AIFTP

ETHICS EDUCATION EXCELLENCE

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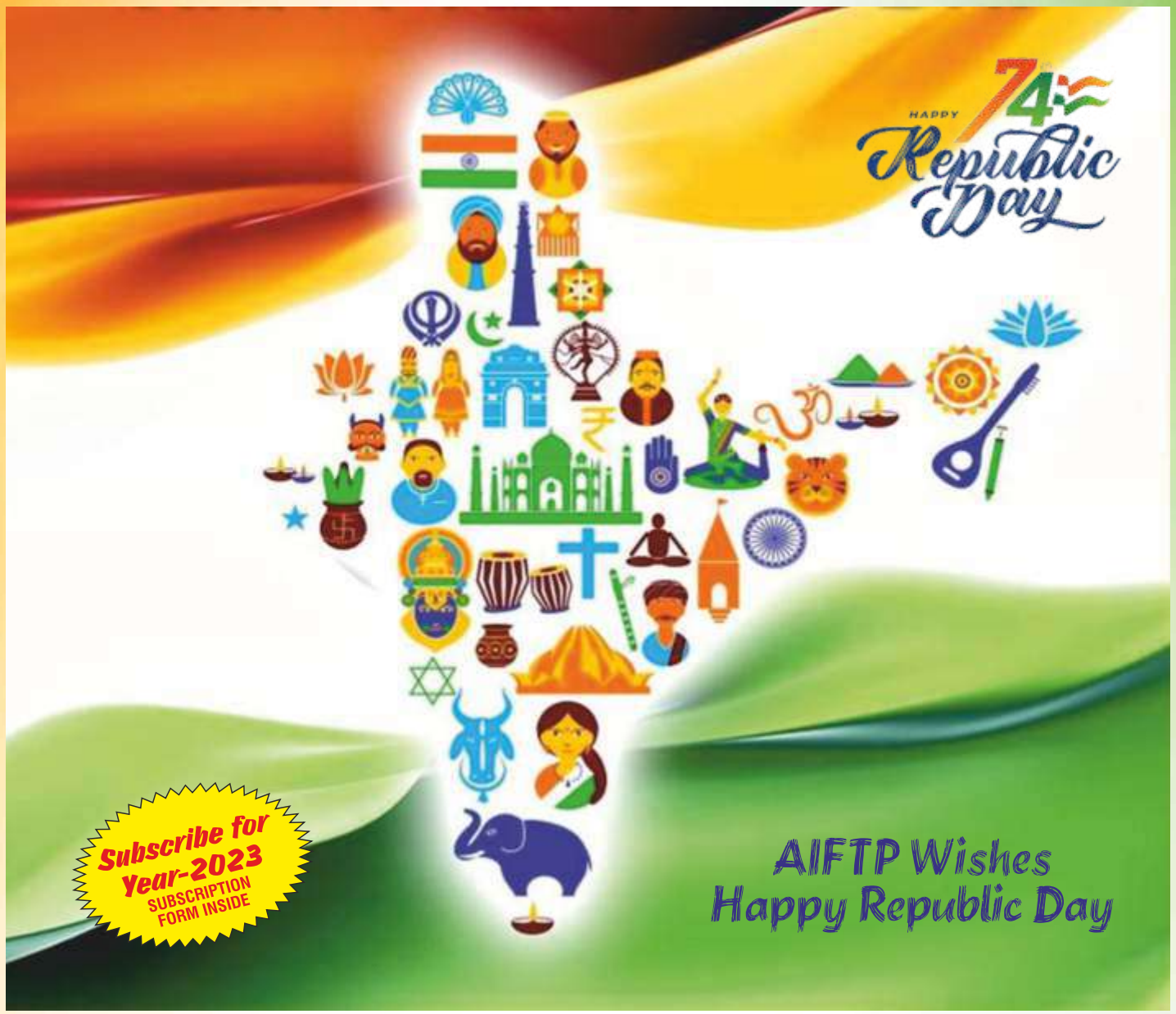

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President's Message

Friends,

The year 2023 is an year of hope, optimism, joy, affection, innovation, artificial intelligence and looking to futuristic trends in life. After almost two year of Covid related issues we are hopeful that 2023 would be a year which would be free of diseases and will bring new buoyancy in the economy.

The New team has taken charge from 1st January, 2023 and we had our first program at Hotel Lalit at New Delhi on 6th January, 2023 which was organized by AIFTP North Zone and West Zone together with Maharashtra Tax Practitioner Association and Sales Tax Bar Association, New Delhi. There was gathering of almost 400 Tax Professionals from throughout India. Credit goes to Mr.Narendra Sonawane of MTPA and Mr. Sripad Bedarkar of MTPA. The special credit goes to Mr. O.P. Shukla, Chairman, North Zone for his efforts and getting registration of around 300+ Members. Sh. AshvinAcharya, Chairman, West Zone also deserves appreciation for the efforts and Coordinating for the program. My thanks to my dear friend Mr. Sanjay Sharma, President, Sales Tax Bar Association.New Delhi for all the support and encouragement.

The next program for month of January is being organized by AIFTP East Zone on 20th - 22nd of January at Kolkata with WBNUJS. It is a National Evaluative Conference on GST @ 5 which will be discussing impact of GST on Central – State physical and the structural and working of GST Law. Office bearer meeting is also called at Kolkata on 20th January, 2023.

We are working to celebrate 26th January i.e. the Republic Day and also planning to organized some programmes in South.

The National Tax Conference and the NEC will be held on Puri on 3rd – 5th February, 2023. The Conference will be organized on a large scale and Speakers from all over India are the star attraction of the NTC. My request to all Members to participate in large number in the Puri NTC &NECIn between of the programmes the budget talk on virtual platform is being organized on 1st & 2nd Feb., 2023 by all Zones. Details of the Budget talks will be circulated shortly.

We are working on connecting the Members of AIFTP to the global world. Accordingly we had decided to launch "AIFTP Global Connect". It will be a search facility on the website of the AIFTP wherein any person can search the presence of AIFTP Member in any city and can connect with him for the professional work etc. Initially we are making it available to all AIFTP Members and shortly the Members who will verify their data and correct the same on the website of the AIFTP will be given priority and will be said to be the AIFTP verified.

I request all to subscribe the AIFTP Indirect Tax Journal and also circulate amongst other Professionals friends, WhatsApp groups and ask them to subscribe this Journal. Journey of this Journal started with the idea conceptualized by Dr. Ashok SarafPast President of AIFTP.

On behalf of AIFTP I convey my best wishes for the happy and prosperous New year, 2023 and a very happy Republic Day.

Regards,

PANKAJ GHIYA

National President, 2023

9829013626

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CHIEF-EDITOR'S COMMUNIQUE

" विद्यां ददाति विनयं विनयाद् याति पात्रताम्।
पात्रत्वात् धनमाप्रोति धनात्धर्मं ततः सुखम्।। "

"Knowledge brings humility; from humility comes worthiness;
with worthiness one attains wealth;
with wealth one is able to perform his duties in a better way;
and in performing his duties one attains happiness."

Friends,

"Here's to a bright New Year and a fond farewell to the old; here's to the things that are yet to come, and to the memories that we hold." I wish a very **Happy New Year** filled with boundless happiness, intellect, strength, endurance and joy to each and every member of AIFTP and family and also to all Tax Practitioners throughout the India. May you have a year filled with prosperity and success.

New team has taken charge under the dynamic leadership of **Mr.Pankaj Ghiya, National President, AIFTP** and **Secretary General Mr. Rajesh Mehta.** At the outset, I would like to thank you all for having bestowed upon me the responsibility for leading this "Indirect Taxes and Corporate Law Journal" as the **Chief Editor** for the year 2023.I would like to give my special thank to our dynamic and vibrant National Presid**e**nt- Mr.PankajGhiya for having shown his trust in me for the same.

Journey of this Journal, started with the idea conceptualized by **Dr. Ashok Saraf**, past President of AIFTP and immediately, we started working on it and released the journal within a month of conceptualization. Initially, it was continued free of cost since then and last year, it was felt that a nominal amount should be fixed for the subscription of it. Therefore, Last year we moved to subscription model for this journal. The Journal has been applauded by the Professionals and it has received wide acceptance and the Articles contained in the Journal are on the recent issues and controversies and amendments. The eminent Professionals had been contributing Articles in the Journal regularly and we are also covering RERA, FEMA and Companies Act apart from GST.

With the change of year, renewal of subscription is due for Year 2023. So I request you all to renew your subscription if due and circulate the information of subscription to all the professionals and friends in all the Whats app groups/ Facebook posts or twitter handler, so that we may get more subscription for this Journal.

It is important for us as professional to be updated and to be aware of the latest changes and judicial decisions. The impact of the any amendment, clarification or interpretation can be far reaching and accordingly the continuous education and updation is must. In this journal, we try to cover latest updates, amendments and judgments etc.

We are also grateful to the contributors to this journal who had been sending Articles, updates, judgments etc. Support of all the professionals by way of advertisement/subscription is also needed.

We also request you to kindly send your Articles, important judgments or updates for publishing in the journal at the mail Id aiftpjournal@gmail.com.

I also wish you a very **"HAPPY REPUBLIC DAY".**

"JAI HIND, JAI BHARAT"

Regards,

Deepak Khandelwal

Chief Editor

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TIMELINE - GST

Adv. Abhay Singla

A. GOODS & SERVICE TAX

Sr. No.	Particulars	Form	Period	Due Date
(i)	Monthly Summary GST Return	GSTR-3B		
	(a) Regular Taxpayers		January, 2023	20th Feb 2023
			Feburary, 2023	20th March 2023
(ii)	Detail of Outward Supplies: -	GSTR-1 (QUARTERLY)	Jan, 2023 (IFF)	13th Feb 2023
	(a) QRMP		Feb, 2023 (IFF)	13th March 2023
	(b) Monthly Filing	GSTR-1	January, 2023	11th Feb 2023
			Feburary, 2023	11th March 2023
(iii)	Payment of Tax under QRMP	PMT-06	By 25th of next month	
(iv)	Quarterly return for Composite taxable persons	CMP-08	Jan-March 2023	18th April 2023
(v)	Return for Non-resident taxable person	GSTR-5	Non-resident taxpayers have to file GSTR-5 by 20th of next month.	
(vi)	Details of supplies of OIDAR Services by a person located outside India to Non-taxable person in India	GSTR-5A	Those non-resident taxpayers who provide OIDAR services have to file GSTR-5A by 20th of next month.	
(vii)	Details of ITC received by an Input Service Distributor and distribution of ITC.	GSTR-6	The input service distributors have to file GSTR-6 by 13th of next month.	
(viii)	Return to be filed by the persons who are required to deduct TDS (Tax deducted at source) under GST.	GSTR-7	January, 2023	10th Feb 2023
			Feburary, 2023	10th March 2023
(ix)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	January, 2023	10th Feb 2023
			Feburary, 2023	10th March 2023

RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

CA Ribhav Ghiya

NOTIFICATIONS–CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
04.01.2023	01/2023-Central Tax	To assign powers of Superintendent of central tax to Additional Assistant Directors in DGGI, DGGST and DG Audit.
26.12.2022	27/2022-Central Tax	Notification under sub-rule (4B) of rule 8 of CGST Rules, 2017
26.12.2022	26/2022-Central Tax	Seeks to make fifth amendment (2022) to CGST Rules

CIRCULARS–CENTRAL TAX

DATE	CIRCULAR NO.	REMARKS
13.01.2023	190/02/2023-GST	clarification regarding GST rates and classification of certain services.
13.01.2023	189/01/2023-GST	clarification regarding GST rates and classification of certain goods.
27.12.2022	188/20/2022-GST	Prescribing manner of filing an application for refund by unregistered persons
27.12.2022	187/19/2022-GST	Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016
27.12.2022	186/18/2022-GST	Clarification on various issue pertaining to GST
27.12.2022	185/17/2022-GST	Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation
27.12.2022	184/16/2022-GST	Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017
27.12.2022	183/15/2022-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 FY 2017-18 and 2018-19

HSN SYSTEM OF CLASSIFICATION OF GOODS UNDER GST

CA S Venkataramani

CA Siddeshwar Yelamali

I. Introduction

1. Goods and Services Tax (for brevity, GST) has subsumed the erstwhile indirect taxes (among others) such as Excise Duty, Service Tax, Countervailing Duty (CVD), Special Additional Duty of Customs (SAD), Value Added Tax (VAT), Central Sales Tax (CST), Octroi, Entry Tax, Luxury Tax, Entertainment tax etc., from the appointed day viz., 01.07.2017. The objective of the GST law is to remove the multiple tax levies thereby reducing the complexity and remove the effect of cascading of taxes.

2. GST is a combination of three taxes – Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST) / Union Territory Goods and Services Tax (UTGST) and Integrated Goods and Services Tax (IGST). CGST and SGST shall be levied on all intra-State supply of goods or services or both and IGST shall be levied on inter-State supply of goods or services or both. The rate at which the tax is levied is based on the classification / description of goods and category of services supplied. In short, the GST on the supply of goods is payable based on the classification of goods in terms of the First Schedule to the Customs Tariff Act, 1975.

II. Levy, Rate of tax and Classification

a. Levy[1]: The levy of tax shall be on allintra-State supply / inter-State supply of goods or services or both on the value determined in terms of section 15 of the CGST Act, 2017 at such rates as may be notified by the Government on the recommendations of the Council and in such manner as may be prescribed. The said tax shall be paid by the taxable person.

b. Rate of tax[2] and Classification[3]: The Central Government and the State Governments have issued notifications specifying the rate of tax based on

[1]Section 9 of the CGST / SGST Act, 2017 and Section 5 of the IGST Act, 2017
[2]Notification No. 1/2017 – Central Tax (Rate) / State Tax (Rate) dated 28.06.2017
[3]Explanation (iii) to the Notification No. 1/2017 – Central Tax (Rate) / State Tax (Rate) dated 28.06.2017

the classification / description of goods with reference to the chapter heading, sub-heading and tariff item.It is also notified that the 'tariff item', 'sub-heading', 'heading' and 'chapter' as referred to therein shall have the same meaning as tariff item, sub-heading, heading and chapter as specified in the First Schedule of Customs Tariff Act, 1975.

The methodology adopted for the purpose of classification of goods under the Customs tariff Act, 1975 is commonly known as Harmonised System Nomenclature (HSN, or also known as Harmonised Commodity Description and Coding System). It is a multipurpose International Product Nomenclature developed by the World Customs Organisation (WCO). WCO has 181 members and India is a member of WCO since 1971. India adopted the system of HSN since 1986.

c. **Rules of interpretation for classification[4]:** It is specified that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 including in respect of 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 the notification issued under the GST Laws.

It is apparent from the above explanations and references thereto that the principles of classification and rules of interpretation for classification of goods under the Customs Tariff Act, 1975 shall be adopted for the purpose GST Laws for the purpose of classification of goods.

