated the 26th December, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R. 903(E), dated the 26th December, 2022, namely:-

In the said notification, after the words, “State of Gujarat”, the words “and the State of Puducherry” shall be inserted.

[F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Note: - The principal Notification No. 27/2022- Central Tax, dated the 26th December, 2022, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022 and was last amended, vide notification number 05/2023 – Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 248(E), dated the 31st March, 2023.

Seeks to Exempt the Registered Person whose Aggregate Turnover in the Financial Year 2022-23 is up to Two Crore Rupees, from Filing Annual Return for the said Financial Year

Notification
No. 32/2023 – Central Tax

New Delhi, dated the 31st July, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the first proviso to section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby exempts the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.

[F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Notify "Account Aggregator" as the Systems with which Information may be Shared by the Common Portal under section 158A of the CGST Act, 201

Notification
No. 33/2023 – Central Tax

New Delhi, dated the 31st July, 2023

G.S.R....(E),— In exercise of the powers conferred by section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies "Account Aggregator" as the systems with which information may be shared by the common portal based on consent under Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017).

2. This notification shall come into force with effect from the 1st day of October, 2023.

Explanation: For the purpose of this notification, "Account Aggregator" means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

[F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Waive the Requirement of Mandatory Registration under section 24(ix) of CGST Act for Person Supplying Goods through ECOs, Subject to Certain Conditions

Notification
No. 34/2023- Central Tax

New Delhi, dated the 31st July, 2023

G.S.R. .....(E).— In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby specifies the persons

making supplies of goods through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with the provisions of sub-section (1) of section 22 of the said Act, as the category of persons exempted from obtaining registration under the said Act, subject to the following conditions, namely: —

(i) such persons shall not make any inter-State supply of goods;

(ii) such persons shall not make supply of goods through electronic commerce operator in more than one State or Union territory;

(iii) such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961);

(iv) such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961), address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;

(v) such persons have been granted an enrolment number on the common portal on successful validation of the Permanent Account Number declared as per clause (iv);

(vi) such persons shall not be granted more than one enrolment number in a State or Union territory;

(vii) no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.

2. This notification shall come into force with effect from the 1st day of October, 2023.

[F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Appoint Common Adjudicating Authority in respect of Show Cause Notices in favour of against M/s BSH Household Appliances Manufacturing Pvt Ltd.

Notification
No. 35 /2023-Central Tax

New Delhi, dated the 31st July, 2023

S.O.—..In exercise of the powers conferred by section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Board, hereby appoint officers mentioned in column (5) of the Table below to act as the Authority to exercise the powers and discharge the duties conferred or imposed on officers mentioned in column (4) of the said Table in respect of noticees mentioned in column (2) of the said Table for the purpose of adjudication of notices mentioned in column (3) of the said Table, namely:-

Table

S. No.	Name of Noticees and Address	Notice Number and Date	Name of Adjudicating Authorities	Name of the Authority
(1)	(2)	(3)	(4)	(5)
1	BSH Household Appliances Manufacturing Pvt. Ltd, Situated 2nd Floor, Arena House, Plot No. – 103, Road No. -12, MIDC, Andheri (East), Mumbai-400093	03/CGST/ME/ Div-X/Supdt/ BSH/2022-23 dated 16.03.2023 issued vide F.No. CGST-A2/ MUM/G-29/BSH/ 5693/5335/2021/9893 to 9896 Dt. 16.03.2023	Superintendent, Division-X, CGST and Central Excise Mumbai East Commissionerate	Joint or Additional Commissioner of Central Tax, Bengaluru South Central Excise and GST Commissionerate
2.	BSH Household Appliances Manufacturing Pvt. Ltd, 4th Floor, South Tower KRM Plaza No. 2, Harrington Road, Chetpet, Chennai-600031	02/2023-GST CH.N (ADC) dated 27.03.2023 issued vide C.NoGEXCOM/ADJN/ GST/ADC/684/2022 Dt. 27.03.2023	Additional Commissioner, CGST and Central Excise Chennai North Commissionerate	
3.	BSH Household Appliances Manufacturing Pvt. Ltd,No-8, GF & FF, 15th Cross, JP Nagar, 6th Phase, Bengaluru Urban, Karnataka-560078	58/2022-23 dated 03.03.2023 issued vide C.No.GEXCOM/ADJN/ GST/ADC/721/2022-ADJN Dt. 03.03.2023	Joint or Additional Commissioner of Central Tax, Bengaluru South Central Excise and GST Commissionerate	

