



AIFTP

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INDIRECT TAX & CORPORATE LAWS JOURNAL

Volume-4

Part-7

July-2023



Years of GST

One Nation, One Tax, One Market

**50th GST Council Meeting
Latest GST Updates and
Highlights**



All India Federation of Tax Practitioners

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ALL INDIA FEDERATION OF TAX PRACTITIONERS

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Membership of All India Federation of Tax Practitioners as on 30 June, 2023					
Life Members					
Zone Name	Associate	Individual	Association	Corporate	Total
Central	0	1450	25	0	1475
Eastern	6	2099	37	0	2142
Northern	0	1512	21	1	1534
Southern	1	2348	23	2	2374
Western	5	2921	38	3	2967
Total	12	10330	144	9	10492

FORTHCOMING PROGRAMMES		
Date & Month	Programme	Place
4th August, 2023	National Executive Committee Meeting	Bengaluru
4th,5th& 6th Aug.,2023	National Tax Conference (Southern Zone)	Bengaluru
12th, 13th & 14th Aug., 2023	Residential Refresher Course (Southern & Central Zone)	Rameswaram
15th Aug., 2023	Independence Day Celebrations	All Zones
20th Aug., 2023	National Tax Conference (Central Zone)	Alwar
21st Aug., 2023	National Executive Committee Meeting	Shirdi
21st & 22nd Aug., 2023	National Tax Conference (Western Zone)	Shirdi

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President's Message

Friends,

Its indeed a pleasure for me to inform that during the period 1st Jan., 2023 to 30 June, 2023 AIFTP has successfully organized 84 programmes throughout the Country. In all Zones the events had been organized and it is really remarkable to see that during the first 6 months of the 2023 tenure we had been able to activate all Zones and organized the events. It was a pleasure for me also as in all the physical events organized throughout the Country, I had been personally present and attended the same along with our Secretary General and Team.



In the events organized by the AIFTP we had received the blessing and presence of Hon'ble Supreme Court Judges, Chief Justice and Judges, Industrialist, Academicians and other important personalities. We had also seen the presence of the Departmental Officials in the Meetings / Conferences.

This year we had come out with the quarterly report of the activities and now we had released the Half-Yearly Report of the activities of AIFTP covering all 84 events with their details and photographs in brief. We had also incorporated / narrated the forthcoming events and giving the details of the office bearers etc. This e-publication is also available on the website of AIFTP and it should be seen and saved by all of us. The motivation and inspiration for organizing the programmes comes from the active participation of the Members and it is really remarkable that during the first half of 2023 we had been able to meet so many members and also able to enrol more than 220 new Members.

Friends, the month of June started with a seminar organized by AIFTP (SZ) at Khammam on 03.06.2023. It was organized on the topics of GST and Income Tax and was attended by large number of Members.

The International Study Tour of AIFTP to Vietnam was a grand success and it was organized from 2nd – 10th June, 2023. The credit goes to Mr. Santosh Gupta, Chairman, International Study Tour Committee and Mr. Nitin Gautam, Convenor, IST Committee and all the team Members. It was attended by over 90 participants.

Thereafter, we had a programme at Agra by AIFTP (NZ) on 11.06.2023 as the part of their CSR activity we also had webinar on 08.06.2023 and a webinar by AIFTP (SZ) on 14.06.2023 on Settlement Commission. Webinar was also organized by AIFTP (CZ) on 15.06.2023 on Mastering error free Income Tax Returns.

A grand event was organized by AIFTP (WZ) along with other associations at Thane. It was attended by over 250 participants and was also jointly organized by AIFTP (NZ) and (EZ). The credit goes Mr. Vijay Kewalramani for the wonderful event. Special thanks to Mr. Girish Rathi, Mr. Ashwin Acharya, Mr. Bharat Sachdeva and other who were instrumental in organizing this grand event.

A newsletter on Allied Laws was released on 21.06.2023. The credit goes to Mr. Sanjay Ghiya, Chairman, Allied Laws Committee and Mr. A.K. Srivastava, Convenor for the effort.

We had a dream of organizing NEC and NTC at Tirupati. The same was done on 23rd and 24th June, 2023. The NEC was organized at Tirumala on 23rd June, 2023 and the NTC was inaugurated at Tirupati at Hotel Bliss on 23rd and the same continued till 24th June, 2023. The AIFTP(SZ) has done wonders in organizing this grand event. Mr. Bhaskar, Chairman, Southern Zone deserves all credit for organizing this great and Mega event. My special thanks to Shri M. Srinivasa Rao, Past President who organized all the Darshans at Tirupati/ Tirumala and also sponsored all the Darshan amounts. He was the man behind the scene in organizing this event at Tirupati. My special thanks to him.

On 24th June, 2023 AIFTP (CZ) organized a mega Conference at Kota with Kota Tax Bar Association and RTCA. It was attended by over 180 delegates. The main speakers were Dr. K. Shivaram, Past President, AIFTP. Mr. Abhay Desai was the Speaker on GST. Special thanks to the Past President, AIFTP, Shri M.L. Patodi for organizing this event. Also thanks to Sh. Milind Vijaywargiya in Co-ordinating and organizing this event.

AIFTP(CZ) again organized a Mega Tax Conference on 30.06.2023 at Raipur, Chhattisgarh. It was a Mega Conference with attendance of over 150 delegates. It was jointly organized with CG Income Tax Bar Association, ITBA Raipur and Raipur Branch of CIRC of ICAI. It was a grand success and special thanks to Sh. Rajesh B. Doshi for organizing this event. In Chhattisgarh it was one of the largest Mega Event in recent times. Mr. Prashanth was the key note speaker on Income Tax and Mr. Mukul Gupta was the key note speaker on GST. Ms. Nikita Badheka, Past President, AIFTP was the Chairman of GST Session and Mr. Sumit Nema, Senior Advocate was the Chairman in Income Tax Session.

AIFTP (WZ) organized a twoday conference with other Associations on 30.06.2023 and 01.07.2023 at Parbhani in Maharashtra it was organized jointly with other Associations.