1. **General Rules for the Interpretation[5]– The Customs Tariff Act, 1975:** The First Schedule toThe Customs Tariff Act, 1975 specifies the 'General Rules for the Interpretation of the First Schedule' that should be adopted for the purpose of classification of goods and determination of rate of tax. The said rules refers to the sections, section notes, chapters, chapter notes, heading and sub-headings. It also specifies the 'General Explanatory Notes' which should be referred for the purpose of classification of goods. HSN has 21 Section, 99 Chapters, 1244 Headings and 5244 sub headings (please note Chapter 99 is kept blank for common use). The various terms

[4] Explanation (iv) to the Notification No. 1/2017 – Central Tax (Rate) / State Tax (Rate) dated 28.06.2017

[5] First Schedule to the Customs Tariff Act, 1975

that have been referred to in the 'General Rules for the Interpretation of the First Schedule' is explained in the following paras:

1.1. Sections: The Customs Tariff Act, 1975 contains 21 sections. Each Section contains multiple chapters. The particular class of goods are broadly grouped under each Section.

1.2. Chapters:Each section (group of class of goods) are further divided into various chapters(98 Chapters) which represents the specific goods of one class. **Chapters are generally denoted by a two digit code.**

Section and Chapters are arranged in the order of products' degree of manufacture or technological complexity. To illustrate and distinguish Section and Chapters, attention is drawn to the table depicted below:

Section	Chapter
Section I: Live Animals; Animal Product	Chapter 01: Live Animals Chapter 02: Meat and edible meat offal Chapter 03: Fish and crustaceans, molluscs and other aquatic invertebrates Chapter 04: Dairy produce; birds' eggs; natural honey; edible products of animal Chapter 05: Products of animal origin, not elsewhere specified or included
Section VII: Plastics and articles thereof; rubber and articles thereof	Chapter 39: Plastic and articles thereof Chapter 40: Rubber and articles thereof
Section XVI: Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers; and parts and accessories of such articles"	Chapter 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof. Chapter 85: Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles

It is relevant to note here that certain Chapters are further divided into sub-Chapters viz., Chapter 72 (Iron and Steel) is divided into I - Primary Materials, II - Iron and Non-Alloy Steel, III - Stainless Steel and IV - Other Alloy Steel.

1.3. Section Notes: The Section Notes appended to each of the Sections

explains the scope of such Section and the class of goods which such Section intends to group. Such notes may refer to the category of goods which would be classifiable in the Chapters forming part of such Section. Similarly, notes may also refer to goods which may be classifiable under other Sections or Chapters forming part of other Sections. Section Notes may also specify the rules for classification of certain specific goods with reference to the headings forming part of the Chapter within such sections. Further, certain Section Notes define certain goods, which should be referred to and understood in the manner defined therein for the purpose of classification, and such goods, should not be classified as per the general understanding.

To illustrate:

a. Section Note 4(a) of Section XVII provides that *vehicle specifically constructed to travel on both road and rail are classifiable under the appropriate heading of Chapter 87.* This means that the vehicle for travel on both road and rail cannot be classified under any Chapter other than Chapter 87;

b. Section Note 5 of Section XVI states that the *for the purpose of these Notes, the expression 'machine' means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85*. This means that for the purpose of classification of goods being a machine, the headings forming part of Chapter 84 or Chapter 85 would be given utmost and due importance. It is only based on the description of the headings the machine should be classified and not by any other means.

1.4. Chapter notes: Notes mentioned at the beginning of each chapter are referred as Chapter Notes. Chapter Notes are a sub-set of Section Notes which will provide the scope for classification of specific class of goods. In other words, Section Notes provides the scope for classification of multiple class of goods which would be classifiable in the Chapter forming part of the Sections, whereas Chapter Notes are provide for the scope and guidelines for classifying specific class of goods under such Chapter. The Notes also refer to goods which are not meant to be classified under the Chapter forming part thereof. Similarly, Chapter Notes also provide

for class of goods which such Chapter is intended to cover.

To illustrate:

a. Note 2 to Chapter 39 (plastics and articles thereof) specifies the goods which are not classifiable therein. Note 2(t) reads *as this Chapter does not cover - (t) parts of aircrafts or vehicles of Section XVII.* This means that the goods being the plastic parts meant for aircraft or vehicles should not be classified under Chapter 39.

b. Note 1 to Chapter 87 (vehicles other than railway or tramway rolling-stock, and parts and accessories thereof) states that *this Chapter does not cover railway or tramway rolling-stock designed solely for running on rails*. Accordingly, the railways rolling stock meant to be operated on rails should not be classified under Chapter 87.

c. Note 3 to Chapter 87 (vehicles other than railway or tramway rolling-stock, and parts and accessories thereof) states that *motor chassis fitted with cabs fall in headings 8702 to 8704, and not in heading 8706.*

1.5. Heading: Each Chapter is further divided into various headings based on the type of goods belonging to the same class of goods. **The Heading is represented by four digit code (which will include the two digit chapter code)**.

1.6. Sub-heading: Each heading is further divided into various sub-heading to group the goods of the same kind belonging to the type of goods covered by the relevant 'Heading' and class of goods covered by the 'Chapter'. **Sub-heading are generally referred to by a six digit code (two digits of chapter plus two digits of heading plus two digits of sub heading).**

1.7. Tariff: Tariff forms part of the sub-heading and covers the specific goods. It is represented by **eight digits which is known as 'tariff entry' or 'tariff number' or HSN (Harmonised System of Nomenclature).** Once the tariff is identified that would conclude the classification of goods and the tariff will represent such classification.

To illustrate: Chapter 39 is divided into various headings viz., 3901 to 3926. Each of the heading is further divided into sub-headings which contains the specific goods known as tariff entry. As an example, heading

3901 is illustrated below:

Heading	Sub-heading	Tariff
3901: Polymers of ethylene, in primary forms	3901 10 - Polyethylene having a specific gravity of less than 0.94 :	3901 10 10 --- Linear low density polyethylene (LLDPE) 3901 10 90 --- Other 3901 20 00 - Polyethylene having a specific gravity of 0.94 or more 3901 30 00 - Ethylene-vinyl acetate copolymers 39014000 - Ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94
	3901 90 - Other:	3901 90 10 --- Linear medium density polyethylene (LMDPE) 3901 90 90 --- Other

1.8. General Explanatory Notes: The sub-headings and the tariff entry are preceded by a symbol '-' (known as "dash") which also has relevance in the process of classification of goods. As may be noted from the illustration given under para 4.7 *supra,* the description of the sub-heading 3901 10 viz., Polyethylene having a specific gravity of less than 0.94 is preceded by single '-'**.** Similarly, one can also find '- -'and '- - -' which precedes the tariff entry. The significance of such symbols is given under the 'General Explanatory Notes' forming part of the 'General Rules for Interpretation of First Schedule to Customs Tariff Act, 1975' which is as follows:

a. "-" denotes that the said article or group of articles shall be taken to be sub-classification of the article or group of article covered by the said **heading**

b. "- -" denotes that the said article or group of articles shall be taken to be sub-classification of the immediate preceding article or group of

articles which has "-"

c. "- - -" denotes that the said article or group of article shall be taken to be a sub-classification of the immediately preceding description of the article or group of article which has"-" or"- -"

To illustrate:

With reference to illustration in para 4.7 *supra,* the tariff entry 'Linear Low Density Polyethylene (LLDPE)' is preceded by '- - -' which falls under the sub-heading 'Polyethylene having a specific gravity of less than 0.94' which is preceded by '-'. This should be understood in such a manner, that for the purpose of classification, LLDPE is an article falling in the group of article the description of which is preceded by '-' viz., 'Polyethylene having a specific gravity of less than 0.94'.

It is relevant to note here that the certain tariff entries represented by eight digit HSN codes are also preceded by only '-'. This means that such articles should be considered as independent sub-classification forming part of the relevant heading. It may be noted in the illustration in para 4.7 that 'Polyethylene having a specific gravity of 0.94 or more' should be construed as separate entry forming part of the heading 3901 and is in no way connected to the immediately preceding sub-heading. Therefore, the first Schedule also contains the classifications where the sub-heading and tariff are also preceded by '-'.

1.9. General Rules for Interpretation of First Schedule to The Customs Tariff Act, 1975: These rules lay down the principles that need to be followed for classification of goods in the First Schedule to The Customs Tariff Act, 1975. There are six general rules that are specified which should be followed in **that order** for the purpose of classification. In other words, if the goods are classified by applying the principles laid down in Rule 1, then there does not arise any requirement to refer to Rule 2.

a. Rule 1:

Quote: The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not

otherwise require, according to the following provisions.

Unquote: The title of sections, chapters and sub-chapters do not have any legal force or legal binding and is meant to be used only for reference purposes. For the purpose of classification, it is legally relevant to refer to terms of headings read with relative section and chapter note.The rules following this rule may not be referred,when the classification is possible on the basis of the description in heading, sub-heading, chapter notes and section notes.Notes of one chapter or section cannot be applied for interpreting entries in another chapter or sectionunless such notes of such other chapters or sections refer to the goods under classification.

To illustrate:

For the purpose of classification of 'Letter closing and sealing machine used as office stationery' following entries appear to be equally applicable:

- **Sub-heading 8422 30 30:** Machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages
- **Sub-heading 8472 30 00:**Machines for sorting or folding mail or for inserting mail in envelopes or bands, machines for opening, closing or sealing mail and machines for affixing or cancelling postage stamps

Classification: In such a scenario, the Section Notes or Chapter Notes may be referred to seek clarity on the classification. In the instant case Note 2 to Chapter 84 inter alia provides that Heading No. 8422 does not cover office machinery of heading no. 8472. Therefore, the product 'Letter closing and sealing machine used as office stationery' in is classified under 8472 30 00 as *Machines for sorting or folding mail or for inserting mail in envelopes or bands, machines for opening, closing or sealing mail and machines for affixing or cancelling postage stamps*.

b. Rule 2(a):

Quote: Any reference in a heading to an article shall be taken to include

a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

Unquote: This rule deals with the classification of unfinished, incomplete, unassembled or disassembled goods. Unfinished and incomplete goods can be classified under the same Heading as the same goods in a finished state provided that such unfinished or incomplete goods have the essential character of the complete or finished article. Similarly, un-assembled or disassembled goods may also be classified under the heading where the assembled goods are meant to be classified. However, this rule does not apply if the text of the Heading or the relevant Legal Notes states any specific method to be followed for classification of unfinished or unassembled product in question. It is relevant to note here that the incomplete or unfinished goods does not cover the parts and accessories of automobile or home appliances. Such goods should be classified by applying the rules of interpretation separately. For example, the castings manufactured and sold before shot blasting will be incomplete / unfinished castings. Such castings should be classified by applying the principles laid down in Rule 2(a) even though they are incomplete / unfinished.

To illustrate: A bicycle in knocked down condition is still classifiable under the tariff 8712 00 10 even if it is in unassembled condition.

c. Rule 2(b):

Quote: Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

Unquote: This rule deals with products, not classifiable byapplying Rule 1 or Rule 2 (a), which are composed of a mixture of materials or

substances. It is stated that a Heading referred to a given material or substance includes mixtures of that material or substance.In other words, mixtures may be classifiable under the Heading which represents the goods forming part of such mixture. In case of classification of mixtures or the goods which contains some other goods, reference can be drawn to the goods which form part of the mixture for the purpose of classification. In the event, if reference to the composition of goods results in the classification under two or more headings, then such goods are not classified in terms of Rule 2(b). Such goods which contain the mixture of more than one material or substance should therefore, be classified in accordance with the principles laid down under Rule 3.

To illustrate: Coffee mixed with chicory is classifiable as 'coffee'. Similarly, natural rubber will cover a mixture of natural and synthetic rubber.

d. Rule 3(a):

Quote: The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings refer to only part of the materials or substances contained in mixed or composite goods or only to part of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Unquote: This rule states that where two or more Headings are equally applicable, the one which provides the most specific description of the product in question should be the appropriate classification. This means that a Heading which names the actual product should be used in preference to one which only names a category to which the product could belong.Similarly, a Heading that describes the whole product should be used in preference to one which describes part of it. However, where two Headings only describe part of the product, this rule cannot be used to classify which one to use even if one seems more specific or detailed than the other.

To illustrate: 'Electrical shaving machine' would be classifiable under the followingtwoheading

- **Heading No. 8510:** Shavers, hair clippers and hair removing appliance with self-contained electric motor
- **Heading No. 8509:** Electro-mechanical domestic appliances, with self-contained electric motor

It should be noted that, electrical shaving machine shall be classified under Heading 8510 since, this Heading is more specific and not general as compared to Heading no 8509.

e. Rule 3(b):

Quote: Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Unquote: This rule applies to mixtures, composite goods and sets that cannot be classified by adopting the principles laid down in Rule 1, Rule 2(a) & Rule 2(b) and Rule 3(a). The mixtures, composite goods and goods sold in sets should be classified by giving due consideration to the essential character represented by such goods. The consideration for essential character shall be given if such criteria can be made applicable. In other words, this rule will not be applicable if the appropriate essential character of mixtures, composite goods and goods sold in sets cannot be determined.

To illustrate: Software supplied with a manual book should be classified based on the essential character of such composite goods which is software.

Similarly, a pencil which has eraser attached to it is essentially a pencil. Accordingly, such pencil is classified under 9609 and not eraser.

f. Rule 3(c):

Quote: When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Unquote: This rule applies to mixtures, composite goods and sets that cannot be classified under Rule 3(a) and Rule 3(b). It states that where

multiple competent Headings are identified for the purpose of classification and such Headings equally merit the consideration, for the purpose of classification, the Heading which occurs last in numerical order would be the appropriate Heading.

To illustrate: When the goods 'electrical insulating self-adhesive tape' are equally classifiable under the following heading –

1. **Heading No. 3919:**Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls;
2. **Heading No. 8546:** Electrical insulators of any material.

It should be noted that, heading 8546 occurs numerically last in the order and as both the headings equally merit classification, goods shall be classified under 8546 by applyingthe principles laid down in Rule 3(c).

g. Rule 4:

Quote: Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin

Unquote: This rule is popularly referred to as Akin rule. This rule specifies that if the goods cannot be classified in accordance with the earlier rules, they shall be classified under the heading in which the most akin goods are classified.

To illustrate: Plastic films used to filter or removethe glare of the sun light, pasted on car glass windows, window penal etc., do not find a specific entry in the tariff schedule. However, heading 3925 30 00 covers builders wares of plastic not elsewhere specified – shutters, blinds (including Venetian blinds). Even though the product in question is not a builders ware, they are most akin to plastic blinds and hence it can be classified under heading 3925 30 00.

h. Rule5(a):

Quote: In addition to the foregoing provisions, camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with

the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

Unquote: This rule deal with classification of containers which states that the containers of the goods sold along with such goods generally, shall be classified under the Heading in which such goods are classifiable.