[F.No.CBIC-20016/16/2023-GST]
(Alok Kumar)
Director

Clarification Regarding GST Rates and Classification of Certain Goods

Circular No. 189/01/2023-GST

North Block, New Delhi
Date: 13th January, 2023

To,

The Principal Chief Commissioners/ Principal Directors General,
The Chief Commissioners/ Directors General,
The Principal Commissioners/ Commissioners of
Central Excise & Central Tax

Madam/ Sir,

Subject: Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022 –reg.

Based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022, clarifications, with reference to GST levy, related to the following are being issued through this circular:

2. Rab -classifiable under Tariff heading 1702:

2.1 Representation has been received seeking clarification regarding the classification of "Rab". It has been stated that under the U.P. Rab (Movement Control Order), 1967, "Rab" means 'massecuite prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but does not include khandsari molasses or lauta gur.' Although, a product of sugarcane, Rab exists in semi-solid/liquid form, and is thus not covered under heading 1701. The Hon'ble Supreme Court in its order in Krishi Utpadan Mandi Samiti vs. M/s Shankar Industries and others [1993 SCR (1)1037] has distinguished Rab from Molasses. Thus, Rab being distinguishable from molasses is not classifiable under heading 1703.

2.2 Accordingly, it is hereby clarified that Rab is appropriately classifiable under heading 1702 attracting GST rate of 18% (S. No. 11 in Schedule III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017).

3. Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni:

3.1 Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni.

3.2 The GST council in its 48th meeting has recommended to fully exempt the supply of subject goods, irrespective of its end use. Hence, with effect from the 1st January, 2023, the said goods shall be exempt under GST vide S. No. 102C of schedule of notification No. 2/2017- Central Tax (Rate), dated 28.06.2017.

3.3 Further, as per recommendation of the GST Council, in view of genuine doubts regarding the applicability of GST on subject goods, matters that arose during the intervening period are hereby regularized on "as is" basis from the date of issuance of Circular No. 179/11/2022-GST, dated the 3rd August, 2022, till the date of coming into force of the above-said S. No. 102C and the entries relating thereto. This is in addition to the matter regularized on as is basis vide para 8.6 of the said Circular.

4. Clarification regarding 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice':

4.1 Representations have been received seeking clarification regarding the applicable six-digit HS code for 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'.

4.2 On the basis of the recommendation of the GST council in its 45th meeting, a specific entry has been created in notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and notification No. 1/2017- Compensation Cess (Rate), dated the 28th June, 2017, vide S. No. 12B in Schedule IV and S. No. 4B in Schedule respectively, with effect from the 1st October, 2021, for goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'.

4.3 It is hereby clarified that the applicable six-digit HS code for the aforesaid goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice' is HS 2202 99. The said goods attract GST at the rate of 28% and Compensation Cess at the rate of 12%. The S. Nos. 12B and 4B mentioned in Para 4.2 cover all such carbonated beverages that contain carbon

dioxide, irrespective of whether the carbon dioxide is added as a preservative, additive, etc.

4.4 In order to bring absolute clarity, an exclusion for the above-said goods has been provided in the entry at S. No. 48 of Schedule-II of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017, vide notification No. 12/2022-Central Tax (Rate), dated the 30th December, 2022.

5. Applicability of GST on Snack pellets manufactured through extrusion process (such as 'fryums'):

5.1 Representations have been received seeking clarification regarding classification and applicable GST rate on snack pellets manufactured through the process of extrusion (such as 'fryums').

5.2 It is hereby clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

6. Applicability of Compensation cess on Sports Utility Vehicles (SUVs):

6.1 Representations have been received seeking clarification about the specifications of motor vehicles, which attract compensation cess at the rate of 22% vide entry at S. No. 52B of notification No. 01/2017 Compensation Cess (Rate), dated 28th June, 2017.

6.2 In this regard, it is clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: -these are popularly known as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.

6.3 This clarification is confined to and is applicable only to Sports Utility Vehicles (SUVs).

7. Applicability of IGST rate on goods specified under notification No. 3/2017-Integrated Tax (Rate):

7.1 Representations have been received expressing doubts regarding the applicable IGST rate on goods specified in the list annexed

to notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017.