Friends, in the month of July we had many more events and all details of the forthcoming events is mentioned on the website and in the AIFTP Times and also circulated through WhatsApp. We request all Members to attend the forthcoming seminars / Conferences at Chennai, Amritsar and Siliguri. The details are mentioned in the Journal also.

Friends, we have seen that the information of the Members is incomplete and therefore we are working on updating our records and the Directory. We are getting the data's from the Members by calling them and we had also devised way and sending mail directly to Members with their Data to verify the same. Support is requested from the Members to see the mail and to verify the Data, so that we may be in regular touch with you.

We look forward to active participation of the Members and also request. In case Members are having suggestions then the same may kindly be informed by sending mail at aiftpho@gmail.com or WhatsApp to the undersigned.

Regards,
PANKAJ GHIYA
National President, 2023
9829013626
pankaj.ghiya@hotmail.com

CHIEF-EDITOR'S COMMUNIQUE

“यत्र धर्मस्तत्र जयः।”

“Where there is righteousness, there is victory.”



Our Esteemed Readers,

This Sanskrit quotation emphasizes the importance of upholding righteousness in the realm of indirect taxes and corporate law. It signifies that by adhering to ethical and legal principles, success and triumph can be achieved. It serves as a reminder to all professionals in these fields to approach their work with integrity, fairness, and a commitment to the rule of law.

It is with great pleasure that I present to you the July edition of the Indirect Taxes and Corporate Law Journal. As the Chief Editor, I am thrilled to share with you the latest developments and insights in the field of indirect taxes and corporate law.

The field of indirect taxes continues to undergo significant changes, with new regulations and reforms being introduced at both the national and international levels. Our journal aims to keep you informed and prepared by providing in-depth analysis of these developments. From the implementation of new GST provisions to updates on GST Law, our articles delve into the intricacies and implications of these changes.

In this edition, we have curated a diverse range of articles and research papers that delve into various aspects of indirect taxes and corporate law. Our esteemed contributors have delved into key topics that are highly relevant in the current landscape, providing valuable analysis and perspectives.

Furthermore, one of the highlights of this edition is an in-depth analysis of recent changes in indirect tax brought by the GST Council in its meeting and exploring their implications for businesses & taxpayers. We have also included articles that examine important case laws, shedding light on their impact on taxpayers and legal frameworks. Our articles provide comprehensive analyses to keep you up to date with the latest legal developments affecting businesses and taxpayers.

As always, we strive to deliver exceptional content that caters to the diverse interests and needs of our readership. In this issue, we have curated articles covering a wide range of topics, including all the timelines, amendments, judgments,

recent changes and latest updates, and much more. We hope that our content resonates with your professional interests and contributes to your understanding of the dynamic legal environment.

I also 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.

As a chief-editor, I extend my heartfelt gratitude to our authors for their remarkable contributions and dedication to advancing knowledge in the field of corporate law and indirect taxes. Their expertise and passion enable us to maintain the high standards of academic rigor and practical relevance that define our publication. We also invite you to stay engaged with us and send your articles/editorials, important judgments or updates for publishing in the journal at the mail Id aiftjournal@gmail.com.

I encourage you to explore the articles in this edition, as they provide a comprehensive overview of the current landscape in these areas. Whether you are a tax professional, corporate lawyer, academic, or taxpayer, I am confident that you will find valuable information and thought-provoking insights within these pages. May the knowledge shared within these pages empower you to navigate the complex legal terrain and make sound decisions for your organizations/clients. Your feedback and engagement are invaluable to us, and we encourage you to reach out with your thoughts, suggestions, and contributions.

Thank you once again for your continued trust and confidence in our publication. We look forward to bringing you more thought-provoking content in the coming months. Together, let us embark on this journey of knowledge, growth, and transformation.

Wishing you an enlightening and productive reading experience!

Sincerely,

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	July, 2023	20 th Aug. 2023
	(a) Regular Taxpayers		August, 2023	20 th Sep. 2023
(ii)	Detail of Outward Supplies: -	GSTR-1 (QUARTERLY)	July, 2023 (IFF)	13 th Aug. 2023
	(a) QRMP		August, 2023 (IFF)	13 th Sep. 2023
	(b) Monthly Filing	GSTR-1	July, 2023	11 th Aug. 2023
			August, 2023	11 th Sep. 2023
(iii)	Payment of Tax under QRMP	PMT-06	By 25 th of next month	
(iv)	Quarterly return for Composite taxable persons	CMP-08	April-June 2023	18 th July 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	July, 2023	10 th Aug. 2023
			August, 2023	10 th Sep. 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	July, 2023	10 th Aug. 2023
			August, 2023	10 th Sep. 2023

RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Deepak Garg

NOTIFICATIONS-CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
27.06.2023	17/2023-Central Tax	Extension of due date for filing of return in FORM GSTR-3B for the month of May 2023 for the persons registered in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat upto 30th June 2023.
19.06.2023	16/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-7 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.
19.06.2023	15/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-3B for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.
19.06.2023	14/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-1 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur

INSTRUCTIONS

DATE	INSTRUCTION NO.	REMARKS
14.06.2023	03/2023-GST	Guidelines for processing of applications for registration.

RECOMMENDATIONS OF 50TH MEETING OF GST COUNCIL

In the 50th Meeting of the GST Council, *inter-alia* the following recommendations relating to changes in GST tax rates, measures for facilitation of trade and measures for streamlining compliances in GST were made:

Changes in GST Tax Rates:

I. Recommendations relating to GST rates on Goods

A. Changes in GST rates of goods

1. It has been decided to reduce the rate on uncooked/unfried snack pellets, by whatever name called, to 5% and to regularise payment of GST on uncooked /unfried snack pellets during the past period on “as is basis”.