To illustrate: Camera cases should be classified under the Heading where the camera is actually classified.

i. Rule 5(b):

Quote: Subject to the provisions of Rule (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

Unquote: This rule deals states an exception for classification of packing materials where such packing materials are meant for repetitive use. In other words, the packing materials for repetitive use should be classified by applying the rule of interpretation separately without resorting to principles laid down in Rule 5(b).

To illustrate: Crates used for sale of cold drinks can be used repetitively. Accordingly, such goods are not meant to be classified in terms of Rule 5(b).

j. Rule 6:

Quote: For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

Unquote: For the purpose of classification, sub-headings falling under a single heading can be compared with each other. However, sub-headings falling under different headings cannot be compared for the

purpose of classification. Accordingly, in the process of classification, the relevant Heading should be decided first and thereafter, appropriate sub-Heading falling in that Heading should be determined.

III. Conclusion

An attempt has been made in this paper to make a reader understand the basis of understanding HSN. This paper is written with a view to incite the thoughts of a reader who could have different views of interpretation. Disparity in views, would only result in better understanding of the underlying principles of law and lead to a healthy debate or discussion.

The information contained in this write up are the views of the paper writer and is not intended to address the facts and circumstances of any particular individual or entity. There can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.

Every effort has been made to avoid errors or omissions in this write-up. In-spite of this, errors may have crept in. Any mistake, error or discrepancy noted may be brought to the notice of the paper writers.

*****

GST IMPLICATIONS ON REVENUES EARNED BY THE YOUTUBERS

Adv. P.V. SubbaRao

CA Sri Harsha

'The skill that sustains livelihood and which is praised by all should be fostered and protected, for your own development'.

'The money you make is a symbol of the value you create'—IdowuKoyenikan.

The above two would apply on all fours to the YouTubers, who have been creating content with their skills and making money. YouTube is undoubtedly the TV for the millions across the globe. I was recently at a family gathering and was talking to the nextgenkids about what they want to become when they grow up. To my surprise, one of them said, he wants to become a YouTuber. I said, that is fine, but, what do you want to do full-time? He has not changed his response. He said he wants to create content as a full-time job and post it on YouTube. No doubt, many of you, who are reading this piece of article would have also got the same response in your gatherings. The immediate question that arises, if someone wants to pursue this as full time, will he be earning which is normally equivalent to a full time conventional job? I did a bit research and understood that in 2020, YouTube has paid about Rs.6,800crores to YouTubers in India as part of its YouTube Partner Program (for brevity 'YPP'). That roughly translates to 6.84 lakh full time jobs[1]. The numbers are astronomical, both the revenues earned and the YouTubers. Maybe we have all taken a wrong job (pun intended).

YouTube pays the content creators in 10 different ways[2]. The significant portion among all the pay-outs by YouTube is the advertisement revenue. Once the content creator meets the threshold set by YouTube, he will be in a position to monetise his videos. YouTube pays roughly 55% of the advertisement revenue to the content creators and retains the balance.

In this piece, we are only dealing with the indirect tax implications on the share of advertisement revenue that is paid by YouTube to the content creators. Let us understand the tax implications by taking a case study. Mr,Tuber is an

[1]https://dazeinfo.com/2022/03/04/indian-youtube-channels-doubling-in-less-than-2-years/

[2] https://blog.youtube/news-and-events/10-ways-monetize-youtube/

individual and a YouTube content creator located in India. He updates original content every week and has a huge subscriber base. He has qualified for the benefits under YPP and he is being paid by YouTube on a monthly basis, share of advertisement revenue, let us say, Rs. 2 lakhs.

The modus operandi is simple. Mr. Tuber creates a video. uploads into his channel and selects that the video is open for monetisation. YouTube based on its ads algorithm[3] plays advertisements on the video posted by Mr. Tuber. YouTube collects money from the advertisers as per its agreements with them. YouTube pays Mr. Tuber, a part of such advertisement revenue, as per the agreed terms and conditions.

Mr. Tuber earns Rs.24 lakhs in the entire year. The question that arises for consideration is, what are the implications on the revenue earned by Mr.Tuber from the perspective of GST laws[4]. Let us proceed to analyse the same.

In order to understand the tax implications, it is a pre-requisite to understand, as to, what is the nature of supply, who is the supplier, who is the recipient, what is the location of supplier, what is the location of recipient and finally, where is the place of supply.

Determination of nature of services provided by YouTube:

As discussed earlier, Mr.Tuber uploads the content he created for the view of general public who use the YouTube. If he meets the threshold set by YouTube, he will be eligible for monetisation and YouTube shares the advertisement revenue. At this juncture, it is important to understand, the nature of service provided by YouTube. The core functionality of YouTube is to allow users to share the videos. It is an online video sharing platform. Hence, Mr. Tuber was provided with a platform, which allows him to upload the videos, so that subscribers can watch the content.

YouTube is the provider of the said service, that is allowing access to Mr. Tuber to upload his videos. Mr. Tuber is the recipient of the said service. As stated earlier, Mr. Tuber is located in India and YouTube is located outside India. Therefore, we have identified the supplier, the recipient and locations thereof. Now, we have to examine, what is the nature of service provided by YouTube to determine the

[3] https://support.google.com/youtube/answer/9269689?hl=en

[4]Central Goods and Services Tax Act, 17, State Goods and Services Tax Act, 17 &Integrated Goods and Services Tax Act, 17

place of supply.

We shall revert to the determination of service provided by YouTube in a moment. Before that, we have to understand, what is the role played by the place of supply vis-à-vis indirect taxation. The determination of place of supply of a service is crucial in arriving at the tax liability.

If the location of recipient of supply is outside India, the location of supplier is in India and the place of supply is outside India, then there is no taxability under the IGST Act[5], because it qualifies as zero rated supply in terms of Section 16 of the IGST Act. Accordingly, if the supplier files a letter of undertaking (for brevity 'LUT'), which is one of the two options and exports the services under the cover of LUT and satisfies other attached conditions, the supply can be called as export of services and no tax is required to be paid. A classic example of this scenario is, the information technology services provided by a software company located in India to a customer located outside India.

On the other hand, if the location of supplier of service is outside India, the location of recipient is in India and the place of supply is within India, then there is tax liability in the hands of the recipient of supply, famously called as tax under reverse charge mechanism (for brevity 'RCM'). A classic example of this scenario is, a software company purchasing certain software subscription from a person located outside India. In such case, the software company located in India, is obliged to pay tax on the purchase value under RCM and allowed to avail the tax paid as credit, subject to other conditions.

There may be another scenario, where the recipient of service is located in India, the location of supplier of service is outside India and the place of supply of service is outside India. In such case, the recipient of service is not obligated to pay tax under RCM, since the place of supply is not in India. A classic example of this scenario is, services provided by a commission agent located outside India. The Indian company pays him commission for the sales, the intermediary has referred. Since, the place of supply of such intermediary service is the location where he resides (as per the provisions of determination of place of supply), there would not be any obligation on the Indian company to pay tax under RCM.

[5]Integrated Goods and Services Tax Act, 17

A final scenario, where the location of supplier of service is in India, the location of recipient of supply is outside India, but the place of supply is in India, then the supplier located in India is supposed to pay tax under forward charge. In other words, it is as good as a domestic service provided by the supplier located in India. The supplier may be in receipt of convertible foreign exchange, but still, he is obliged to pay tax. A classic example of this scenario is, services provided by an Indian company in relation to overhaul of aeroplane, belonging to a person located outside India. Since, the place of supply of such repair services is the location where the repair has been undertaken, that is India (as per the provisions of determination of place of supply), the services provided become taxable.

Hence, the determination of place of supply is very crucial and has a direct impact on the determination of tax on such supply. The place of supply is dependent upon the nature of service involved. Section 13 of the IGST Act provides for determination of place of supply, when the location of supplier or recipient of supply is located outside India. It becomes necessary to examine the provisions of Section 13 to determine the place of supply of services provided by YouTube, since YouTube is located outside India.

The general principle under Section 13 is, the place of supply of services is the location of recipient of services. However, this general principle comes into trigger only, when the services do not fall under sub-sections (3) to (13) of Section 13. Hence, if we rule out that, the services provided by YouTube do not fall under any of the sub-sections (3) to (13) of Section 13, then the location of recipient of services, that is Mr. Tuber, will be the place of supply. Hence, let us proceed to examine, under which sub-section of Section 13, the services provided by YouTube would fit in.

A survey of the sub-sections (3) to (13) of Section 13 would indicate that, Section 13(12) is the one relevant in the current context. Section 13(12) deals with place of supply of online information and database access or retrieval services (for brevity 'OIDAR') and states that the place of supply is the location of recipient of services. Hence, if the services provided by YouTube fall under the ambit of OIDAR, then place of supply shall be the location of recipient, that is Mr.Tuber, in our case study.

The definition of OIDAR is provided in Section 2(17) of the IGST Act to mean 'services whose delivery is mediated by information technology over the

internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in absence of information technology and includes electronic services such as advertising on the internet, cloud services, provision of e-books, movie, music, software and other intangibles through internet, providing data or information, retrievable or otherwise, to any person in electronic form through a computer network, online supplies of digital content (movies, television shows, music and like), digital data storage and online gaming.'

On a reading of the above definition along with illustrative inclusions, it would be evident that the services provided by YouTube, that is access to video sharing platform, fall under the ambit of OIDAR. The provision of services of YouTube is impossible in the absence of information technology. Hence, the services provided by YouTube can be stated to fall under OIDAR services.

Since, the place of supply of services of OIDAR services is location of recipient of services, that is Mr. Tuber, and accordingly, it would be in India. Since, the supplier of service is located outside India, the recipient of supply is located in India and place of supply is in India, the recipient is obliged to pay tax under RCM. However, since YouTube does not charge any consideration for access of its platform to Mr. Tuber, there would not be any tax implications in the hands of Mr.Tuber. Since, there is no consideration, an examination of position under Section 14, when OIDAR is provided to non-taxable online recipients is also not analysed for brevity.

However, the above analysis does not answer our question, as to what would be the tax implications on the advertisement revenue shared by YouTube to Mr. Tuber. Now, let us proceed to examine, the place of supply of such services.

Determination of nature of services involved in sharing of advertisement revenue:

As discussed earlier, Mr. Tuber on meeting the threshold set by YouTube, would be eligible for YPP. Under YPP, Mr. Tuber will be eligible to monetise the video and thereby getting eligible for the share of advertisement revenue earned by YouTube. Mr. Tuber has to turn on the monetise option for each of his videos to be eligible for the share of advertisement revenue. In such a case, Mr. Tuber can be said to be the service provider, since, he is allowing YouTube to run advertisements on his content. Consequently, YouTube would be the service receiver. We know the

locations of the service provider and service receiver. What needs to be determined is the place of supply and that is dependent upon the nature of supply provided by Mr. Tuber to YouTube.

The drill is same for this scenario also, since one of them is outside India and we need to fall back on Section 13. So, let us find out under which sub-section of Section 13, the services provided by Mr. Tuber would fit into. One can argue that the services provided by Mr. Tuber would also be called OIDAR. But on a close reading, it would appear that OIDAR necessities a supply from the provider to recipient with the help of telecommunication or internet. However, in case of Mr. Tuber, the video is already within the control of YouTube and by click of the button (turning the ads on for monetisation) which is at the disposal of Mr Tuber, YouTube can place the ads on his content. In other words, Mr. Tuber need not do anything more for allowing YouTube to place the ads on his video except giving a consent. Hence, the said service may not be falling under OIDAR. That leaves us to the general rule, that is the place of supply shall be the location of service recipient. Even, if someone takes an argument that services provided by Mr Tuber are also in the nature of OIDAR, then also, the place of supply shall be the location of recipient. In any case, the place of supply shall be the location of recipient that is YouTube.

Since, YouTube is outside India, supplier is in India and place of supply is outside India, the supply checks out majority of the conditions mentioned for 'export of service' as laid down in Section 2(6) of the IGST Act. If Mr. Tuber receives the advertisement revenue in the form of convertible foreign exchange, it can be safely concluded that the services provided by Mr. Tuber are classifiable as 'export of services' and thereby zero rated supplies as per Section 16 of the IGST Act.

Rule 96A of the CGST Rules[6] states that any person who wishes to avail the option to supply goods or services for export without payment of tax, has to furnish a LUT in Form GST RFD –11 to the jurisdictional Commissioner binding himself to pay tax on such exports, if the payment is not realised in the prescribed time period. GST RFD – 11 can be filed electronically and it would be sufficient for the entire year, if filed at the beginning of the year.

[6]Central Goods and Services Tax Rules, 17

Section 16(3) of the IGST Act allows refund of input tax credit that has been accumulated by the service provider who gets engaged in provision of zero rated supplies. Hence, Mr. Tuber can apply for refund of taxes paid by him on his purchases of inputs and input services that are used for provision of export of services, subject to certain conditions and limitations.

Now, let us conclude this part by answering the question on implications on income generated, that is, share of advertisement revenue, by Mr, Tuber. Since, we have analysed that the said services qualify as export of services, there is no requirement for Mr. Tuber to pay any tax on the amounts received. However, he is mandated to obtain a registration in the light of the provisions of Section 24 (i) of the CGST Act, irrespective of his quantum of receipts. In other words, even income of Mr. Tuber in our case study has not crossed Rs. 20 lakhs in a year, he would still be liable to obtain registration and disclose the receipts under zero rated supplies in the periodical returns.

Other incidental aspects:

Services provided by YouTube to taxable persons:

The advertisement revenue that is shared by YouTube to the content creator is derived from the separate contracts that YouTube enters into with different persons. Let us say, a company located in India intends to advertise its products with the help of YouTube. The company enters into a contract with YouTube and accordingly leaves it to the ads algorithm. In such cases, the company is undoubtedly the service receiver, YouTube is the service provider. The nature of supply shall be OIDAR, because, it covers advertising on the internet. In such cases, the place of supply shall be the location of service recipient, that is India. Since, the place of supply is India, the recipient is located in India and provider is located outside India, the tax is required to be paid by Indian company under RCM.

Services provided by YouTube to non-taxable persons:

YouTube has rolled out premium subscriptions recently. Under premium subscription, an individual can make a payment to YouTube and avoid seeing advertisements on the content he wishes to watch. Ideally, the individual would be obliged to pay tax under RCM, since all the conditions for import of service gets satisfied. However, in order to relieve the individual from obtaining registration and

complying with tax, Section 14 of the IGST Act stipulates that YouTube is obliged to make payment of tax for all such services provided to individuals.

Services received by content creators from persons outside India:

It is possible for YouTube content creators located in India to avail certain services from outside India for creating the content that is to be hosted on YouTube. Let us say, in our case study, Mr. Tuber has subscribed for a software tool which is used for editing the video before posting it on YouTube. The payment is made to the software tool company which is located outside India using a credit card. In such cases, Mr. Tuber is obliged to pay tax under RCM, if such service qualifies the import of service, that is, if for such service, the place of supply is India. If place of supply is outside India, then there is no obligation to pay tax under RCM as discussed in one of the scenarios above while dealing with the importance of place of supply.