7.2 On the basis of the recommendation of the GST Council in its 47th Meeting, held in June 2022, the IGST rate has been increased from 5% to 12% on goods, falling under any Chapter, specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, when imported for the specified purpose (like Petroleum operations/Coal bed methane operations) and subject to the relevant conditions prescribed in the said notification. However, some goods specified in the list annexed to notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, are also eligible for a lower schedule rate of 5% by virtue of their entry in Schedule I of notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017.

7.3 Accordingly, it is hereby clarified that on goods specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, which are eligible for IGST rate of 12% under the said notification and are also eligible for the benefit of lower rate under Schedule I of the notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017 or any other IGST rate notification, the importer can claim the benefit of the lower rate.

8. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Dibyalok)
Technical Officer, TRU-I

Clarification Regarding GST Rates and Classification of Certain Services

Circular No. 190/02/2023- GST

North Block, New Delhi
Dated the –13th January, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) /The Principal Director Generals/ Director Generals (All)

Subject: Clarifications regarding applicability of GST on certain services – reg.

Madam/Sir,

Representations have been received seeking clarifications on the following issues:

1. Applicability of GST on accommodation services supplied by Air Force Mess to its personnel;

2. Applicability of GST on incentive paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

The above issues have been examined by GST Council in the 48th meeting held on 17th December, 2022. The issue -wise clarifications are given below:

2. Applicability of GST on accommodation services supplied by Air Force Mess to its personnel:

2.1 Reference has been received requesting for clarification on whether GST is payable on accommodation services supplied by Air Force Mess to its personnel.

2.2 All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

3. Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions:

3.1 Representations have been received requesting for clarification on whether GST is applicable on the incentive paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

3.2 Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs.2000/-.

3.3 The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

3.4 The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive. However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.

3.5 As recommended by the Council, it is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

4. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Anna Sosa Thomas)
Technical Officer, TRU II

Clarification regarding GST Rate and Classification of 'Rab' based on the Recommendation of the GST Council in its 49th meeting held on 18th February 2023 –reg

Circular No. 191/03/2023-GST

North Block, New Delhi
Date: 27th March, 2023

To,

The Principal Chief Commissioners/ Principal Directors General,
The Chief Commissioners/ Directors General,
The Principal Commissioners/ Commissioners of Central Excise & Central Tax

Madam/ Sir,

Subject: Clarification regarding GST rate and classification of 'Rab' based on the recommendation of the GST Council in its 49th meeting held on 18th February, 2023 –reg.

Based on the recommendation of the GST council in its 49th meeting, held on 18th February, 2023, with effect from the 1st March, 2023, 5% GST rate has been notified on Rab, when sold in pre- packaged and labelled, and Nil GST, when sold in other than pre- packaged and labelled.

2. Further, as per the recommendation of the GST Council in the above-said meeting, in view of the prevailing divergent interpretations and genuine doubts regarding the applicability of GST rate on Rab, the issue for past period is hereby regularized on "as is" basis.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Amreeta Titus)
Deputy Secretary, TRU-I

Clarification on Charging of Interest under section 50(3) of the CGST Act, 2017, in Cases of wrong availment of IGST Credit and Reversal thereof.

Circular No. 192/04/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

References have been received from trade requesting for clarification regarding charging of interest under sub-section (3) of section 50 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest under sub-section (3) of section 50 of CGST Act, read with rule 88B of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"), in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

2. Issue has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.	Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit. Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Rules.

2.	Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.	As per proviso to section 11 of Goods and Services Tax (Compensation to States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under subrule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the

Board. Hindi version would follow.
(Sanjay Mangal)
Principal Commissioner (GST)

Clarification to Deal with Difference in Input Tax Credit (ITC) Availed in FORM GSTR-3B as Compared to that Detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021

Circular No. 193/05/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.

Attention is invited to Circular No. 183/15/2022-GST dated 27th December, 2022, vide which clarification was issued for dealing with the difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** for FY 2017-18 and 2018-19, subject to certain terms and conditions.