B. Other changes relating to goods

1. It has been decided to exempt IGST on Dinutuximab (Quarziba) medicine when imported for personal use.
2. It has been decided to exempt IGST on medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021 when imported for personal use subject to existing conditions. Similarly, IGST exemption is also being extended to FSMP when imported by Centres of Excellence for Rare Diseases or any person or institution on recommendation of any of the listed Centres of Excellence.
3. It has been decided to clarify that supply of raw cotton, including kala cotton, by agriculturists to cooperatives is taxable under reverse charge mechanism and to regularise issues relating for the past period on “as is basis”.
4. It has been decided to reduce GST on imitation zari thread or yarn known by any name in trade parlance from 12% to 5% and to regularize payment of GST related to this matter during the past period on “as is basis”.
5. It has been decided to amend the entry 52B in compensation cess notification to include all utility vehicles by whatever name called provided they meet the parameters of Length exceeding 4000 mm, Engine capacity exceeding 1500 cc and having Ground Clearance of 170 mm & above and to clarify by way of

explanation that 'Ground clearance' means Ground Clearance in un-laden condition.

6. It has been decided to reduce GST rate on LD slag from 18% to 5% to encourage better utilisation of this product and for protection of environment.
7. It has been decided to regularise the matters relating to trauma, spine and arthroplasty implants for the period prior to 18.07.2022 on "as is basis" in view of genuine interpretational issues.
8. It has been decided to reduce the GST rate on fish soluble paste from 18% to 5% and to regularise payment of GST on fish soluble paste during the past period on "as is basis".
9. It has been decided to regularise the matters relating to dessicated coconut for the period 1.7.2017 to 27.7.2017 on "as is basis" in view of genuine interpretational issues.
10. It has been decided that on pan masala, tobacco products etc, where it is not legally required to declare the retail sale price, the earlier ad valorem rate as was applicable on 31st March 2023 may be notified in order for levy of Compensation Cess.
11. It has been decided to include RBL Bank and ICBC bank in the list of specified banks for which IGST exemption is available on imports of gold, silver or platinum and update the list of banks/entities eligible for such IGST exemption as per Annexure 4B (HBP) of Foreign Trade Policy 2023.
12. Consequential changes in notifications may be carried out in view of new Foreign Trade Policy 2023.
13. It has been decided to regularise the issues relating to GST on plates and cups made of areca leaves prior to 01.10.2019.
14. It has been decided to regularise the issues relating to GST on biomass briquettes for the period 01.7.2017 to 12.10.2017.

II. Recommendations relating to GST rates on Services

A. Changes in GST rates of services

1. It has been decided that GST exemption on satellite launch services supplied by ISRO, Antrix Corporation Limited and New Space India Limited (NSIL) may be extended to such services supplied by organisations in private sector

also to encourage start ups.

B. Other changes relating to Services Services

1. As a trade friendly measure, it has been decided that GTAs will not be required to file declaration for paying GST under forward charge every year. If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM).
2. It has also been decided that the last date of exercising the option by GTAs to pay GST under forward charge shall be 31st March of preceding Financial Year instead of 15th March. 1st January of preceding Financial Year shall be the start date for exercise of option.
3. It has been decided to clarify that services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.
4. It has been decided to clarify that supply of food and beverages in cinema halls is taxable as restaurant service as long as (a) they are supplied by way of or as part of a service and (b) supplied independently of the cinema exhibition service. Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

III. Second Report of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

A Group of Ministers (GoM) was constituted to look into the issues related to taxation on casinos, horse racing and online gaming. The GoM submitted its first report in June, 2022 and it was placed before the GST Council in its **47th GST Council meeting** wherein, it was decided that the GoM may relook into all the issues once again. The GoM submitted its report and it was placed before the

50th GST Council meeting. The GoM, in its second report has recommended that since no consensus could be reached on whether the activities of online gaming, horse racing and casinos should be taxed at 28% on the full-face value of bets placed or on the GGR, **the GST Council may decide.** The GST Council has deliberated on the issues and has recommended the following:

- **Suitable amendments to be made to law to include online gaming and horse racing in schedule III as taxable actionable claims.**
- **All three namely Casino, Horse Racing and Online gaming to be taxed at the uniform rate of 28%.**
- **Tax will be applicable on the face value of the chips purchased in the case of casinos, on the full value of the bets placed with bookmaker/totalisator in the case of Horse Racing and on the full value of the bets placed in case of the Online Gaming.**

Measures for facilitation of trade:

1. **Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023:** The Council has recommended the Rules governing appointment and conditions of President and Members of the proposed GST Appellate Tribunal **for enabling smooth constitution and functioning of GST Appellate Tribunal.** The Council also recommended that provisions of finance Act, 2023 pertaining to GST Appellate Tribunal may be notified by the Centre **with effect from 01.08.2023**, so that the same can be brought into operation at the earliest. Further the council has recommended the Chief Secretary of Maharashtra to be nominated as one of the members of the Search cum selection committee as per Section 110(4)(b)(iii) of CGST Act 2017. Regarding the number of State Benches, it was decided to start them in a phase wise manner.
2. **Annual Returns for FY 2022-23:** The Council has recommended that the relaxations provided in FY 2021-22 in respect of various tables of **FORM GSTR-9** and **FORM GSTR-9C** be continued for **FY 2022-23**. Further, for easing compliance burden on smaller taxpayers, exemption from filing of annual return (in **FORM GSTR-9/9A**) for taxpayers having aggregate annual turnover **upto two crore rupees**, to be continued for **FY 2022-23** also.

3. The Council has recommended to **clarify through a circular** that **Input Services Distributor (ISD) mechanism is not mandatory** for distribution of input tax credit of **common input services procured from third parties** to the distinct persons as per the present provisions of GST law, and also to clarify issues regarding taxability of **internally generated services** provided by one distinct person to another distinct person. The Council has also recommended that **amendment may be made in GST law to make ISD mechanism mandatory prospectively** for distribution of input tax credit of such common input services procured from third parties.
4. **Circular to be issued to provide clarity on various issues** pertaining to the GST liability as well as the liability to reverse input tax credit in **cases involving warranty replacement of parts and repair services during warranty period** without any consideration from the customers, clarifying *inter alia* that no GST is chargeable by the manufacturer on such replacement of parts and/ or repair service and also, no reversal of input tax credit is required to be made by the manufacturer.
5. **Circular to be issued to clarify various refund related issues:** Consequent to amendment in rule 36(4) of CGST Rules 2017 with effect from 01.01.2022, refund of accumulated input tax credit (ITC) under Section 54(3) of CGST Act, 2017 for a tax period to be restricted to ITC on inward supplies reflected in **FORM GSTR-2B of the said tax period or any previous tax period**. Consequent to Explanation having been inserted in rule 89(4) of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the **value of export goods**, to be included while calculating “**adjusted total turnover**” in the formula under rule 89(4), will be determined as per the said explanation. Clarification regarding **admissibility of refund** in cases where export of goods, or the realization of payment for export of services, as the case may be, is made after the time limit provided under rule 96A of CGST Rules, 2017.
6. Circular to be issued to provide clarification regarding **TCS liability under Sec 52** of the CGST Act, 2017 in cases where **multiple E-commerce Operators (ECOs)** are involved in a single transaction of supply of goods or services or both.
7. To ease compliance burden of the taxpayers, **clause (f) of rule 46** of CGST Rules, 2017 to amended to provide for requirement of only **name of the State**