(*There may be different views of interpretation. As the article is for academic purpose, it is suggested to analyse the facts correctly and apply the relevant provisions.)*

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DOCTRINE OF 'LEX NON COGIT AD IMPOSSIBILIA' VIS-A-VIS SECTION 16(2)(C) OF THE CGST ACT

Adv. Mukul Gupta
Adv. Prateek Gupta

The doctrine of '*Lex non CogitadImpossibilia'* which says that '*the law cannot compel a person to do an act which is impossible'* is very significant for justified application of Section 16(2)(c) of the GST Acts, where genuine tax payers (inward suppliers) are being unreasonably harassed for the misdeeds of their respective outward suppliers, where no GST Returns have been filed or due tax has not been deposited by the defaulting outward supplier even inspite of receiving from the genuine inward supplier the amount of GST as part of the total consideration for the Supply being separately charged in the Tax Invoice.

The GST Department is regularly issuing notices to the genuine inward suppliers, seeking to explain the mismatch of Input Tax Credit-ITC claimed in GSTR 3B and GSTR 2A. In addition to this, theOfficers of GST Department also direct the inward supplier to reverse the ITC along with interest and penalty*in spite of* explaining the true nature of transaction and proving its genuinety based on the documents.Whereas the outward supplier should be legally forced by the Government Officers under the powers to comply with the law and fulfil its responsibility.Further, it is unjust to deny credit as ITC in the chain of transactions merely on the ground that outward supplier as its legal responsibility has neither paid due taxes nor properly reported in GST Return, but such amount of tax was subsequently recovered from the recipient of the supply.

It may be noted that in the recent Judgments of **Raghav Metals v State of Haryana, [2022] 141 taxmann.com 179 (Punjab & Haryana) and Shiv Enterprises v State of Punjab, [2022] 135 taxmann.com 123 (Punjab & Haryana),** wherein the legal maxim "LEX NON COGIT AD IMPOSSIBILIA" which means *"that the law does not compel a man to do that which he cannot possibly perform"* was taken into considerationand it was emphatically observed that a person cannot be compelled to do something which is not possible, definitely he cannot be penalized for not doing so, the High Court have granted relief to the assessees.

The most significant observations which were made in both the Judgments are as under:

> *25. When the aforesaid principles of law and the bare provisions of law are applied to the present case, we find that the investigation report relied upon by the respondents to initiate proceedings under Section 130 against the petitioner lacks sting. Under the 2017 Act, a trader is either a 'supplier' qua 'outward supply' or is a 'recipient' of 'inward supply'. The alleged 'intent to evade tax' must have a direct nexus with the activity of trader. The opinion formed by the authorities must reflect such nexus before proceeding under Section 130 of 2017 Act. A trader cannot be accused of having intention to evade payment of tax for act or omission on part of a person not immediately linked to his activity. Learned counsel for the State agreed that even if a trader wants to be prudent, there is no system in place from where he can check as to whether his predecessors in supply chain have paid input tax credit or not. Meaning thereby, it is virtually impossible for a trader to ascertain as to whether input tax has been paid by his predecessors or not and it is for this reason also that the claim to input tax credit has been made subject to scrutiny and assessment. It is the fundamental legal principle embedded in legal maxim "LEX NON COGIT AD IMPOSSIBILIA"-That the law does not compel a man to do that which he cannot possibly perform". Once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so.*

On bare perusal of the above observation, it is clear that the genuine taxpayer (inward supplier) could not be made as a scapegoat for the misdeeds of the outward supplier. After the verdict of the Hon'ble High Court, the GST Council should consider the most reasonable way-out and make necessary amendments in Section 16 of the GST Acts so that the law could reasonably serve its purpose; moreover the primary burden of payment of tax on outward supplier should not be shifted for some deficiencies in the system and misdeeds of the outward supplier. The government machinery should be robust enough to check the wrong deeds of the outward supplier rather than finding fault of the genuine inward suppliers.

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WHETHER LEVY OF GST ON VAT PAID GOODS IS JUSTIFIED IN GST REGIME?

Adv. Natabar Panda

A Tax Payer is receiving hire charges on vehicles which are given on hire to State Government Departments. He is regularly paying tax on the hire charges @2.5% towards SGST and CGST to the Government. He is fueling the vehicles on his own and getting reimbursement of the expenses claimed from the contractee(s). On receipt of report from the WAMIS the Department issued noticeto the Tax Payer asking to show cause against levy of GST, interest and penalty for nonpayment of GST on the reimbursement charges received from the said Departments.

The Tax Payer tried to explain the Proper Officer that Diesel is a VAT paid goods. He is fueling his vehicles regularly and getting the expenses reimbursed from the Contractee(s). Hence levy of GST on VAT paid goods will have a cascading effect.

Before implementation of GST w.e.f. 01/07/2017 it was promised by the Union as well as State Governments to have "**ONE NATION, ONE TAX & ONE MARKET**". It was very easy to listen but became difficult to digest. It was further explained to the Tax Payers as well as Stake Holders that there would be no cascading effect i.e. tax on tax in our country during GST regime. There would be only one tax on a single category of goods or services throughout the Country.

On receipt of SCN the Tax Payer contacted the Contractee who in reply said that –"***Reimbursement of cost of fuel is being made as per bills of filling station which has no GST and hence is not payable. The matter may be taken up with the concerned authority accordingly***".

But the Proper Officer passed order u/s.73 of the Act demanding SGST, CGST, Interest and Penalty on the Tax Payer.

It was explained by the Proper Officer that - as per Notification No.11/2017 dated-28/06/2017 at Sl. No.8, Heading-9964 (Passenger Transport Services) under the sub-head-"description of services"-clause (vi) it is mentioned that –"***Transport of passengers by motorcab where the cost of fuel is included in***

the consideration charged from the service recipient" GST is chargeable @2.5% under OGST and @2.5% under CGST Act.

But contention of the Tax Payer is that he raises Tax Invoice on the hire charges only and raises the imbursement Invoice on the fuel expenses.

The provision of Section-7 of the CGST Act defines the term 'Supply' as under:

> *"(a)* all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
>
> (b) import of services for a consideration whether or not in the course or furtherance of business;
>
> (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
>
> (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II."

The provisions of Section 15 of the CGST Act provides that-

> 1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
>
> 2) The value of supply shall include—–
>
> 3) (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
>
> 4) (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

5) (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

6) (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

7) (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

8) ***Explanation***—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

9) That in terms of clause (b) of Section 15(2) of the CGST Act, any expenses which ought to be incurred by the recipient and provided to the supplier shall be included in the value of supply for the chargeability of GST. In terms of clause (c) of Section 15(2) of the CGST Act, any incidental expenses charged by the supplier to the recipient for supply of the services shall be included in the value of the supply for the chargeability of GST unless otherwise satisfied the conditions as prescribed in Rule 33 of Pure Agent for exclusion of expenses from value of supply.

Rule-33 of the CGST Rules says:-

"Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his

own account.

Explanation.- For the purposes of this rule, the expression "P**ure Agent**" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his Pure Agent to incur expenditure or costs in the course of supply of goods or services or both;

(b)neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) doesn't use for his own interest such goods or services so procured,

receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration.- Corporate services firm 'A' is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Few orders of Advance Ruling Authorities of our country are presented below to appraise of the facts regarding levy of GST on the cost of reimbursement of goods by the supplier from the recipient:-

(a) In the case of M/s VITP Private Limited (formerly known as Vanenburg IT Park Private Limited) –Vrs.- Commissioner of Central Tax, Hyderabad-IV in Service Tax Appeal No.27964 of 2013 dated-08/07/2022 it has been held by the CESTAT, Hyderabad that "***Applicability of service tax on reimbursement of expenses from its customers on account of water, electricity and diesel expenses incurred for provision of services- Not Applicable***".

(b) The Delhi, CESTAT in ***the case of M/s Seher v. Commissioner of Service Tax Delhi [Service Tax Appeal No. 52708 of 2016 dated June 13, 2022]*** held that, service tax is not payable on reimbursement of expenses as the nature of service should make no difference to the taxability of

reimbursement.

(c) In the case of M/s Global Vectra Helicorp Limited, Gujarat Advance Ruling Appellate Authority in Application No. Advance Ruling/SGST & CGST/ 2020/AR/13 dated-06/07/2021 held that "***in terms of the valuation provisions under GST legislation, amount recovered as reimbursement by the appellant M/s.Global Vectra Helicorp Ltd. from the customer, for the fuel procured for use in the helicopter provided on rent to customer is required to be included in the value of services provided by the Appellant***".

(d) In the case of Maansmarine Cargo International LLP, Maharastra Authority for Advance Ruling No. GST-ARA- 04/2019-20/B-97, Dated. 23rd August, 2019 it was held that-"***the reimbursement received by the applicant pertains to establishment costs which would be incurred by them for running their office in India. In any normal business such expenses are borne by the supplier of service and it is but natural that they would include such costs in the value to be received from the recipient of their services. In the subject case the said costs, are termed as reimbursements and are recovered in addition to management fees from their clients and therefore it is nothing but additional consideration charged for the supply in this case. The provisions of Section 15 of the CGST Act, which deals with the transaction value are very clear and as per the said provisions the valuation of supply will include all costs, including the employee cost provided by one distinct entity to the other distinct entities".***

(e) In the case of M/s Goodwill Auto's, Karnataka Advance Ruling Authority vide No.KAR/ADRG/44/2021 dated-30/07/2021 it has been held that- "***The contract entered between the applicant and the recipient is for the hiring of DG Set and is a comprehensive contract with the consideration having a fixed component anda variablecomponent. The fixed component is the monthly fixed rent charged in the invoice for the DG Set and the variable charge is the charge for the diesel used. Both are part of thesame consideration and is for the contract of supplying DG Set on hire. Though it appears that the applicant is receiving the reimbursement of diesel cost, the recipient is not paying***

for the diesel but for the services of DG Set, which is an integral part of thesupply of DG Set rental service. There is no separate contract for supply of diesel and the invoice issued for the reimbursement of diesel cost is nothing but a supplementary invoice issued forthe supply of rental service of DG Set. Hence, consideration for reimbursement of expenses as cost of the diesel for running of the DG Setis nothing but the additional consideration for the renting of DG SetandattractsCGST @9% and KGST @9%".

(f) In the case of ICU Medical India LLP Tamilnadu State Appellate Authority for Advance Ruling in Appeal No. AAAR/10/2021 dated-10/03/2021 has held that –"***In our opinion, GST is therefore to be paid on such amounts of expenses reimbursed at the time determined as per Section 13 of the GST Act, as it represents the part of consideration received in advance by the appellant from its recipient (not with standing that the same is later included in tax invoice of the appellant) and to be paid at the time of reimbursement as by then the actual expenses borne by the recipient is known. Therefore, the first question sought by the appellant is answered in affirmative".***

(g) The Authority for Advance Ruling in Karnataka in the case of **M/s SreeSubha Sales** bearing Advance Ruling No. KAR /ADRG/ 39/2022 dated-27/10/2022 held that-"***reimbursement of tree cut compensation amount paid to the farmers and land owners during the execution of work is not chargeable to GST as the applicant qualifies to be a Pure Agent and reimbursement of land compensation amount paid to farmers and land owners during the course of execution of work is chargeable to GST as the applicant doesn't qualify to be a Pure Agent***."

REIMBURSEMENT

The dictionary meaning of "reimbursement" as per Chambers 20th Century Dictionary is-"***to repay, to repay an equivalent to for loss or expense***". Similarly as per Oxford Dictionary- "***repay a person who has spent money***".

REIMBUREMENT OF EXPENSES

In a business transaction under the GST regime one part is the "supplier"

and another part is the "recipient". When the supplier incurs an expenditure on the behalf of the recipient in order to save time and delay and claims an equivalent amount for the expenditure incurred it is named as reimbursement. This reimbursement is of two types i.e. "incidental expenses incurred by the supplier and later on reimbursed from the recipient and the supplier acts as Pure Agent of the recipient".

PURE AGENT

It is the principle of Taxation Laws that the same goods should not be taxed more than once. In the GST Law it is made clear that supplies by the Pure Agent are not to be made taxable.

The main objective of the supply made bythe Pure Agent is not to be made taxable under the law in order to prevent the supplier or the Pure Agent from bearing the burden of taxes which has originally been procured on behalf of the recipient of Goods and/or Services on his authorization.

CONCLUSION

The Goods and Services Tax was introduced in India w.e.f. 01/07/2017 to create a comprehensive and robust framework for levying indirect taxes on supply of goods and/or services. Under the GST Regime, all the erstwhile Indirect Taxes like Excise Duty, Service Tax, Value Added Tax, Entry Tax and Sales Tax were subsumed.

The main object behind introducing the GST was to facilitate seamless tax flow at every stage of supply chain while eliminating the impact of double taxation i.e. cascading effect (tax on tax) on the goods.

This reimbursement of expenses to the supplier often forms a subject matter of dispute wherein the issue that arises is whether such reimbursement is taxable under GST Law or not.

It is left to the readers to analyze the question of levy of GST on reimbursement of expenses on the value of the goods, which have already suffered VAT at the time of purchase.

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INTRICACIES OF PROVISIONS OF INSPECTION, SEARCH & SEIZURE UNDER GST LAWS CONSIDERING RECENT JUDICIAL PRONOUNCEMENTS

Adv. Arun Bansal

Under GST Laws, wide powers are given to departmental officers for safeguarding the leakage of revenue. One of such power is of ***'Inspection and Search &Seizure.'***In erstwhile law also there were such powers. Hon'bleSupreme Court in the case of**M.P. Sharma v. Satish Chandra [1954] S.C.R. 1077, 1096**upheld the constitutional validity of search and observed that "*A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law."*

The word 'Search' itself is a petrifying term. Many taxable personsdespite having genuine transactions and all supporting documents gave up to the undue pressure of departmental officers and end up taking mental anxiety without any reasons. It is necessary to maintain one's mental balance and remain poised and confident during search.

The purpose of this article is to summarize basic provisions in relation to Inspection, Search & Seizure under GST LawsBefore analyzing the provisions of Act and related judicial pronouncements,it is important to understand the terms i.e. Inspection, Search & Seizure. We may add that such terms are not defined under the law.

Meaning of Inspection, Search and Seizure:

The term **'Inspection'**means that an officer is enabled to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

The term **'Search'** in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object, etc. in order to find something concealed or for the purpose of discovering evidence of a crime.

The term **'Seizure'** in Law Lexicon Dictionary,is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

Power of Inspection,Search andSeizure under CGST Act:

Section 67 of the CGST Act deals with the provisions of Inspection, Search andSeizure.It gives power to officer not below the rank of Joint Commissioner to order for Inspection, Search and Seizure, as the case may be.