2. Even though the availability of ITC was subjected to restrictions and conditions specified in Section 16 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") from 1st July, 2017 itself, restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per **FORM GSTR- 2A** were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. W.e.f. 09.10.2019, the said rule allowed availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the invoice furnishing facility (IFF), to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of CGST Act in **FORM GSTR-1** or using the IFF. The said limit was brought down to 10% w.e.f. 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only up to the extent communicated in **FORM GSTR-2B**.

3.1 As discussed above, rule 36(4) of CGST Rules allowed additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019, 01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their **FORM GSTR-1** or IFF, leading to discrepancies between the amount of ITC availed by the registered persons in their returns in **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A**. It may, however, be noted that such availment of input tax credit was

subject to the provisions of clause (c) of sub-section (2) of section 16 of the CGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier. In this context, it is mentioned that rule 36(4) of CGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfilment of conditions of section 16 of CGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

3.2. Though the matter of dealing with difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** has been clarified for FY 2017-18 and 2018-19 vide Circular No. 183/15/2022-GST dated 27th December, 2022, various representations have been received seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A** during the period from 01.04.2019 to 31.12.2021.

4. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

(i) Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, in toto, for the period from **01.04.2019 to 08.10.2019.**

(ii) In respect of period from **09.10.2019 to 31.12.2019**, rule 36(4) of CGST Rules permitted availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using IFF to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using IFF shall not exceed 20 per cent. of the eligible credit available in respect of invoices

or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using IFF. This is clarified through an illustration below:

Illustration:

Consider a case where the total amount of ITC available as per **FORM GSTR-2A** of the registered person was Rs. 3,00,000, whereas, the amount of ITC availed in **FORM GSTR 3B** by the said registered person during the corresponding tax period was Rs. 5,00,000. However, as per rule 36(4) of CGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC in excess of an amount of Rs 3,00,000*1.2 = Rs.3,60,000.

In the above case, the ITC of Rs 1,40,000 which has been availed in excess of Rs. 3,60,000 shall not be admissible as per rule 36(4) of CGST Rules as applicable during the said period even if the requisite certificate as prescribed in Circular No. 183/15/2022-GST dated 27.12.2022 is submitted by the registered person. Therefore, ITC availed in FORM GSTR-3B in excess of that available in FORM GSTR-2A up to an amount of Rs 60,000 only (i.e. 3,60,000-3,00,000) can be allowed subject to production of the requisite certificates as per

(iii) Similarly, for the period from 01.01.2020 to 31.12.2020, when rule 36(4) of CGST Rules allowed additional credit to the tune of 10% in excess of the that reported by the suppliers in their **FORM GSTR-1** or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the IFF shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

(iv) Further, for the period from 01.01.2021 to 31.12.2021, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1

or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of subsection (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the IFF shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

5. It is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

6. Further, it may be noted that proviso to rule 36(4) of CGST Rules was inserted vide Notification No. 30/2020-CT dated 03.04.2020 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide Notification No. 27/2021-CT dated 01.06.2021 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

7. It may also be noted that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

8. These instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

9. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

Clarification on TCS Liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction

Circular No. 194/06/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.

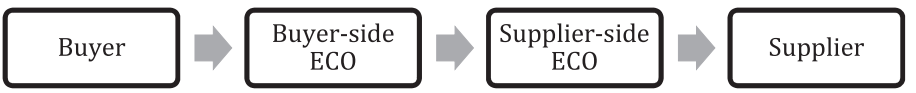
Reference has been received seeking clarification regarding TCS liability under section 52 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

2.1 In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS under Sec 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.

2.2 In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?



Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?

Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on Availability of ITC in Respect of Warranty Replacement of Parts and Repair Services during Warranty Period 09/17/19

Circular No. 195/07/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

Representations have been received from trade and industry that as a common trade practice, the original equipment manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of

charge and as such no separate consideration is charged and received at the time of replacement. It has been represented that suitable clarification may be issued in the matter as unnecessary litigation is being caused due to contrary interpretations by the investigation wings and field formations in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers.

2. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies as follows:

S. No.	Issue	Clarification
1.	There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services. Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
2.	Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or

		repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
3.	Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?	There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer. In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
4.	In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?	(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same. (b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the

		customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty. (c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
5.	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017. Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.
6.	Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	(a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. (b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

Clarification on Taxability of Share Capital held in Subsidiary Company by the Parent Company

Circular No. 196/08/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on taxability of shares held in a subsidiary company by the holding company.