of the recipient, and not the name and full address of the recipient, on the tax invoice in cases of supply of taxable services by or through an ECO or by a supplier of OIDAR services to an unregistered recipient.

8. Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:

- a. Clarifying that the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, are required to issue **e-invoices** under rule 48(4) of CGST Rules. for the **supplies made to Government Departments** or establishments / Government agencies / local authorities / PSUs, etc., registered solely for the purpose of TDS,
 - b. Clarification regarding the **manner of calculation of interest amount** liable to be paid under section 50(3) of CGST Act, 2017 in respect of wrongly availed and utilized IGST credit, clarifying *inter alia* that in cases of wrong availment of IGST credit, **the balance of input tax credit (ITC) in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be taken in consideration while calculating such interest liability as per rule 88B of CGST Rules, 2017.**
 - c. Clarifying that **mere holding of securities of a subsidiary company by a holding company** cannot be treated as a supply of services and therefore, cannot be taxed under GST.
9. As per the recommendations of the Council in its 48th meeting, Circular No. 183/15/2022-GST dated 27th December, 2022 was issued to provide for the procedure for verification of input tax credit in cases involving difference in Input Tax Credit availed in **FORM GSTR-3B** vis a vis that available as per **FORM GSTR-2A** during **FY 2017-18 and 2018-19**. To provide further relief to the taxpayers, the Council recommended for further issuance of a circular to provide for similar procedure for verification of input tax credit in cases involving difference in Input Tax Credit availed in **FORM GSTR-3B** vis a vis that available as per **FORM GSTR-2A** during the period **01.04.2019 to 31.12.2021**.
- 10. Special procedure** to be provided under section 148 of CGST Act, 2017 to enable manual filing of appeal against the orders passed by proper officers in respect of TRAN-1/ TRAN-2 claims of the registered persons, filed in pursuance of the directions of Hon'ble Supreme Court in case of the Union of

India v/s Filco Trade Centre Pvt. Ltd.

11. **Rule 108(1) and rule 109(1)** of CGST Rules, 2017 to be amended to provide for manual filing of appeal under certain specified circumstances.
12. Council recommended to **extend the amnesty schemes** notified vide notifications dated 31.03.2023 regarding non-filers of **FORM GSTR-4, FORM GSTR-9 & FORM GSTR-10** returns, **revocation of cancellation of registration and deemed withdrawal of assessment orders** issued under Section 62 of CGST Act, 2017, till **31.08.2023**.
13. In view of the prevailing law and order situation in the State of Manipur, the Council recommended to extend the due dates for filing of **FORM GSTR-1, FORM GSTR-3B** and **FORM GSTR-7** for the months of April, May and June, 2023 for the registered persons of State of Manipur till **31.07.2023**.

Measures for streamlining compliances in GST:

1. In accordance with the recommendations of **Group of Ministers (GoM) on implementation of E-way bill requirement for movement of Gold/ Precious stones** under chapter 71, the Council has recommended to insert **rule 138F** in CGST Rules, 2017, as well as in SGST Rules, 2017 of the States, who want to mandate the requirement of generation of e-way bills for intra-State movement of gold and precious stones under Chapter 71 within their States.
2. In accordance with the recommendations of the **Group of Ministers (GoM) on Capacity based taxation and Special Composition Scheme** approved by the Council in 49th meeting, the Council has made the following recommendations: **issuance of notification under section 148** of CGST Act, 2017 **prescribing a special procedure** to be followed by the manufacturers of tobacco, pan masala & other similar items inter alia for registration of machines and for filing of special monthly returns; **insertion of section 122A** in CGST Act, 2017 providing for **special penalty** for non-registration of machines by such manufacturers; provisions of section 123 of Finance Act, 2021, amending section 16 of IGST Act, to be notified with effect from **01.10.2023** and notification to be issued under section 16(4) of IGST Act, 2017 to provide for restriction of IGST refund route in respect of exports of tobacco, pan masala & other similar items as well as mentha oil.

- 3. Amendment in CGST Rules, 2017 regarding registration:** The Council has recommended the following amendments in CGST Rules, 2017 **to strengthen the registration process and to effectively deal with the menace of fake and fraudulent registrations in GST: Amendment in rule 10A** to provide that the details of bank account, in name and PAN of the registered person, to be required to be furnished within 30 days of grant of registration or before filing of statement of outwards supply under section 37 of CGST Act in **FORM GSTR-1/ IFF**, whichever is earlier. **Amendment in rule 21A(2A)** to provide for system-based suspension of the registration in respect of such registered persons who do not furnish the details of valid bank account under rule 10A with the time period prescribed under the said rule. **Insertion of 3rd proviso in rule 21A(4)** to provide for automatic revocation of such system-based suspension upon compliance with provisions of rule 10A. **Amendment in rule 59(6)** to provide that where a registered person has not furnished details of a valid bank account under rule 10A, the said registered person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF. **Amendment in rule 9 and rule 25** to do away with the requirement that the physical verification of business premises is to be conducted in the presence of the applicant and also to provide for physical verification in high risk cases even where Aadhaar has been authenticated.
- 4.** Pilot to be conducted in U.T. of Puducherry for **risk-based biometric-based Aadhaar authentication** of registration applicants. The State of Andhra Pradesh also expressed its intent to join this pilot after the system's readiness is tested in the state of Gujarat and U.T. of Puducherry.
- 5. Procedure for Recovery of Tax and Interest in terms of Rule 88C(3):** On the recommendations of the GST Council in its 48th meeting held on 17.12.2022, rule 88C was inserted in the CGST Rules, 2017 with effect from 26.12.2022 for system based intimation to the registered person in cases where the output tax liability in terms of **FORM GSTR-1** of a registered person for any particular month exceeds the output tax liability disclosed by the said person in the return in **FORM GSTR-3B** for the said month by a specified threshold. The Council has now recommended insertion of **Rule 142B** in the CGST Rules, 2017 and insertion of a **FORM GST DRC-01D** to provide for manner