Circumstances for conducting Inspection:

Proper officer not below the rank of Joint Commissioner may authorize in writing to any officer to inspect any places of business of the taxablepersonor the person engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place where he **has reasons to believe** that:

(a) Taxable person has suppressed any transaction of supply;

(b) Taxable person has suppressed stock of goods in hand;

(c) Taxable person has claimed excess input tax credit;

(d) Taxable person has contravened any provisions of this Act or rules made thereunder to evade tax;

(e) Transporter or an owner or operator of a warehouse or godown or any other place, has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

Circumstances for conducting Search &Seizure:

Officer not below the rank of Joint Commissioner, either pursuant toinspection above or **where he has reason to believe** that any goods liable for confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to proceeding under this Act, are **secreted in any place**, he may authorize in writing any officer of central tax to search and seize or may himself search and seize such goods, documents or books or things.

Meaning of the phrase 'Reasons to believe':

It is very important to understand the meaning of "Reasons to believe", as

the same is a pre-requisite to conduct either Inspection, Search or Seizure.

Reason to believe is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, ***"A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."***

'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances. Reference here can be made to the judgment of '**Crompton Greaves Ltd Vs. State of Gujarat 120 STC 510'** where in the Courtobservedthat "*these words suggest that belief must be that of a honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor*."

Hon'ble Delhi High Court in the case of **M/s R.J Trading Co. Vs. Commissioner of GST, 2021(7) TMI 924**discussed the relevance of 'Reason to believe' in Section 67 (1) & (2) and observed that *"Theofficers concerned should bear in mind that the search and seizure power conferred upon them, is an intrusive power, which needs to be wielded with utmost care and caution. The legislature has, therefore, consciously ringfenced this power by inserting the controlling provision, i.e., 'reasons to believe'."*

Delhi High Court in the cases of **RCI Industries and Technologies Ltd Through Its Director Rajeev Gupta Versus Commissioner DGST Delhi &Ors., 2021 (1) Tmi 702** commented upon the jurisdiction of courts to comment on 'Reason to believe' in each case and held as follows:

> *"While exercising writ jurisdiction, we cannot adjudge or test the adequacy and sufficiency of the grounds. We can only go into the question and examine the formation of the belief to satisfy if the conditions specified under the statutory provision invoked are met. The Courts can interfere and hold the exercise of power to be bad in law only if the grounds on which reason to believe is founded have no rational connection between the information or material recorded; or are non-existent; or are such on which no reasonable person can*

come to that belief."

On the basis of above, it may be seemed that there must be a sufficient cause to believe that default has been done by the taxable person. The 'Reason to believe' contemplates an objective determination, not subjective consideration. The 'Reason to believe' must be honest & reasonable and not mere on suspicion, gossip, or rumor.

Meaning of the phrase 'Secreted in any place':

It is also important to understand the meaning of 'Secreted in any place'. As per the law, the secreted means the hidden or not disclosed facts to the revenue for making self-assessment. Therefore, in case the goods are not disclosed in books of accounts, it impliedly means that such goods are secreted from the department.

In regard to same, reference can be made to the decision of Hon'ble Allahabad High Court in the case of **M/s Rajeev Traders Versus State of U.P.: 2019 (8) TMI** 1135 observed the meaning of 'Secreted' as follows:

> *"The word 'secreted' plainly implies to be hidden or not disclosed to the revenue authorities for the purposes of making a fair self-assessment. Once the dealer does not record the goods in his regular books of account, a presumption arises that he does not intend to disclose the same to the Assessing Authority or the revenue for the purpose of making a fair self-assessment of his turnover."*

Power and obligation of Officer doing search orseizure:

There are various powers provided u/s. 67 of the CGST Act which may be exercised during Search. The same are as follows:

1. The officer may seal or break open the door of any premises.
2. The officer may break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed.
3. Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of tax, he may, for reasons recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same.

4. Proper officer may entrust upon the owner of goods from whose custody goods are seized,the custody of such goods or things for safe upkeep and said person shall not remove, part with or otherwise deal with the goods or things except with the permission of such officer.
5. The Government may specify the goods which shall be disposed off after seizure, if good so seized are of hazardous in nature or perishable, or due to constraint of storage or any relevant considerations.

In regard to above, we also refer the decision of Gujarat High Court in the case of **PareshNathalalChauhan Versus State of Gujarat, 2019 (10) TMI 1184, wherein the Hon'ble courtcondemned the way in which search was conducted and observed as follows:**

> *"The manner in which the officers have conducted themselves by overreaching the process of law and acting beyond the powers vested in them under sub-section (2) of section 67 of the CGST Act needs to be deprecated in the strictest terms. Therefore, a proper inquiry needs to be made in respect of the action of the respondent officers of staying day and night at the premises of the petitioner without any authority of law."*

Safeguardsavailable to person upon whom search is conducted:

There are various safeguards available to the person u/s. 67 of the CGST Act upon whom the search is conducted. The same are as follows:

1. The person from whose custody documents are seized can make copies of such documents in presence of authorized officer except when such officer thinks that it may hamper the investigation. We also refer the decision of Kerela High Court in the case of **Thomas Mathew, Lillykutty Mathew, M/S. K.E. Agro Products (P) Ltd., M/S. Gee Yem Agro Mills Versus The State Tax Officer (Ib), 2021 (11) TMI 1011wherein the Hon'ble High Court partly allowed the writ petition, for the reason that the assessee was not allowed to make copies of the documents seized.**
2. Seized goods shall be released, on a provisional basis, upon execution of a bond and furnishing of a security as may be prescribed or on payment of applicable tax, interest and penalty, as the case may be.

3. Where any goods are seized and no notice in respect thereof is given within six months of seizure, the goods shall be returned to the person from whose possession they were seized. We also refer the decision of **Gujarat High Court** in the case of **DeveshRadheshyamjiKabra Versus State of Gujarat,2021 (2) TMI 335wherein it was held by the Hon'ble Court that** no notice has been issued as contemplated u/s. 67(7) of the Act and also proviso to Section 67(7) of the Act was not invoked. Therefore, in the absence of issuance of notice, the articles seized shall be returned.

How long the documents / goods seized by the department can be retained:

One of the very important point here to understand is how long the goods / articles / documents seized by the department can be retained by them for examination. Regarding same, as per the provisions of the law, the officers may retain the goods till the completion of the examination. However, the officer is duty bound to return the goods / articles / documents which are not relied upon to the taxable person within 30 days from seizure.

Another aspect has arisen time to time i.e. whether cash can be seized by the department during search. In regard to same, we may refer the decision of MP High Court in the case of **Smt. KanishkaMatta Versus Union of India and Others, 2020 (9) TMI 42**wherein it washeld that cash can be seized during search.

Procedural aspect relating to Search (Rule 139, Rule 140& Rule 141 of CGST Rules, 2017)

1. Authorization to visit any place of business or any other place for the purpose of conducting inspection or search or seizure shall be issued by Joint Commissioner in **FORM GSTINS-01.**
2. Order to seize any goods, documents, books, or things shall be made by proper officer or an authorized officer in **FORM GST INS-02.**In the case of**M/s Golden Cotton Industries Versus Union of India,2019 (7) TMI 471, the Hon'ble Gujarat High Court held that** if the authority has reason to believe that the goods liable to be confiscated are likely to be secreted, the authority will have the power to pass an order of prohibition in Form GST INS-03, pursuant to the order of seizure in FORM GST INS-02.

3. Order of prohibition i.e. not to remove seized goods to owner of such goods, can be issued in **FORM GST INS-03.**In the case of **Mahendra Kumar Indermal Versus Deputy Assistant Commissioner (St) Nandigama Circle,2020 (4) TMI 629**, the Hon'ble Andhra Pradesh High Court held that the order of prohibition issued in Form GST INS-03 is illegal and without any jurisdiction for the reason that written authorization was missing for conducting such search in the present case. '
4. The department may release the seized goods on provisional basis upon execution of a bond in **Form GST INS-04**.
5. In the circumstances where the goods are of perishable or hazardous nature, an order to release such goodsmay be issued in**Form GST INS-05**, subject to deposition of market value of such goods or the tax, interest & penalty, whichever is lower.

Concluding the above, it may be observed that the wide powers are given under the GST laws to conduct Inspection, Search and Seizure. However, there are certain pre-requisites which shall be followed by the officer before conducting Inspection or Search like there must be a reason to believe, etc. The 'Reason to believe' shall contemplates an objective determination and cannot be mere reliance on some suspicion, gossip or rumor. The wide powers provided to the officers includes break open the doors, almirahs, etc. However, certain safeguards are available with the person on whom such search is conducted. In addition to the same, it is also important to understand the procedure prescribed under law relating to search and for retention of the documents / goods seized by the department.

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RECENT DEVELOPMENT AND AMENDMENT IN GST

CA Shilvi Khandelwal

1. Introduction: During the month of December 2022, GST revenue has been collectedRs 1,49,507crore which is a record increase of 15% on Year-on-Year basis. The revenues for the month of December 2022 are 15% higher than the GST revenues in the same month last year. During the month, revenue from import of goods was 8% higher and the revenues from domestic transaction (including import of services) are 18% higher than the revenues from these sources during the same month last year. During the month of November, 2022, 7.9 crore e-way bills were generated, which was significantly higher than 7.6 crore e-way bills generated in October, 2022.

CBIC has tweeted that some news reports have appeared in media suggesting that though @GST_Council has recommended reducing threshold for generation of e-invoice to Rs. 5 cr. w.e.f. 1.1.23, the Govt. has yet to issue notification in the matter, giving rise to uncertainties amongst the taxpayers. It has been clarified that presently, e-invoicing has been made mandatory for registered persons having aggregate turnover of more than Rs. 10 crore in any preceding financial year from 2017-18 onwards. There is no proposal before the Government, at present, to reduce this threshold limit to Rs. 5 Crore with effect from 01.01.2023, as no such recommendation has been made by GST Council as yet. (Tweets from CBIC @cbic_india [Official Handle of the Central Board of Indirect Taxes & Customs, responsible for administering Indirect Taxes in India Ministry of Finance, Government of India] dt. Dec 26, 2022.

GST brings in many changes or amends flowing from recent 48th GST Council meeting held on 17th December, 2022 in the form of Notification Nos. 26 & 27 dated 26.12.2022, rate notification Nos. 12 to 15 dated 30.12.2022 and Circular Nos. 183 to 188/2022-GST, all dated 27.12.2022. These are majorly applicable w.e.f. 1st January, 2023. Major changes have been brought through amendment in CGST Rules, 2017 vide Central Good & Service Tax (Fifth Amendment) Rules, 2022. Amendment in Rules 8, 9,

12, 37, 46, 46A, 59, 87, 89, 108, 109, 138, 161 & Forms GST Reg-01, GST REG-17, GST REG-19, GSTR-1, GST RFD-01, GST APL-02, GST DRC-03 and Insertion of Rule 37A, 88C, 109C & Forms GST APL-01/03 W, GST DRC-01B have been made vide Noti. 26/2022-CT, dt.26.12.2022.

2. Important Major Changes under GST: In short,Important and latest changes are as under :

- PAN-linked mobile number and e-mail address shall be captured in Forms REG 01 and OTP based verification will be conducted at the time of registration (Rule 8).
- One time passwords shall be sent to the mobile number and e-mail address linked to the permanent account number while registering in GST (Rule 8).
- For persons to whom registration is granted to deduct tax at source or to collect tax at source, the said officer may cancel the registration, based on a request made in writing by a person to whom such registration is granted [Rule 12(3)].
- Rule 37(1) of the CGST Rules has been amended w.e.f. 01-10-2022 to provide for the reversal of input tax credit only proportionate to the amount not paid to the supplier vis-a-vis the value of the supply, including tax payable.
- New Rule 37A has been inserted to provide for the mechanism and time limit of reversal of ITC by the recipient where tax is not paid by the supplier to the Government.
- Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" issued shall contain all the details which a regular tax invoice contains[Rule 46(A)].
- Mismatch between GSTR-1 and GSTR-3B: Rule 88C provides manner of dealing with difference in liability reported in statements of outward supplies and that reported in GSTR¬3B. Tax authorizes will intimate the difference in amount in Part A of GST DRC-18 through GSTN portal / email directing the tax payer to pay the differential tax liability with interest. It also provides for procedure to be followed by the

taxpayer after such intimation. Any unpaid tax liability shall be recoverable as per section 79 of the CGST Act, 2017.

- Procedure has been prescribed for filing application of refund by the unregistered buyers in cases where the contract/ agreement for supply of services, like construction of flat/house and long-term insurance policy, is cancelled.
- Prescribes procedure for filing refund application by unregistered byes (Rule 89). Form GST RFD-01 has also been amended.
- Rule 108 and Rule 109 of the CGST Rules have been amended to provide clarity on the requirement of submission of the certified copy of the order appealed against and the issuance of final acknowledgement by the appellate authority.
- New Rule 109C and new Form GST APL-01/03W have been inserted to provide the facility for withdrawal of an application of appeal up to a certain specified stage.
- E-way bill shall have to be generated for transportation of imitation jewellery (HSN-7117) (Rule 138).
- Rule 8(4A) for verification for completion of GST registration through biometric based Aadhar authentication and photograph shall not apply to all the States and Union Territories except Gujarat. Rule 8(4A) shall only be applicable to the State of Gujarat w.e.f. 26.12.2022. For other states and Union Territories, it shall be notified later.
- Apart from the above procedural changes, changes in rates of tax and clarifications for certain goods and services have also been given.

3. Point-wise Updates, amendments and Clarifications issued during Dec 2022 and Jan 2023.

- **Verification process for completion of GST registration application via biometric-based Aadhaar authentication and photograph only applicable to the state of Gujarat :** The CBIC has notified that Rule 8(4A) of the CGST Rules w.r.t. the completion of application after biometric-based Aadhaar authentication and photograph of the applicant, verification of the documents in FORM GST REG-01, shall not be applicable in all the States and Union

territories except in the State of Gujarat. (Notification No. No. 27/ 2022 - Central Tax, dt. 26.12.2022).

- **Clarification to deal with difference in ITC availed in GSTR-3B and GSTR-2A for FY 2017-18 and 2018-19 :**CBIC has issued clarification to deal with differences in ITC availed in GSTR-3B and GSTR-2A for FYs 2017-18 and 2018-19 since GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST and a detailed procedure is prescribed to ensure uniformity in the implementation. (Circular No. 183/15/2022-GST, dt. 27.12.2022).
- **CBIC issues clarification on ITC availability for transportation of goods to a place outside India :**CBIC has issued clarification to deal with differences in ITC availed in GSTR-3B and GSTR-2A for FYs 2017-18 and 2018-19 since GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST and a detailed procedure is prescribed to ensure uniformity in the implementation. (Circular No. 184/15/2022-GST, dt. 27.12.2022).
- **Guidelines for recovery proceedings :** Another important change announced around ITC under GST is regarding Rule 88C. CBIC issued guidelines for recovery proceedings under the provisions of Section 79 of the CGST Act, 2017. It instructed for providing of opportunity to the affected taxpayer to explain the differences between GSTR-1 and GSTR-3B by sending a letter, before initiation of action under Section 79 of the CGST Act, 2017. To standardize the entire recovery proceedings, Rule 88C has been inserted in the CGST Rules, 2017. (Notification No. No. 26/2022 - Central Tax, dt. 26.12.2022).
- **Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation :** The Circular provides clarification for cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been

established against the person to whom such notice was issued, then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73. (Circular No. 185/17/2022-GST,dt. 27.12.2022).