Representations have been received from the trade and field formations seeking clarification on certain issues whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
Taxability of share capital held in subsidiary company by the parent company		
1.	Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of	Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST

	service or not and whether the same will attract GST or not.	Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on Refund-Related Issues

Circular No. 197/09/2023- GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on refund related issues.

References have been received from the field formations seeking clarification on various issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

1. Refund of accumulated input tax credit under Section 54(3) on the basis of that available as per FORM GSTR 2B: -

1.1 In terms of Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, refund of accumulated input tax credit (ITC) is restricted to the input tax credit as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Para 5 of the said circular is reproduced below:

> "5. Guidelines for refunds of Input Tax Credit under Section 54(3):
>
> 5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references

have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent."

1.2 However, in view of the insertion of clause (aa) in sub-section (2) of section 16 of the CGST Act, 2017 w.e.f. 1st January, 2022 vide Notification No. 39/2021-Central Tax dated 21.12.2021, and the amendment in Rule 36(4) of the Central Goods and Services Tax Rules, 1997 (hereinafter referred to as "CGST Rules") w.e.f. 1st January, 2022 vide Notification No. 40/2021- Central Tax dated 29.12.2021, doubts are being raised as to whether the refund of the accumulated input tax credit under section 54(3) of CGST Act shall be admissible on the basis of the input tax credit as reflected in **FORM GSTR-2A** or on the basis of that available as per **FORM GSTR-2B** of the applicant.

1.3 The matter has been examined and it has been decided that since availment of input tax credit has been linked with FORM GSTR-2B w.e.f. 01.01.2022, availability of refund of the accumulated input tax credit under section 54(3) of CGST Act for a tax period shall be restricted to input tax credit as per those invoices, the details of which are reflected in **FORM GSTR-2B** of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. Accordingly, para 36 of Circular No. 125/44/2019-GST dated 18.11.2019, which was earlier modified vide Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, stands modified to this extent. Consequently, Circular No. 139/09/2020-GST dated 10.06.2020, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant, also stands modified accordingly.

1.4 It is further clarified that as the said amendments in section 16(2)(aa) of CGST Act and Rule 36(4) of CGST Rules have been

brought into effect from 01.01.2022, therefore, the said restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per **FORM GSTR-2B** for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards. However, in cases where refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force, the same shall not be reopened because of the clarification being issued by this circular.

2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST dated 18.11.2019.

2.1 Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 provides for an undertaking to be provided by the applicant electronically along with the refund claim in FORM RFD-01 in accordance with the Rule 89(1) of CGST Rules. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 is reproduced below:

> "7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with subsection (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."

2.2 In accordance with the same, the following undertaking was inserted in **FORM GST RFD-01:**

> "I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 read with sub-section (2) of section 42 of the CGST/SGST Act have not been complied with in respect of the amount refunded."

2.3 However, Section 42 of CGST Act has been omitted w.e.f. 1st October, 2022 vide Notification No. 18/2022-CT dated 28.09.2022. Further, an amendment has also been made in Section 41 of the CGST Act, wherein the concept of provisionally accepted input tax credit has been done away with. Besides, **FORM GSTR-2** and FORM GSTR-3 have also been omitted from CGST Rules. In view of this, reference to section 42, **FORM GSTR-2** and FORM GSTR-3 is being deleted from the said para in the Circular as well as from the said undertaking. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 & the undertaking in **FORM GST RFD-01** may, therefore, be read as follows:

> Para 7: "The applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."
>
> Undertaking in FORM GST RFD 01:- "I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST/ SGST Act have not been complied with in respect of the amount refunded."

2.4. Consequentially, Annexure-A to the Circular No. 125/44/2019-GST dated 18.11.2019 also stands amended to the following extent:

i. "Undertaking in relation to sections 16(2)(c) and section 42(2)" wherever mentioned in the column "Declaration/ Statement/Undertaking/Certificates to be filled online" may be read as "Undertaking in relation to sections 16(2)(c)".

ii. "Copy of GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

iii. "Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant

period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

3. Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. 14/2022- CT, dated 05.07.2022.

3.1 Doubts have been raised as regarding calculation of "adjusted total turnover" under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.0222. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule.

3.2 In this regard, it is mentioned that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021 was issued which inter alia clarified 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", needs 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.