of recovery of the tax and interest in respect of the amount intimated under rule 88C which has not been paid and for which no satisfactory explanation has been furnished by the registered person.

6. **Mechanism to deal with differences in ITC between FORM GSTR-2B and FORM GSTR-3B:** The Council has recommended a mechanism for system-based intimation to the taxpayers in respect of the excess availment of ITC in **FORM GSTR-3B** vis a vis that made available in **FORM GSTR-2B** above a certain threshold, along with the procedure of auto-compliance on the part of the taxpayers, to explain the reasons for the said difference or take remedial action in respect of such difference. For this purpose, **rule 88D** and **FORM DRC-01C** to be inserted in CGST Rules, 2017, along with an amendment in **rule 59(6)** of CGST Rules, 2017. **This will help in reducing ITC mismatches and misuse of ITC facility in GST.**
7. To improve discipline in filing of annual returns, **FORM GSTR-3A** to be amended to provide for issuance of notice to the registered taxpayers for their failure to furnish Annual Return in **FORM GSTR-9** or **FORM GSTR-9A** by due date.
8. **Rule 64** and **FORM GSTR-5A** of CGST Rules, 2017 to be amended to require OIDAR service providers to provide the details of supplies made to registered persons in India in his return in **FORM GSTR-5A**. This will help in tracking due payment of tax on reverse charge basis by such registered persons in India in respect of supplies received from OIDAR service providers.
9. Explanation 3 to be inserted after **rule 43** of CGST Rules, 2017 to prescribe that the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers to be included in the value of exempt supplies for the purpose of reversal of input tax credit.
10. Sub-rule (3A) to be inserted in **rule 162** of CGST Rules, 2017 to prescribe the compounding amount for various offences under section 132 of CGST Act, 2017.
11. The Council has recommended **insertion of rule 163** in CGST Rules, 2017 to provide for manner and conditions of consent-based sharing of information of registered persons available on the common portal with other systems. The Council has also recommended issuance of **a notification under section 158A** of CGST Act, 2017 for notifying “**Account Aggregators**” as the

systems with which information is to be shared by the common portal.

12. The Council has recommended **insertion of a clause (ca) in sub-section (1) of section 10 of the I GST Act, 2017** to clarify the place of supply in respect of supply of goods to unregistered persons.
13. The GST Council has recommended to form a **State level coordination Committee** comprising of GST officers from both State and Central GST administrations for knowledge sharing on GST matters and coordinated efforts towards administrative and preventive measures.
14. The 2nd interim report of the **Group of Ministers (GoM) on IT System Reforms** was also discussed by the Council. The GoM has recommended various measures to curb frauds in GST through System based measures for strengthening registration process in GST, more use of third-party data for risk management and controlling flow of fake Input Tax Credit down the supply chain.

Note: The recommendations of the GST Council have been presented in this release containing major item of decisions in simple language for information of the stakeholders. The same would be given effect through the relevant circulars/ notifications/ law amendments which alone shall have the force of law.

EXPORT OF GOODS AND SERVICES IN GST REGIME

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The law and procedures relating to import of Goods and Services in GST regime have been deliberated in the earlier article (published in AIFTP Indirect Tax & Corporate Laws Journal, June 2023 issue). The various provisions of GST and Customs laws and procedures stipulated for exportation of Goods and Services (supply of goods and services outside India) are discussed in this article. Some of the laws and procedures applicable to both imports and exports elucidated in earlier needs to be referred to, for better understanding of this article.

Export Trade

The Indian government aims to enhance the production and quality of exports through its “Make in India” programmes. One step towards achieving this goal is the implementation of the Goods and Services Tax (GST), which combined the taxes on commodities and services into a unified system, which gave way for a uniform taxation as well as cost effective trade, in both national and international forums. To support the policy objectives, the government has issued many notifications and guidance notes clarifying the applicability of GST on exports and the tax benefits available to exporters as approved by the GST Council in its periodical meetings. The support for exports through reforms in Foreign Trade policy 2023 (FTP) under FTDR Act, GST and Customs laws and allied acts are narrated in the following part. The law and procedures applicable commonly for goods and services are narrated in the beginning followed by exclusive procedures applicable in respect of export of goods. Detailed exclusive procedures on ‘export of services’ and ‘deemed exports’ will be taken up in the next article.

India actively participates in international trade, with a strong emphasis on exporting goods and services, which contributes significantly to the country’s economic growth. The transactions and the implementation of GST in the domestic tariff area (DTA) have implications for both imports and exports of goods and services. The GST laws have been designed to ensure a level playing field for domestic suppliers in comparison to their international counterparts in the case of imports. Additionally, these laws aim to boost the competitiveness of Indian exports by preventing the

export of taxes. To achieve higher share of international market, the exports to destinations outside India and supplies to Special Economic Zones (SEZ) are treated as “zero-rated.” This implies that the goods or services being exported are exempt from GST either at the input stage or the final product stage, and the taxes paid are refunded. Consequently, supplying goods or services to an SEZ unit/developer is also treated similarly to physical exports. Supplies made for export through merchant exporters attract a minimal tax rate of 0.1%, with the benefit of claiming Input Tax Credit (ITC). Furthermore, supplies of goods from the Domestic Tariff Area (DTA) to Export Oriented Units (EOU), Electronic Hardware Technology Park (EHTP) Units, Software Technology Park (STP) Units, or Bio-Technology Parks (BTP) Units are considered “deemed exports.” These deemed exports receive certain benefits like those enjoyed by actual exports which are deliberated in the subsequent article.