- **Clarifications on taxability of no claim bonus and applicability of e-invoicing under GST:** Circular The CBIC has issued a circular to clarify that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and therefore, no claim bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company. It has also been clarified that exemption from generation of e-invoices is for the entity as a whole and not restricted by nature of supply being made by entity. (Circular No. 186/18/2022-GST, dt. 27.12.2022).
- **CBIC issues clarification on treatment of statutory dues for taxpayers where proceedings are finalised under IBC, 2016 :**The CBIC has clarified that proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor and it would be covered under the term 'other proceedings' in Section 84 of CGST Act. Therefore, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable, then the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 for reducing such demand. (Circular No. 187/19/2022-GST, dt. 27.12.2022).
- **CBIC prescribes the manner of filing an application for refund by unregistered persons :**The CBIC has issued circular to clarify that a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'. The date of issuance of letter of cancellation

of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant. Also, the manner and procedure for filing of refund applications by unregistered persons is prescribed. (Circular No. 188/20/2022-GST, dt. 27.12.2022).

- **GST Rate Slash on Goods:**

✓ CBIC has amended Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 12/2022-Central Tax (Rate) dated 30.12.2022 w.e.f. 01.01.2023. As a result, instead of the current 18% GST, ethyl alcohol sent to refineries for blending with motor spirit (petrol) will only be subject to 5% GST.Also the fruit pulp or juice-based drinks, not carbonated, will have a 12% GST levy. Further, mathematical boxes, colour boxes and geometry boxes shall attract a GST rate of 12%, while pencil sharpeners have been kept out of this entry, unlike earlier.

✓ CBIC has amended Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 13/2022-Central Tax (Rate) dated 30.12.2022 providing exemption to intra state supplies w.e.f. 01.01.2023. As a result, instead of the current 5% GST, supply of husks from pulses, chilka and concentrates, chuni or churi, and khanda primarily used as cattle feed will only be subject to exempt GST. In simpler words, no GST is payable on the husks of pulses and the items given above for cattle feed.

- **Reverse Charge in case of supply of essential oils other than those of citrus fruits:** CBIC has amended Notification No. 4/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 14/2022-Central Tax (Rate) dated 30.12.2022w.e.f. 01.01.2023 to provide that payment of GST shall be under Reverse Charge Mechanism in case of supply of essential oils other than those of citrus fruits. Supply of peppermint essential oil (Menthapiperita), Spearmint oil, Water mint oil, horsemint oil and bergamot oil by any unregistered person to registered persons, attracts GST on a reverse charge basis.

- **GST Rate Change on Services:**CBIC has amended Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 15/2022-Central Tax (Rate) dated 30.12.2022 w.e.f. 01.01.2023

in respect to Exemption to renting of residential unit to registered persons and GST on the sevices by way of access to a road or a bridge on payment of annuity.

- ✓ Exemption will apply if the tenant, who is also a proprietor, uses such rented place as their own residence and on their own account and not that of the proprietorship concern. In other words, the expense must not be charged to the proprietor's account.
- ✓ BOT annuities brought under GST : Concessionaires who receive annuities from the National Highways Authority of India and state authorities for construction and maintenance of roads and highways will now have to pay GST on the toll amounts received effective January 1, 2023, as the exemption has been removed. A recent notification by the Central Board of Indirect Taxes and Customs has omitted serial 23A and related entries dealing with this in the Notification No. 12/2017- Central Tax (Rate) - Notification for exemption from tax (NIL rated) in case of services. The provision had exempted "service by way of access to a road or a bridge on payment of annuity". In simple words, Exemption under entry No. 23A has been omitted, i.e. to the sevices by way of access to a road or a bridge on payment of annuity.

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HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 18216 of 2017

M/s. Shiva Jyoti Construction ..... Petitioner

Mr. Jagamohan Pattanaik, Advocate

-versus-

The Chairperson, Central Board of Excise & Customs and others ..... Opposite Parties

Mr. Subash Chandra Mohanty, Senior Standing Counsel

Coram : The Chief Justice

Justice M.S. Raman

The Hon'ble Orissa High Court permitted the assessee to rectify its GST Returns filed for the months of September 2017 and March 2018, in order to claim ITC benefit by the recipient, wherein B2C was erroneously mentioned, instead of B2B.

Held that, the assessee will be unnecessarily prejudiced if it is not allowed to avail the benefits of ITC.

ORDER

12.01.2023

Order No.

07. 1. The Petitioner before this Court seeks a direction to the Opposite Parties to permit the Petitioner to rectify the GST Return filed for the period September, 2017 and March 2018 in Form-B2B instead of B2C as was wrongly filed under GSTR-1 in order to get the Input Tax Credit (ITC) benefit by M/s. Odisha Construction Corporation Limited (OCCL), the principal contractor.

2. Admittedly, the last date of filing the return was 31st March, 2019 and the date by which the rectification should have been carried out was 13th April, 2019.

3. It is the case of the Petitioner that the error came to be noticed after the OCCL held up the legitimate running bill amount of the Petitioner by

informing it about the above error on 21st January, 2020. It is the case of the Petitioner that thereafter it has been making requests to the Opposite Parties to permit it to correct the GSTR-1 Forms but to no avail.

4. The stand taken by the Opposite Parties is that once the deadline for rectification of the Forms was crossed, then no further indulgence could be granted to the Petitioner.
5. The fact remains that by permitting the Petitioner to rectify the above error, there will be no loss whatsoever caused to the Opposite Parties. It is not as if that there will be any escapement of tax. This is only about the ITC benefit which in any event has to be given to the Petitioner. On the contrary, if it is not permitted, then the Petitioner will unnecessarily be prejudiced.
6. In similar circumstances, the Madras High Court in its order dated 6th October, 2020 in Writ Petition No.29676 of 2019 ***(M/s. SUN DYE CHEM v. The Assistant Commissioner ST)*** accepted the plea of the Petitioner and directed that the Petitioner in that case should be permitted t o file the corrected form.
7. For the aforementioned reasons, the letters of rejection dated 19th June and 23rd September, 2020 are hereby set aside. The Court permits the Petitioner to resubmit the corrected Form-B2B under GSTR-1 for the aforementioned periods September, 2017 and March, 2018 and to enable the Petitioner to do so a direction is issued to the Opposite Parties to receive it manually. Once the corrected Forms are received manually, the Department will facilitate the uploading of those details in the web portal. The directions be carried out within a period of four weeks.
8. The writ petition is disposed of with the above directions.
9. An urgent certified copy of this order be issued as per rules.

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HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17506 of 2022

M/s Eagle Fibres Limited
Versus
State of Gujarat

Appearance:

Mr Karankumar J Sukawala(10263) for the Petitioner(s) No. 1,2

MR Mukund Kumar Chouhan(10259) for the Petitioner(s) No. 1,2

for the Respondent(s) No. 1

Mr Siddharth Rami, Agp for the Respondent(s) No. 1,2

Coram: Honourable Ms. Justice Sonia Gokani and
Honourable Mr. Justice Sandeep N. Bhatt
Date : 12/01/2023

Gujarat High Court held that order, making the addition of huge amount of tax, interest and penalty, passed in FORM GST DRC-07 without granting opportunity of personal hearing is liable to be set aside.

Oral Order

(Per : Honourable Ms. Justice Sonia Gokani)

1. Rule returnable forthwith. Learned Assistant Government Pleader Mr. Siddharth Rami waives service of notice of rule for and on behalf of the respondents.

2. This is a petition seeking direction to set aside the ex-parte order passed in FORM GST DRC-07 dated 14.04.2022 passed by the respondent no.2 without following the principles of natural justice. The facts leading to the present petition are as follows :-

2.1. The petitioner no.1 M/s. Eagle Fibres Limited is a manufacturer of polyester yarn who is registered with the GST Department having GSIN 24AAACE5085C1Z1.

2.2. A show cause notice was issued in Form GST DRC-01 by the respondent no.2 on 14.02.2022 and uploaded on the portal. No hard copy of the show

cause notice was served upon the petitioner. The excise clerk of the factory was on leave for 30 days and after his return, he found that show case notice has been served on portal and forwarded the same to the learned advocate who was to prepare the reply. In the meantime, the respondent no.2 passed an order in Form GST DRC-07 on 14.04.2022.

2.3. On the ground that the mandatory opportunity of personal hearing was not granted as required under Section 75(4) of the CGST/SGST Act, 2017, the petitioner is before Court seeking to challenge the order passed by the respondent relying on various decisions of this Court which insist on grant of opportunity of personal hearing and also interpreting Section 75(4) of the CGST/SGST Act when the additions are made prejudicial to the petitioner, with the following prayers:-

"(A) that this Hon'ble Court be pleased to issue a writ of Certiorari or any other writ, order or direction under Article 226 of The constitution of India after going the validity and legality there of quash the order DRC 07 Reference No. ZD2404220100580 dated 14/04/2022 (Annexure-B) issued by Respondent No. 2;

(B) that this Honble Court be pleased to issue a writ of Certiorari or any other appropriate writ, order or direction under Article 226 of the constitution of India after going into the validity legality thereof, direct re-adjudication of the Show Cause Notice Form GST DRC-01 Reference No. ZD2402220082451 dated 14/02/2022 (Annexure - A) after following the Principles of Natural Justice.

(C) that this Honble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction, ordering and directing the Respondent No.-2 by himself, his subordinates, servants and agents, pending disposal of the present Petition not to recover amount imposed vide impugned order dated 14/04/2022 and stay the execution and other proceeding thereof.

(D) For ad- interim reliefs in terms of prayers (a), (b) and (c) above.

(E) For costs of this Petition,

(F) For such and other reliefs as the nature and circumstances of the case may require."

3. This Court (Coram: Mr. N.V.Anjaria & Mr. Bhargav D. Karia, JJ.) issued notice for final disposal on 14.09.2022. Today, when the matter was taken up, we have heard learned advocate Mr. Mukund Kumar Chouhan appearing for the petitioners and learned Assistant Government Pleader Mr. Siddharth Rami for the respondent - State.

4. It is not disputed that the personal hearing had not been granted in the instant case. It is an ex-parte order in Form GST DRC-07 passed on 14.04.2022 by making the addition of huge amount of tax, interest and penalty of Rs. 2.40 crores (rounded off).

5. The decision of this Court in case of **Graziano Trasmissioni India Pvt. Ltd. vs. State of Gujarat [2022(66) G.S.T.L. 38 (Guj.)]** and **Alkem Laboratories Ltd. vs. Union of India [2021(46) G.S.T.L. 113 (Guj.)]** and other decisions will need to come to the rescue of the petitioner which insist on providing the opportunity of personal hearing when any adverse decision is contemplated, even without any request for personal hearing on the part of the party concerned.

5.1. In case of **Graziano Transmissioni India Pvt. Ltd.** (supra), the Court held and observed thus:-

"11. At the outset, we would like to reproduce Section 75 of the CGST Act, 2017, which is as under:

"Section 75 : General provisions relating to determination of tax.

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or subsections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer

shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within

five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or subsection (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

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

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

12. Section 75(4) of the CGST Act, 201 7 provides that an opportunity of hearing is to be provided where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.

13. The stand on the part of the Department is that the Online Portal mode was chosen by the petitioners, which had resulted in the entire matter having been proceeded Online. The opportunity

of hearing was not granted since the same was not requested for. However, while so arguing, the provision of Section 75(4) has been missed out. Even without any request having been made on the part of the party concerned, when any adverse decision is contemplated, personal hearing is a must. Hence, the same is missing in the instant case and the request on the part of the petitioners is to remand the matter by directing the respondents to consider the matter afresh by giving the fullest opportunity to the parties to present their case.

14. Without entering into the merits of the matter, only on the ground of non-availment of opportunity of personal hearing, we deem it appropriate to quash the impugned Orderin-original No. ZD240322019756J dated 25.03. 2022 and two (2) Summary Orders in Form DRC-07 passed by respondent No.3. The respondent No.3 shall avail the opportunity of personal hearing on 18.07.2022. If any document/s are needed to be furnished, let the same be done on or before 13.07.2022 physically. No adjournment shall be sought for by the petitioners. None of the observations will come in the way of the parties in finally deciding the matter. Both the petitions stands disposed of accordingly. Direct service permitted."

6. Accordingly, the petition is ALLOWED quashing and setting aside the impugned order of assessment with all consequential proceedings. Rule is made absolute to the aforesaid extent. The respondent is at liberty to initiate the proceedings from the stage where it had been left, by affording reasonable opportunity of hearing to the petitioner on intimating him even physically.

7. We noticed that it is only through portal that the assessee is being served. Let the service be also effected physically through RPAD and thereafter, affording the reasonable opportunity, the order shall be passed in accordance with law.

8. Petition is disposed of accordingly.

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HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

S.B. Criminal Miscellaneous Bail Application No. 17536/2022

Gaurav Kakkar S/o Shri Kishan Lal Kakkar, ... Petitioner
Resident C 54, Ground Floor, Near Metro Piller,
Uttam Nagar, Delhi
(At Present Confined In Central Jail Jaipur)

Versus

Directorate General Of Gst Intelligence, ... Respondent
Jaipur Zonal Unit

For Petitioner(s) : Mr. R.K. Agarwal, Sr. Advocate
assisted by Mr. Yash Vardhan Nandwana

For Respondent(s) : Mr. Kinshuk Jain, Sr. Standing counsel
for CGST assisted by Mr. Sourabh Jain
Mr. Jai Upadhyaya

Hon'ble Mr. Justice Manoj Kumar Garg

Availment & passing of fake/ineligible ITC – HC Grants bail to accused

Order

11/01/2023

The petitioner has been arrested in connection with File No. DGGI/INV/INT/1073/2022-GR.J.O/O DD-DGGI-RU-UDAIPUR for offence under Section 132(1)(c) (f)(k) and (l) of Central Goods and Service Tax Act, 2017.