3.3 On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

4. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:

4.1 References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received

within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A.of CGST Rules.

4.2 It is mentioned that in terms of sub-rule (1) of rule 96A of the CGST Rules, a registered person availing of the option to export without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of -

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

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

4.3 In this context, it has been clarified inter alia in para 45 of Circular No. 125/44/2019 - GST dated 18.11.2019 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. The same principle should be followed in case of export of services"

4.4 Further, in Para 44 of the aforesaid Circular, it has been 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.

4.5 The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible.

4.6 It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

4.7 It may further be noted that the refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as ”Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on Issue Pertaining to E-invoice

Circular No. 198/10/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on issue pertaining to e-invoice.

Representations have been received seeking clarification with respect to applicability of e-invoice under rule 48(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") w.r.t supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act").

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issue as under:

S. No.	Issue	Clarification
1.	Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of einvoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act?	Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct tax at source as per provisions of section 51 of the CGST/SGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act. Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons

		under the GST law as per provisions of clause (94) of section 2 of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification Regarding Taxability of Services provided by an Office of an Organisation in one State to the Office of that Organisation in another State, both being Distinct Persons

Circular No. 199/11/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act'). The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board,

in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue in succeeding paras.

2. Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: -

S. No.	Issue	Clarification
1.	Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act. In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to

		the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.
2.	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs **when full input tax credit is available to the concerned BOs.**	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides 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. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, **if the recipient BO is eligible for full input tax credit.** Accordingly, in cases **where full input tax credit is available to a BO**, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases **where full input tax credit is available to the recipient**, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.
3.	In respect of internally generated services provided by the HO to BOs, in cases where **full input tax credit is not available to the concerned BO**s, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where **full input tax credit is not available to the concerned BO**.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification Regarding GST Rates and Classification of Certain Goods based on the Recommendations of the GST Council in its 50th Meeting held on 11th July, 2023

Circular No. 200/12/2023-GST

North Block, New Delhi
Dated the 1st August, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/ Sir,

Subject: Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023–reg.

Based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023, clarifications with reference to GST levy related to the following items are being issued through this circular:

i. Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion;
ii. Fish Soluble Paste;
iii. Desiccated coconut;
iv. Biomass briquettes;
v. Imitation zari thread or yarn known by any name in trade parlance;
vi. Supply of raw cotton by agriculturist to cooperatives;
vii. Plates, cups made from areca leaves
viii. Goods falling under HSN heading 9021

2. Applicability of GST on un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion:

2.1 In the 48th meeting of the GST Council, it was clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

2.2 In view of the recommendation of the GST Council in the 50th meeting, supply of uncooked/ un-fried extruded snack pellets, by whatever name called, falling under CTH 1905 will attract GST rate of 5% vide S. No. 99B of Schedule I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 with effect from 27th July,2023. Extruded snack pellets in ready- to-eat form will continue to attract 18% GST under S. No. 16 of Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

2.2 Further, in view of the prevailing genuine doubts regarding the applicability of GST rate on the un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion, the issue for past period upto 27.7.2023 is hereby regularized on "as is" basis.

3. Applicability of GST on Fish Soluble Paste:

3.1 Fish soluble paste attracted 18% under the residual entry S No. 453 of Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017. As per recommendation of the GST Council, GST on fish soluble paste, falling under CTH 2309, has been reduced to 5%. Accordingly, the rate has been notified vide S. No. 108A with effect from 27th July,2023.

3.2 Further, in view of the prevailing genuine doubts regarding the applicability of GST rate on fish soluble paste, the issue for past period upto 27.7.2023 is hereby regularized on "as is" basis.

4. Desiccated coconut- Regularisation of the issue for past period from 01.07.2017 upto and inclusive of 27.07.2017:

As per recommendation of the GST Council, in view of the prevailing genuine interpretational issues regarding the applicability of GST rate on

the desiccated coconut, falling under CTH 0801, the issue for past period from 01.07.2017 up to and inclusive of 27.07.2017 is hereby regularized on "as is" basis.

5. Biomass briquettes- Regularisation of the issue for past period from 01.07.2017 up to and inclusive of 12.10.2017: As per recommendation of the GST Council, in view of the prevailing genuine interpretational issues regarding the applicability of GST rate on the Biomass briquettes, falling under any chapter, the issue for past period from 01.07.2017 up to and inclusive of 12.10.2017 is hereby regularized on "as is" basis.