Benefits of GST System in Exports

The benefits of GST uniform structure to the exporters could be as follows:

- (a) **Advantages of a Uniform Tax Structure:** The implementation of GST has established a consistent tax structure throughout the country. This has alleviated the burden of compliance for exporters, who previously had to navigate varying tax structures across different states.
- (b) **Decreased Transaction Costs:** GST has effectively reduced transaction costs for exporters by eliminating the cascading impact of taxes. Previously, taxes were imposed at each stage of the supply chain, leading to higher production costs. However, GST allows for ITC, thereby reducing these expenses.
- (c) **Streamlined Export Procedures:** The introduction of GST has simplified export procedures by amalgamating different taxes like Central Excise, Service Tax, and VAT into a single tax. This has resulted in a reduction in both the time and cost associated with export procedures.
- (d) **Enhanced Competitiveness:** The implementation of GST has bolstered the competitiveness of Indian goods and services in the global market. It has achieved this by reducing production costs and making them more price competitive.

This has helped in reducing the compliance burden for exporters who had to deal

with different tax structures in different states.

Zero Rated Supply of Goods and Services

As per Section 2(47) of the CGST Act, a 'supply' is considered exempt if it either attracts a nil rate of duty, is specifically exempted by a notification, or is kept out of the purview of tax (non-GST supply). If a good or service is exempt from tax payment, it cannot be truly zero-rated, because the inputs and input services used in the production or provision of the exempted goods or service have already incurred tax, and only the final product is exempted. Thus, input tax credit (ITC) cannot be utilized for the inputs and input services used in the supply of the exempted output and thereby must be reversed, which becomes a cost to the supplier.

In the context of GST, zero rating refers to the exemption of the entire value chain of a supply from tax i.e., not only is the outward supply is exempt from tax, but also there are also restrictions on claiming credit for taxes paid on the input side for the purpose of providing the outward zero-rated supply. Under the GST Law, exports and supplies to SEZ units/developers are treated as zero-rated. Section 2(23) of the IGST Act 2017 defines "zero-rated supply" as per Section 16(1) of the same Act, which includes the export of goods or services or both and the supply of goods or services or both for authorized operations to a SEZ (developer) or a SEZ unit. Zero rating of outward supplies ensures that both the outward supplies themselves and the ITC availed in providing those supplies are exempt from GST. This is achieved through the following mechanisms:

Option 1: Registered person may avail and utilise ITC for the taxes paid on all inputs used in supplying zero-rated goods or services, supplied without payment of outward tax. Even if a zero-rated supply is exempted or made without tax payment, the taxes paid on the inputs or input services (unused ITC) are refunded. In this method the supplier can supply goods and/or services to export trade or SEZ developer or unit, under a bond or Letter of Undertaking (LUT) without paying the Integrated Goods and Services Tax (IGST) and claim a refund of the unutilized input tax credit (ITC). (Section 16(3) of the IGST Act read with Rule 96A of CGST Rules 2017) from GST Authorities. This enables businesses to recover the taxes paid on inputs used for physical exports and supplies to SEZs thereby ensuring that the entire value chain of zero-rated supplies remains free of GST. Or

Option 2: Refund of taxes paid on zero-rated outward supplies to the exporter when goods/services are supplied on payment of IGST. In this mode suppliers can

export goods and/or services by paying IGST and claim a refund of the tax paid on such supply (i) of goods from Customs and (ii) of services from GST authorities. (Section 16(4) of the IGST Act read with Rule 96 of CGST Rules 2017)

Circular No. 01/2017 Compensation Cess dated 26.07.2017 provides clarification that the provisions of section 16 pertaining to zero-rated supplies are applicable to GST Compensation Cess as well. As a result, exporters have the choice to claim a refund of the GST Compensation Cess paid on goods exported by them. Alternatively, if goods are exported under a bond or Letter of Undertaking (LUT), no GST Compensation Cess will be levied, and the exporter will be eligible for a refund of the Input Tax Credit (ITC) related to the GST Compensation Cess on the exported goods.

Export of Goods and Services

Exports of goods or services are considered as inter-State supplies and are zero-rated, regardless of whether there is a full exemption for the supply.

Option 1: Export of Goods and Services Under Bond or Letter of Undertaking (LUT) (Rule – 96A):

Under this procedure, any registered person availing option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, furnish a bond, or a Letter of Undertaking. This bond or Letter of Undertaking is required to be furnished in FORM GST RFD-11 on the common portal. In the Letter of Undertaking (LUT), exporter to commit, for payment of the tax due along with interest at a rate of 18% within the following timeframes in case of failure to export: (a) For the export of goods: Within 15 days after the expiry of 3 months, or any additional period allowed by the Commissioner, from the date of issuing the export invoice if the goods are not exported out of India. (b) For the export of services: Within 15 days after the expiry of 1 year, or any additional period allowed by the Commissioner, from the date of issuing the export invoice, if the payment for such services is not received by the exporter in convertible foreign exchange or in Indian rupees, as permitted by the Reserve Bank of India.

As stated above the LUT is to be furnished prior to undertaking export of goods. However, Central Board of Indirect Taxes ('CBIC') vide circular no. 125/44/2019 dated November 18, 2019, has clarified that the substantive benefit of zero-rated supply may not be denied where the exporter has delayed in furnishing LUT. Accordingly, LUT may be admitted on ex post facto basis, taking into account,

facts and circumstance of each case.