The prosecution case against the petitioner is that he created fake firms for availment and passing of fake/ ineligiblie Input Tax Credit (ITC) to facilitate existing beneficiary firms. It is alleged that in total, ITC of Rs. 19.65 crores has been availed on the basis of goodsless invoices which is ineligible as per Section 16(2)(b) of the CGST Act, 2017.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case and the arrest has been made without determining the tax liability and by wrongfully calculating ITC allegedly availed by the present

petitioner. Learned counsel appearing for the petitioner submits that the present petitioner is no way involved in the commission of the offences alleged and that he has been arrested on frivolous grounds, in violation of the guidelines laid down in case of D.K. Basu Vs. State of West Bengal reported in (1997) 1 SCC 416. It is also argued that offences are triable by Magistrate and petitioner is behind the bars since 04.11.2022 and now challan of the case has also been presented, therefore, there is no question of tampering with evidence or winning over witnesses in this case and thus no useful purpose would be served by keeping the applicant in jail, therefore, the benefit of bail should be granted to the accused-petitioner. Learned counsel for the petitioner placed reliance on decision of Hon'ble Apex Court in the case of Ratnambar Kaushik Vs. UOI reported in (2022) SC 1215 and decision in the case of Vinay Kant Ameta Vs. UOI (Criminal Appeal No. 60/2022) decided on 10.01.2022 .

Per contra, learned counsel for the CGST vehemently opposed the bail application and raised an objection that the petitioner has directly filed bail application before the court of Additional Sessions Judge under Section 439 Cr.P.C. without filing bail application before the trial court under Section 437 Cr.P.C. He place reliance on decision of Hon'ble Allahabad High Court in the case of Noor Mohammad Vs. State of UP & ors reported in 1992 SCC Online All 877. He further argued that certain firms were created which were operating only on paper and were passing on inadmissible ITC by issuing invoices without supplying the goods mentioned therein. It is further contended that the evidence collected so far clearly indicates that the accused is the mastermind in creating fake firms who subsequently defrauded the Government exchequer to the tune of Rs. 19.65 crores, therefore, the bail application may be rejected. Learned counsel for the respondent placed reliance on decision of Hon'ble Apex Court in the case of Lalit Goyal Vs. UOI & Anr. (Special Leave to Appeal (Crl.) No. 3509/2022 decided on 26.08.2022. Learned counsel for the respondent also placed reliance on order passed by co-ordinate Bench of this court in the case of Yashik Jindal Vs. UOI (S.B. Crl. Misc. Bail Application No. 14792/2022) dated 16.12.2022 and submitted that in the case of Vinay Kant Ameta (supra) and Yashik Jindal (supra), the Hon'ble Apex Court and co-ordinate Bench of this Court directed the petitioner therein, to deposit Rs.200 crores and Rs. 2 crores respectively, as a condition for grant of bail.

Heard learned counsel for the parties and perused the material available on record.

It is an admitted fact that petitioner was arrested on 04.11.2022 and since then, he is in judicial custody. The challan of the case has already been presented and no investigation is pending. Section 132(1)(i) of the Act provides for punishment that "in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine". Taking into consideration the investigation and evidence so collected, the trial will take considerable time and it may happen, if denied bail, the judicial custody be prolonged beyond the statutory period of punishment which is for five years. However, in the case of Vinay Kant Ameta (supra), the Hon'ble Apex Court directed the accused to deposit Rs. 200 crores as a condition for grant of bail, therefore, having regard to the totality of the facts and circumstances of the present case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bail to the accused petitioner under Section 439 Cr.P.C with a condition to deposit Rs. 3 crores by the petitioner before the respondent Department under protest.

Accordingly, the bail application filed under Sec.439 Cr.P.C. is allowed and it is directed that petitioner - Gaurav Kakkar S/o Kishan Lal Kakkar shall be released on bail provided he executes a personal bond in a sum of Rs.2,00,000/- with two sureties of Rs.1,00,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

The trial court is directed to take the receipt of deposition of Rs. 3 crores on record from the petitioner before attesting the bail bonds.

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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 267 of 2022

M/s Mahendra Sponge ..... Appellant
and Power Limited Through Kamlesh Ghosh,
S/o Late Shri S.K. Ghosh, aged about 51 Years,
Authorized Signatory, R/o Sai Nagar,
Opp Agriculture College, Raipur, 492012 (Chhattisgarh)

Versus

Assistant Commissioner State Tax (SGST) ..... Respondent
Circle-9, Raipur, Civil Lines, Raipur (Chhattisgarh)

(Cause-title taken from Case Information System)

For Appellant : Mr. Bhishma Ahluwalia, Advocate
For Respondent : Ms. Astha Shukla, Government Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice
Hon'ble Shri Arvind Singh Chandel. Judge

The Hon'ble Chhattisgarh High Court quashed and set aside the order passed by the Single Judge directing the assessee to avail the alternate remedy. Held that the availability of alternative remedy cannot be an absolute bar to file a writ petition in cases where the principles of natural justice has been violated.

Order on Board

Per Arup Kumar Goswami. Chief Justice

09.01.2023

Heard Mr. Bhishma Ahluwalia, learned counsel for the appellant. Also heard Ms. Astha Shukla, learned Government Advocate, appearing for the respondent.

2. This appeal is preferred against an order dated 04.05.2022 passed by the learned Single Judge in WPT No. 67 of 2022, declining to entertain the writ petition on the ground that petitioner may avail alternative remedy as available under Section 107 of the Chhattisgarh Goods and Services Tax Act, 2017 (for short, 'the Act of 2017'), as there is no exceptional circumstance to invoke the discretionary jurisdiction under Article 226 of the Constitution of

India.

3. The learned Single Judge at paragraphs 5 and 6 had observed as follows :

"5. Undisputedly, upon scrutiny, notice under Section 61, notice in FORM GST ASMT-10 was issued to the petitioner on 11.08.2021 followed by show-ause notice under Section 73 of CGST/ SGST Act and the respondent authority by impugned order had determined the tax liabilities, interest and penalty upon the petitioner under Section 73(9) of CGST/ SGST Act and made demand of the amount mentioned therein. Section 107 of the GST Act, 2017 provides for appeal to appellate authority against the order of adjudicating authority. The order impugned is passed by adjudicating authority, hence, the order is to be assailed before the appellate authority under Section 107 of GST Act, 2017. Petitioner is having statutory alternate remedy of challenging the impugned order. The petitioner instead of availing the statutory remedy available to it of filing appeal under Section 107 of GST Act, 2017 has filed this writ petition. The grounds raised in this writ petition, very well be considered by the appellate authority and as held by Hon'ble Supreme Court in the aforementioned rulings ie. M/s Commercial Steel Limited (supra) the existence of an alternate remedy is not an absolute bar but the discretionary jurisdiction under Article 226 of the

Constitution can be exercised only in exceptional circumstances like :

(i) a breach of fundamental rights;

(ii) a violation of principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation.

6. In the case at hand, respondent issued notice under Section 61 of GST Act, calling explanation upon the discrepancies found by the authority to which the petitioner did not reply, thereafter, show-cause notice under Section 73 of CGST/SGST along with the summary of show-cause notice dated 11.10.2021 was also issued."

4. Mr. Ahluwalia has submitted that the learned Single Judge did not consider the provision contained in Section 75(4) of the Act of 2017, which provides that an opportunity of hearing shall be granted when a request is received

in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. Drawing attention of the Court to letter dated 20.08.2021 at page 44 and letter dated 30.10.2021 at page 45, he submits that the petitioner had specifically prayed for grant of personal hearing and yet, no personal hearing was provided to the appellant. He also submits that the learned Single Judge committed an error of facts in construing the notice dated 11.10.2021 to be a show-cause notice as the same was not a show-cause notice.

5. Ms. Shukla, as usual, has fairly submitted that no personal hearing was granted to the appellant and the same was in view of the fact that by letter dated 20.10.2021, though the appellant had prayed for 30 days' time to file reply to the notice dated 11.10.2021, subsequently, he did not file any reply, but, on 30.10.2021, took a plea that he had not been served a detailed show-cause notice and that DRC-01 dated 11.10.2021 is merely a summary of demand as per Rule 142(1) the GST Rules, 2017.

6. We have heard the learned counsel for the parties and have Perusecl tne materials on record.

7. Alternative remedy is not an absolute bar if there is violation of principles of natural justice. Irrespective of the fact as to whether the appellant had filed reply or not, it is evident that the appellant had prayed for a personal hearing, which was, admittedly, not granted to the appellant.

8. In that view of the matter, we are of the opinion that it will not be equitable to relegate the appellant to avail alternative remedy.

9. Taking that view, the order of the learned Single Judge dated 04.05.2022 as well as the order dated 02.02.2022 passed by the respondent are set aside and quashed.

10. At this juncture, Ms. Shukla submits that within a period of 10 days, a notice will be issued to the appellant, fixing a date for grant of personal hearing.

11. It is observed that at the time of grant of personal hearing, the appellant would be at liberty to press the contention that notice dated 11.10.2021 is not a show-cause notice.

12. The respondent shall pass appropriate orders after granting opportunity of hearing to the appellant within a period of 45 days from the date of hearing.

13. Till the order is passed after such hearing, the balance amount shall not be recovered from the appellant.

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COMMERCIAL NEWS

Adv. Deepak Garg

New Labour Code

The Government has formulated four Labour Codes, namely, **the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020** and **the Occupational Safety, Health and Working Conditions Code, 2020** and published these Codes in the Official Gazette for general information. As a step towards implementation of the four Labour Codes, the Central and a number of State Governments have pre-published the draft Rules, inviting comments of all stakeholders.

The four Labour Codes envisage strengthening the protection available to workers, including unorganized workers in terms of statutory minimum wage, social security and healthcare of workers. Some of the important provisions are as follows:-

1. A statutory right for minimum wages and timely payment of wages has been made available to all workers to support sustainable growth and inclusive development.
2. To avoid multiple interpretations and litigations, uniform definition of 'wages' across all the four Labour Codes has been provided that is simple, coherent and easy to enforce.
3. Provision for annual health check-up and medical facilities has also been made which enhances labour productivity and increases life expectancy.
4. Statutory provision has been made for the first time to issue appointment letter to every employee of the establishment which leads to formalized contract of employment that increases job security and enables a worker to claim statutory benefits such as minimum wages, social security etc .
5. Provision of Re-skilling Fund for skill development of workers.
6. The gig worker and the platform worker have been defined for the purpose of formulating schemes to provide social security benefits. Social security schemes can be formulated from the contribution of aggregators and the other sources can include funds from the Central and State Governments.
7. The Central Government may extend benefits to unorganised workers, gig workers and platform workers and the members of their families through

Employees' State Insurance Corporation or Employees' Provident Fund Organization.

8. A worker engaged under Fixed Term Employment (FTE) is entitled for all the benefits which are available to permanent employees and has also been made eligible for gratuity if he renders service for a period of one year.
9. Every worker is entitled to annual leave with wages after working for 180 days in comparison to 240 days at present. Provision for encashment of leave on demand by a worker while in service at the end of calendar year.
10. Applicability of Employees' Provident Fund has been extended to all industries as against scheduled industries at present.

This information was given by the Minister of State for Labour & Employment, ShriRameswarTeli in a written reply in LokSabha on 12.12.2022.

Source- PIB Delhi- 12-Dec-2022

GST officers have no power to seize cash during search operations: HC

Cash not goods as per GST: GST officers have no power to seize cash during search operations; HC The undisputed facts are that a search operation was conducted at the residence of the petitioners on 04.12.2020, by certain officers of GST, AE, Delhi, West under Section 67(2) of the Goods and Services Tax Act, 2017 (hereafter 'the GST Act'). During the course of the search, the officers found cash aggregating to ₹ 1,22,87,000/- and took possession of the said cash. Admittedly, no seizure memo was drawn in respect of the said cash. The petitioner has challenged the said search operation as unlawful on several grounds. It is contended by the petitioner that the concerned officers could have no reason to believe that any goods liable for confiscation were lying in the premises of the petitioners. It is also claimed that the concerned officers had no reason to believe that any records relevant to the proceedings would be available in the premises. The petitioner also challenges the action of the concerned officers of taking possession of cash as without the authority of law. The Bhopal Commissionerate had informed CGST Delhi East Commissionerate that enquiries were conducted in respect of a concern named M/s Samriddhi Enterprises, holding GSTIN 23BSOPP9752K1ZY, which belongs to one Sh. Rakesh Pal and was located at Shop No.2, Kolar Road, Bhopal. He was ostensibly engaged in the trading of betel

nuts, but the enquiry revealed that such trading was without actual movement of goods. It was also revealed that there was a saree shop at the said premises operating under the name of 'TakshSarees'. And, no concern with the name Samriddhi Enterprises was operating from the said address. Apparently, Sh. Rakesh Pal had made a statement that the said concern was opened by petitioner. He also named a few other persons. Admittedly, the petitioners are not assessees from whom any tax or amount is to be recovered The laptop and mobile phones, which were taken away by the concerned officers, were subsequently returned to petitioner no.1. However, the cash collected by the officers was deposited in a fixed deposit receipt in the name of the President of India. In the aforesaid context, the petitioner contends that the GST officers had no power to seize any cash in exercise of its powers under Section 67(2) of the GST Act. It is contended that the power under Section 67(2) of the GST Act to seize goods could be exercised only if the goods were liable for confiscation. The documents, books or things, could be seized only if the same are useful or relevant to any proceedings under the GST Act. It is contended on behalf of the petitioners that currency is excluded from the definition of goods and thus cannot be seized as goods. The currency is also not useful or relevant for conducting any proceedings and therefore, there is no question of seizing currency in exercise of section 67(2) of the GST Act. What Court said? 13. In view of the above, one of the principal question that requires to be addressed is whether cash can be seized by the officers under Section 67(2) of the GST Act. Prima facie, a plain reading of Section 67(2) of the GST Act indicates that the seizure is limited to goods liable for confiscation or any documents, books or things, which may be "useful for or relevant to any proceedings under this Act". Clearly, cash does not fall within the definition of goods. And, prima facie, it is difficult to accept that cash could be termed as a 'thing' useful or relevant for proceedings under the GST Act. The second proviso to Section 67(2) of the GST Act also provides that the books or things so seized would be retained by the officer only so long as may be necessary "for their examination and for any inquiry or proceedings under the Act." 14. However, there is no occasion for this Court to now examine the aforesaid question as it is the respondents' stand that the cash was not seized. It is contended that the seizure memo was not prepared as the officers, who had conducted the search operation, had, in fact, not seized any cash. 15. Mr.Harpreet Singh, learned counsel for the respondents, submits that the officers had merely "resumed" cash as is noted in the panchnama and therefore, the same cannot be considered as seizure. 16. However, Mr Harpreet Singh is unable to point out any

provision in the GST Act that entitles any officer of GST to merely "resume" assets. Clearly, the petitioners had not handed over the cash to the concerned officers voluntarily. Undisputedly, the action taken by the officers was a coercive action. We find no provision in the GST Act that could support an action of forcibly taking over possession of currency from the premises of any person, without effecting the same. The powers of search and seizure are draconian powers and must be exercised strictly in terms of the statute and only if the necessary conditions are satisfied. 17. In the present case, the GST officers have dispossessed the petitioners of the currency found in their premises during search operations conducted under Section 67(2) of the GST Act but have not seized the currency under the said provision. Plainly, their action in doing so is without authority of law.