6. Supply of raw cotton by agriculturist to cooperatives:

6.1 As per recommendation of the GST Council, it is hereby clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply of raw cotton by agriculturist to the cooperatives (being a registered person) attracts 5% GST on reverse charge basis under notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017.

6.2 In view of prevailing genuine doubts, the issue for the past periods prior to issue of this clarification is hereby regularized on "as is basis".

7. GST rate on Imitation Zari thread or yarn known by any name in trade parlance:

7.1 In the 15th Council meeting, the Council agreed to tax embroidery or zari articles i.e., imi, zari, kasab, saima, dabka, chumki, gota, sitara, naqsi, kora, glass beads, badla, gizai at the rate of 5%. Based on the recommendation of the 28th GST Council, it was clarified that imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, would attract a uniform GST rate of 12% under tariff heading 5605.

7.2 As per the recommendation of the GST Council in its 50th meeting, GST on imitation zari thread or yarn known by any name in trade parlance has been reduced from 12% to 5%. Accordingly, the rate has been notified vide S. No. 218AA with effect from 27th July,2023.

7.2 In view of the confusion in the trade regarding the applicability of GST rate on these products, the issue for past period upto 27.7.2023 is hereby regularized on "as is" basis.

8. Plates, cups made from areca leaves

As per the recommendation of the GST Council, issues relating to GST on plates and cups made from areca leaves are hereby regularized on "as is basis" for the period prior to 01.10.2019.

9. GST rate on goods falling under HSN 9021

9.1 Representations have been received seeking clarification regarding the GST rates applicable on trauma, spine and arthroplasty implants falling under HSN heading 9021 for the period before 18.07.2022 stating that there are interpretational issues due to the duality of rates on similar items leading to ambiguity. The issue has arisen as prior to 18.07.2022 there existed two rates on the goods falling under HSN heading 9021 as per S. No. 257 of schedule I and S. No. 221 of schedule II of notification no. 01/2017-CT (Rate) dated 28.06.2017.

9.2 The issue was examined by GST Council in its 47th meeting and as per its recommendations, a single uniform rate of 5% was prescribed for such goods (except hearing aid, which continued to attract Nil under S.N. 142 of 02/2017-CT(Rate)) falling under HSN heading 9021 with effect from 18.07.2022.

9.3 As per recommendations of the GST council in its 50th Meeting, it is hereby clarified that the GST rate on all such goods falling under heading 9021 would attract a GST rate of 5% and in view of prevailing genuine doubts, the issue for the past periods is hereby regularized on "as is basis". However, it is clarified that no refunds will be granted in cases where GST has already been paid at higher rate of 12%.

10. It is further clarified that no refunds will be granted where GST has already been paid in any of the above cases.

11. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Nitin Gupta)
Technical Officer, TRU-I

Clarifications Regarding Applicability of GST on Certain Services

Circular No. 201/13/2023-GST

North Block, New Delhi,
Dated the 1st August, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services – reg.

Representations have been received seeking clarifications on the following issues

1. Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism;

2. Whether supply of food or beverages in cinema hall is taxable as restaurant service.

The above issues have been examined by GST Council in the 50th meeting held on 11th July, 2023. The issue -wise clarifications as recommended by the Council are given below:

Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism:

2. Reference has been received requesting for clarification whether services supplied by a director of a company or body corporate in personal or private capacity, such as renting of immovable property to the company, are taxable under Reverse Charge Mechanism (RCM) or not.

2.1 Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 provides that tax on services supplied by director of a company or

a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism.

2.2 It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

Whether supply of food or beverages in cinema hall is taxable as restaurant service:

3. References have been received requesting for clarification whether supply of food and beverages at cinema halls is taxable as restaurant service which attract GST at the rate of 5% or not.

3.1 As per Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017, "Restaurant Service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."

3.2 Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

3.3 The cinema operator may run these refreshment or eating stalls/ kiosks/ counters or restaurant themselves or they may give it on contract to a third party. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

3.4 It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

a) the food or beverages are supplied by way of or as part of a service, and

b) supplied independent of the cinema exhibition service.

3.5 It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

4. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Rajeev Ranjan)
Under Secretary, TRU