These provisions also apply to zero-rated supplies of goods and/or services to a Special Economic Zone (SEZ) unit/developer without the payment of Integrated Goods and Services Tax (IGST). Other conditions for export under bond or LUT are:

(a) Any registered person is eligible to export goods and services under LUT, except those who have been prosecuted for any offence under the CGST Act/IGST Act or under any of the existing laws and the amount of tax evaded exceed Rs. 250 lakhs. [Notification No. 37/2017 CT dated 04.10.2017]. (b) LUT once filed shall be valid for the whole financial year, and it is to be filed in every financial year. (c) such LUT/ Bond should be accepted within a period of 3 working days of its receipts along with self-declaration and if the same is not accepted within a period of 3 working days from the date of its submission it shall be deemed to be accepted. (d) If the goods are not within three months or such further period allowed by the Commissioner from the date of issue of the invoice, the tax dues have to be paid along with interest. (e) If the proceeds of export are not received within one year, or such further period allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange the tax dues have to be paid along with interest. (f) The details of the export invoices must be furnished the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished. (g) Rule 96B lays down that the proceeds of export of goods need to be realized within the period allowed under the Foreign Exchange Management Act, 1999 (FEMA). Non/partial realization of such proceeds may result in recovery of any refund paid to the taxpayer with interest. (h) Failure to export goods and pay the tax due along with interest within the period specified above results in withdrawal of the facility of export without payment of IGST and recovery of the said amount under section 79 of the CGST Act. The facility, however, can be restored on payment of the said amount [Notification No. 37/2017 CT dated 04.10.2017].

The details of the export invoices should be filed in GSTR-1. These details shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system. Further

information relating to Option 1 are as follows:

- (a) A LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish a LUT in place of bond, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio.
- (b) Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding ₹ 250 lakh. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.
- (c) Clarification regarding running bond: The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit/credit entries of integrated tax in the running bond will lie with the exporter.
- (d) Facilitating Exports Through Electronic Sealing and Direct Port Delivery - CBIC has undertaken various measures for enhancing export facilitation by simplifying the procedure and creating trust-based environment by dispensing the need for exporters seeking the presence of jurisdictional officer. The key steps include: (1) Self-sealing using e-Seals and (2) Direct Port Entry.
 - (1) Electronic Sealing: CBIC has simplified the factory stuffing procedure under which Customs have shown more faith in exporters by allowing them to stuffing containers at their premises using electronic seal (e-Seal). The use e-Seal is mandatory for exporters availing self-sealing facility. Exporters who have not sought this facility, should stuff the goods for export before customs officer at the exporting customs port/airport/inland container depot.

- (2) Direct Port Entry (DPE): Direct Port Entry scheme aims to reduce export release time and associated cost. Under this scheme, export containers are allowed direct entry into the port terminal prior to granting Let Export Order (LEO). This facility has been extended to all factory stuffed export containers of all manufacturing entities. Salient features of DPE are: (i) The state-of-the-art Direct Port Entry (DPE) facility enables direct movement of containers from factories, without intermediate handling at any Container Freight Station (CFS), thus facilitating the shippers to Gate-In their factory stuffed exports directly to the Container Terminal on 24×7 basis. (ii) DPE was developed to enable export clearance for faster and cost-effective export admittance. (iii) DPE for export containers has resulted in reduction of time taken in obtaining Customs approval bringing down dwell time and savings in cost.
- (e) Realization of export proceeds in Indian Rupee: The Reserve Bank of India (RBI) has authorized the use of Indian Rupee for invoicing and payments in international trade, as stated in A.P (DIR Series) Circular No. 10 RBI/2022-2023/90 dated 11.07.2022 on “International Trade Settlement in Indian Rupees (INR).” According to the circular, all exports and imports can be denominated and invoiced in Indian Rupee (INR), and trade transactions will be settled in INR. This arrangement by RBI aims to encourage global trade growth, particularly exports from India, and support the growing interest of the global trading community in INR. The framework established by RBI applies to any partner country wishing to engage in trade with India using INR, as per RBI’s Circular dated 11.07.2022.

According to para 2.52 (d) in FTP 2023, the invoicing, payment, and settlement of exports and imports can also be conducted in INR, subject to compliance with RBI’s A.P. (DIR Series) Circular No. 10 dated 11th July 2022. As per the prescribed procedures, trade transactions in INR will be settled through Special Rupee Vostro Accounts, which will be opened by authorized dealer (AD) banks in India, in accordance with Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016. Under this mechanism, Indian importers making imports will pay in INR, which will be credited to the Special Vostro account of the

correspondent bank of the partner country, against invoices for the supply of goods or services from the overseas seller/supplier. Similarly, Indian exporters conducting exports of goods and services through this mechanism will receive their export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country. Paragraph 2.53 of FTP 2023 addresses the applicability of FTP schemes for export realizations in Indian Rupees. It permits export proceeds realized in INR, as per para 2.52(d)(ii), to avail export benefits, incentives, and fulfil export obligations under the FTP.

- (e) Acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.
- (f) Jurisdictional officer: The LUT/Bond submitted online shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter.

Refunds on Goods Exported Under LUT

Section 54(3)(i) of the CGST Act provides that a registered person may claim refund of unutilized input tax credit ('ITC') for zero-rated supply made without payment of tax. The refund application may be made for each tax period. The said provisions stipulated that if the goods which are exported as subject to export duty or any drawback is to be claimed on such exports, refund of utilized ITC may not be available. Further, the refund of utilized ITC has to be computed as per the method prescribed under Rules 89(4) of the CGST Rules which in brief is as follows.

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

- Where,
- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

- (C) “Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or LUT or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
- (D) “Turnover of zero-rated supply of services” means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-
- (E) “Adjusted Total Turnover” means the sum total of the value of (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding- (i) the value of exempt supplies other than zero-rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed under subrule (4A) or sub-rule (4B) or both, if any, during the relevant period.’
- (F) “Relevant period” means the period for which the claim has been filed.

Earlier, Circular No 125/44/2019 dated November 18, 2019, had restricted filing refund applications where tax period was across financial years by which the refund claim for multiple tax period falling in different financial year was not allowed. However, there is no such restriction place in Section 54 of the CGST Act and hence the circular was going beyond what was prescribed under the Act. Accordingly, the said restriction has been removed vide 135/05/2020-GST dated March 31, 2020.

Option 2: Exports on Payment of IGST and Claiming Refund.

Any exporter who supplies goods or services, or both, after fulfilling certain conditions, safeguards and procedures as prescribed and after payment of IGST, can claim refund of such tax paid on the supplied goods or services, or both.