Source- Study Café-24-Jan-2023

Longer wait for GST tribunals with Council yet to clear proposals

NEW DELHI : Businesses may have to wait longer for quicker resolution of Goods and Services Tax (GST)-related disputes under the proposed appellate tribunals, as the Finance Bill 2023 is expected to skip crucial amendments needed in this regard.The plan to set up GST appellate tribunals (GSTAT) across the country missed a crucial opportunity with the federal tax body, the GST Council, not clearing the proposals at its last meeting on 17 December, a person informed about the Centre-state discussions said."Amendments to Central GST (CGST) Act and Integrated GST (IGST) Act are done through Finance Acts brought out every year as part of the annual budget exercise and missing this year's budget could mean that these amendments may have to wait for another year, unless an ordinance is promulgated," said the person.However, an ordinance does not appear likely at this juncture, the person added. The council was convened in December with the idea of getting this and other important amendments cleared, the person said. However, it took up only eight of the 15 agenda items on the table at its last meeting. Union finance minister and chairperson of the council NirmalaSitharaman had said at a briefing at the end of the meeting that the issue of tribunals will be taken up at the Council's next meeting, which may be an in-person meeting. A date for the next meeting is yet to be fixed. One important item cleared by the Council was de-criminalization of GST laws along with an increase in the monetary threshold for initiating prosecution from ₹ 1 crore to ₹ 2 crore by amending Section 132 of

the CGST Act. This is expected to make it to the Finance Bill, 2023, giving relief to businesses."In the absence of GSTAT, a lot of assessees now approach high courts to seek remedies including in refund cases, which adds up to the burden of cases on high courts. The urgency of having GSTAT is not lost on anyone and it is surprising that after five years of the indirect tax reform, we do not have the appellate tribunal. I hope this does not get delayed further," said Shashi Mathews, partner, tax at law firm IndusLaw. Experts said that not many high courts have expertise on GST and it will make sense to have the tribunals across the country. GST appellate tribunals will also deal with Centre-state disputes. The Council has to take a call on whether there should be one GST appellate tribunal per state or whether one per region, and how many members should be there from the Centre and states. There would be four members in a tribunal including two technical members, a judicial member and the president of the tribunal. The Council has to decide what would be an equitable distribution of members between central and state governments. Experts also hope for an amnesty scheme for customs duty-related disputes in the forthcoming Union budget.

Source- Live Mint- 20-Jan-2023

Direct recovery of GST in case of discrepancies between GSTR-1 and GSTR-3B

As an outcome of the recent 48th GST council meeting, the manner of dealing with difference in liability reported in statement of outward supplies (GSTR-1) and that reported in return (GSTR-3B) has been codified in the form of Rule 88C of the CGST Rules. This rule is likely to affect the taxpayers in case of any discrepancies between the supplies reported in GSTR-1 and GSTR-3B. The onus will be on the taxpayers to ensure compliance. The first question that arises in mind is whether this rule has got a statutory backing. The answer to this question apparently seems to be a yes. Section 75(12) of the CGST Act provides for direct recovery of unpaid or short-paid self-assessed tax as per GSTR-3B without following the demand procedures laid down under the CGST Act. The Finance Act, 2021 has amended this section by inserting an explanation to provide that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished in form GSTR-1, but not included in the return furnished in form GSTR-3B. This explanation extended statutory power to department for direct recovery of tax in a situation of difference between the output liability reported in

GSTR-1 and actual tax discharged in GSTR-3B for the relevant period. However, the provision was silent on grant of any opportunity of being heard before initiating recovery proceedings which was later clarified vide a benevolent circular. To put an end to the uncertainties prevailing in the trade due to absence of any requirement to issue any notice/intimation under the law by the department before initiating direct recovery, Rule 88C has been inserted in the CGST Rules. This rule basically provides for as under: Where tax payable for a tax period under GSTR-1 exceeds the amount of tax payable under GSTR-3B, by specified amount and percentage, a system generated intimation in Part A of Form DRC-01B of such difference shall be given to registered person. On receipt of DRC-01B, registered person shall within a period of 7 days either pay such differential tax liability fully or partially with interest and furnish details thereof and furnish the same in Part B of Form DRC-01B electronically on the common portal, or furnish a reply electronically on common portal incorporating reasons in respect of unpaid differential liability, if any, in Part B of Form DRC-01B. In case, differential tax liability is not paid within period specified, or where no explanation or reason is furnished by registered person or where such reason is not found to be acceptable by proper officer, the said amount shall be recoverable in accordance with Section 79 of the CGST Act. Rule 59 has also been amended to provide that in case where intimation is received by registered person under Rule 88C, such person shall not be allowed to furnish GSTR-1 for a subsequent tax period, unless he has either deposited the amount specified in intimation or has furnished a reply explaining the reasons for any amount remaining unpaid. It was stated in the 48th GST council meeting that this would facilitate taxpayers to pay/ explain the reason for the difference in such liabilities reported by them, without intervention of the tax officers. Here, it would be interesting to see whether any reply by the taxpayer explaining the differences would suffice or such reply will have to be to the satisfaction of the officer. The newly inserted rule has made the GSTR-1 and GSTR-3B reconciliation an indispensable time-sensitive exercise wherein a limited window of 7 days has been provided to reconcile the difference and take a call either to pay or to explain the differences. Further, the newly inserted rule does not provide for any sort of extension of the strict time limit of 7 days. The inaction would not just trigger the direct recovery action by the department but also block filing of GSTR-1 for the subsequent periods. Since there is mandate of sequel filing of GSTR-1 and GSTR-3B under Section 39, effectively, GSTR-3B can also not be filed for subsequent periods unless this difference is sorted. In case, default in filing GSTR-1 or GSTR-

3B continues for one more tax-period, filing of E-way bill will also be restricted under Rule 138E rendering the businesses completely helpless for movement of any goods under the cover of E-way bill and thereby, disrupting the entire business chain. The nature of the intimation in the form of DRC-1B is not clear as to whether it is a notice for demand under Section 75. If so, rigours of that section should be made applicable to this intimation as well which would include opportunity of being heard, grant of time/adjournments and requirement of passing speaking order by the proper officer whereas Rule 88C does not provide for any of these. In case the reasons furnished by the registered person are not acceptable to proper officer, the rule provides that the differential amount shall be recoverable in accordance with Section 79 of the CGST Act. It may also be possible that explanation furnished by registered person for few of the items is acceptable whereas for other items, it is not acceptable to proper office which would require determination and passing of order by the proper officer for the amount payable by the registered person. However, from the perusal of Rule 88C or the form DRC-1B, it appears that the proper officer would directly initiate recovery proceedings without passing any order. If so, where is the scope of challenging the order of proper officer regarding differential tax liability before appellate forums. This poses a serious question whether the only remedy with the registered person would be to rush to High Courts for stay of recovery action. The newly inserted Rule 88C is not yet effective since the amount/percentage of differences must be specified to bring it in force. Nevertheless, this rule is set to result in flood of system generated DRC-1B thrown on taxpayers in the coming months. Therefore, it is paramount that the department clarifies these issues at the earliest to avoid unnecessary litigation in the times to come.

Source- Times of India- 17-Jan-2023

Gift or not ? The confusion over GST on promotional schemes run by businesses

Businesses now-a-days are adopting new and innovative promotional schemes to attract customers. With increased competition, making space for a new business or even surviving in the market has become a challenge. However, for implementation of such schemes, tax implications are very critical and have been a matter of dispute under indirect tax regime. One of the important issues related to promotional schemes is availability of input tax credit (ITC) of tax paid on procurements made for promotional schemes. While the term 'business' has been

defined under the Central Goods and Services Tax Act, 2017 (the CGST Act), there is no definite yardstick to find out whether an activity is carried out 'in course or furtherance of business'. The advance ruling in M/s. Myntra Designs Private Limited (Myntra)case is an important example of such an anomaly in law. Myntrahadsought advance ruling on availability of ITC on vouchers and subscription packages procured from third-party vendors. Myntra proposed to run a loyalty program, by way of issuing loyalty points to the customers on fulfilment of certain terms and conditions. Such loyalty points, which are non-transferable, and have no monetary value, are redeemed by customers for vouchers and subscription packages. The Karnataka Authority for Advance Ruling (AAR)heldthat redemption of loyalty points by customers for receiving vouchers from Myntra implies that the vouchers are issued free of cost to the customers and amounts to disposal of vouchers by way of gift, which is blocked credit under Section 17(5)(h) of the CGST Act. Now, in commercial sense, any activity that expands the business, including marketing and promotional schemes, would deem to be in the course or furtherance of business. In the present case, introducing a loyalty program whereby customers can redeem loyalty points for vouchers and subscription packages is essentially a marketing initiative to promote the e-commerce platform of Myntra, which would help in broadening the customer base and also, increase the commission earned by Myntra by way of supplier listing. The vouchers and subscription packages are neither a gratuity nor an act of generosity. For something to be termed as a gift, it must be unconditional, but since the offer is not available to each and every customer and requires quid pro quo from customers to fulfill the term and conditions for becoming eligible to participate in the loyalty program, it does not come within the ambit of 'gift'. Accordingly, the said Ruling has completely ignored the purpose behind issuance of vouchers and subscription packages, which are provided to the customers in course or furtherance of business only, and definitely not as a 'gift'. Further, there have been several Advance Rulings on similar issues wherein ITC of goods and services procured for business promotional schemes have been rejected. The Appellate Authority for Advance Ruling (AAAR), Tamil Nadu in the case of GRB Dairy Foods Pvt Ltd. , has held that gifts or rewards given without consideration even when given for sales promotion do not qualify as inputs for the purposes of ITC, since no GST is paid on its disposal. In another decision of Biostadt India Limited, the Maharashtra AAR held that in absence of any agreement signed by the customers, promotional scheme could not be considered as a contractual obligation and thus, was 'gift'. However, in this context it is also interesting to highlight another decision of Maharashtra AAAR in the case of Sanofi India Limited, where no advance ruling could be issued due to difference in opinion among the

members. One member (SGST) upheld the order of AAR opining the goods distributed free of cost are in nature of gift, while the other member (CGST) set aside the order of the AAR, ruling in favour of the Appellant, opining that the promotional scheme was designed with the sole purpose of furthering the business, driven purely by commercial intention, and accordingly, categorising the goods and services procured as 'input' and 'input services'. From the above rulings, it is evident that traditional promotional schemes can be broadly divided into two categories. Firstly, target based promotional schemes, where incentives are given upon fulfilment of certain sales targets; and secondly, where promotional items are given free of cost as a marketing gimmick. In both these types of schemes, owing to the lack of clarity in law, ITC has been consistently denied by the Authorities. Furthermore, on analysis of Myntra case, it is observed that there is a promotional scheme different from the schemes offered by conventional businesses, whereby the customers earn points for every purchase they make, and such points can be redeemed to get vouchers and subscription packages. There is neither any element of fulfilling sales targets, nor any products being supplied free of cost. To earn points, a customer has to purchase items. The entire conundrum here is due to the fact that the term 'Gift' is not defined under GST law. So, reliance may be taken from other legislations such as the Gift Tax Act, in terms of which Gift is a "transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth". Thus, 'Gift' is a voluntary act which does not involve consideration. Further, there is also an absence of any contractual obligation behind such gifts which are either in the nature of vouchers, points or in some cases free gifts. Further, it also becomes imperative to note that in terms of input or input service in GST laws the only criteria is the same, i.e., being used or intended to be used by a supplier in the course or furtherance of business. There is no doubt that goods or services used for promotional activities are meant for the 'business' or rather growing the business and qualifies as being used 'in course or furtherance of business'. Thus, denial of ITC of tax paid on such items/ activities on the ground that they are provided free of cost or because there is no output tax on such items/ activities or there being no agreement signed between the parties are completely unjustifiable specially in today's online marketing schemes. The vouchers/ loyalty points, etc., goods or services must qualify as 'input' and 'input services, on which ITC should be available to the companies. Under the light of existing perplexities on the issue, the Central Board of Indirect Taxes and Customs (CBIC) has issued a Circular providing clarification

on the aspects of taxability, valuation and availability of ITC in the hands of the supplier in relation to few promotional schemes. However, in today's dynamic business environment, where companies introduce innovative ways of promoting their businesses, the Circular issued by CBIC is not sufficient to cover all promotional schemes considering the various kinds of businesses. In today's trend, it is important that there should not be restrictions on the availability of ITC on expenses incurred on such promotional activities, and promotional schemes should be subjectively analysed keeping in mind the intention behind the implementation of such schemes. Denial of ITC adds to the burden of business and increases the cost of products or services, the brunt of which is eventually borne by the customers and accordingly this issue must be evaluated by the GST authorities with a moderate view.

Source- Economic Times- 11-Jan-2023

GST Council decisions kick in from 1 January

NEW DELHI: Several decisions related to Goods and Services Tax (GST), decisions signed off by the GST Council at its meeting earlier this month, will kick in from 1 January, showed a series of orders issued by the Central Board of Indirect Taxes and Customs (CBIC). CBIC said that no GST is payable where a residential dwelling is rented to a GST registered person if it is rented it in his or her personal capacity for use as his or her own residence. This exemption is applicable when the dwelling is rented on his own account and not on account of his business. This brings clarity about the GST liability of proprietors of businesses on rented properties. CBIC also said that the tax rate changes cleared by the Council will be effective from 1 January. Accordingly, ethyl alcohol supplied to refineries for blending with motor spirit (petrol) will only attract 5% GST against 18% now. The Council had decided to lower the rate on the husk of pulses, including chilka and concentrates, to zero from 5%. It had also decided to include supply of menthaarvensis under reverse charge mechanism as has been done for mentha oil in order to improve tax compliance. At the last Council meeting on 17 December, Centre and states had clarified on the applicability of GST cess on sports utility vehicles and decided to decriminalise certain provisions of the law. As per this, the minimum threshold of tax amount for launching prosecution under GST has been raised to ₹2 crore from ₹1 crore, except for the offence of issuing invoices without supply of goods or services. The Council had also decided to reduce the compounding amount from the present range of 50-150% of tax amount to 25-100%.

Source- Live Mint- 31-Dec-2022

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29th January, 2023	One Day Conference (Central Zone)	Dausa
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1st February, 2023	Webinar on Union Budget (Southern Zone)	Virtual Platform
2nd February, 2023	Webinar on Union Budget (Northern Zone)	Virtual Platform
2nd February, 2023	Webinar on Union Budget (Western Zone)	Virtual Platform
3rd February, 2023	National Executive Committee Meeting	Puri
3rd & 4th Feb., 2023	Two Day National Tax Conference (Eastern Zone)	Puri
11th Fabruary, 2023	Full Day Conference	Bhopal
25th February, 2023	One Day Conference (Northern Zone)	Varanasi
18th &19th March,2023	Two Day Natfonal Tax Conference (Northern Zone)	Lucknow
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