Physical Exports of Goods

“**Export of goods**” as defined under Section 2(5) of IGST Act, 2017 with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. Therefore, Export of goods involves the act of transporting

them from India to a location outside its boundaries. The definition of India as per section 2(56) extends to its maritime zone, which spans 200 nautical miles from the coastal baseline. As a result, for goods to be considered exported, they need to travel beyond 200 nautical miles from the baseline.

As per Customs Act, 1962 , export means taking goods out of India to a place outside India (Section 2(18)); ‘Export goods’ means any goods which are to be taken out of India to a place outside India (Section 2 (19)) and ‘exporter’, in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter(Section 2 (20)).

The documentation required for exports are: (i) Obtain the Import Export Code (IEC) from DGFT;(ii) If exporting without paying IGST, furnish a bond or LUT as explained above;(iii) Ensure relevant purchase orders are attached to other documents;(iv) Issue tax invoices containing the following details (a)Endorsement describing whether the supply is for export with or without payment of integrated tax (b)Name, address, and GSTIN of the supplier (c) Invoice number and date (d) Name and address of the recipient, including delivery address and destination country (e) Harmonized System of Nomenclature (HSN) Code of goods, along with the relevant description (g) Quantity of the goods and the number of units (h) The total value of the goods, with the breakdown of the value into the price per unit (i) Signature of the authorised signatory of the supplier. (v)File the shipping bill and include the same details listed on the tax invoice.

(vi) E-way bill: The exporter must generate an e-way bill for the consignment of goods being exported. This is a document that contains details of the goods being transported, such as the quantity, value, and destination. The electronic export procedure has been introduced to simplify the process of exporting goods which allows exporters to file all the necessary forms and documents electronically through the GST portal, which reduces the time and effort required to complete the export process. The electronic export procedure includes the filing of the GSTR-1 form, the generation of e-way bills, and the claiming of GST refunds.

The procedure for the sanction of refund in respect of export of goods from Customs department are as follows:

(a) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India when Export

General Manifest (EGM) has been filed by the person in charge of the conveyance carrying the export goods (freight forwarder) covering the number and the date of shipping bills or bills of export; and

(b) The exporter has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be. (c) The above said details would be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India. (d) Upon the receipt of the information regarding the furnishing of a valid return from the GST common portal, the system (ICEGATE) designated by the Customs or the proper officer of Customs will process the claim of refund in respect of export of goods and (e) an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities. The refund should be sanctioned within 3 months of the filing of returns for such period.

Merchant Exporter

Manufacturer exporter means a person who exports goods manufactured by him or intends to export such goods. Merchant exporter means a person engaged in trading activity and exporting or intending to export goods. Merchant exporters are instrumental to boost exports which contribute to the growth of Indian economy. To support the same, special benefit of procurement of goods without payment of duty was provided under earlier indirect tax laws (Central Excise/ VAT etc.). Under GST, the said benefit was discontinued till 23.10.2017. Accordingly, merchant exporter is left out with no option but to procure goods with payment of duty and subsequently claim as a refund. This has resulted in blockage of working capital due to increase in cash outflows. Addressing the above disruption, amendment was made vide notification 40/2017-Central Tax dated 23.10.2017, w.e.f 23.10.2017, where exemption is provided in excess of rate 0.05% (Effectively GST is to be paid @ 0.1% i.e., CGST @ 0.05% + SGST @ 0.05% (or) IGST @ 0.1%) in order to restore the position under earlier laws.

Circular No. 125/44/2019 GST dated 18.11.2019 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him.

The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act. However, it may be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of IGST. Circular No. 08/08/2017 dated 04.10.2017 has clarified that there is no provision for issuance of CT-1 Form - which enables merchant exporters to purchase goods from a manufacturer without payment of tax - under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST. A registered supplier can supply goods to a merchant exporter at low rate of GST (0.1%) prescribed under Notification Nos. 41/2017 IT(R) and 40/2017 CT(R) both dated 23.10.2017 if following conditions (specified in the said notifications) are fulfilled-

- (a) the registered supplier (manufacturer) shall supply the goods to the registered recipient (merchant exporter) on a tax invoice.
- (b) the registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier.
- (c) the registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export.
- (d) the registered recipient shall be registered with an Export Promotion Council.
- (e) the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier.
- the registered recipient shall move the said goods from place of registered supplier –(i) directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or (ii) directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;

After goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report

having been filed, to the registered supplier as well as jurisdictional tax officer of such supplier. Merchant exporters may exclude commercially sensitive information while providing copies of shipping bills to registered suppliers [Circular No. 42/2017 Customs dated 07.11.2017].

CBIC vide Notification No 16/2020-Central Tax dated March 23, 2020 has inserted Rule 96B in the CGST Rules which provides the sale proceed in respect of export of goods have to be realised within the time period allowed under Foreign Exchange Management Act, 1999 ('FEMA'). In case the sale proceed is not realised within the prescribed time limit, the refund amount sanctioned to the extent of non-realisation of export proceeds shall have to be refunded along with applicable interest. With this recent amendment, exporter claiming refund of IGST paid on export of goods or claiming refund of unutilized ITC, in both the case, are now require to submit proof that the sale proceeds are realised within the prescribed time limit. In case if the exporter does not realise the export proceeds within the prescribed time limit, the amount of refund to the extent of non-realisation of sale proceeds has to be deposited along with the applicable interest within thirty days of the expiry of the said period. If the refund amount is not deposited within thirty days, the amount of refund shall be recovered in accordance with Section 73 or 74 of the CGST Act.

Zero rated supply to SEZ developer or unit

“Special Economic Zone” areas defined under Section 2(19) of IGST Act, 2017 shall have the same meaning as assigned to it in the Special Economic Zones Act, 2005. As per Section 7 (5) (b) of the IGST Act, 2017 Supply of goods or services or both, to or by a Special Economic Zone Developer or a SEZ unit shall always be treated as a supply in the course of inter-State trade or commerce. Under Section 8, supply of goods or Services to or by a SEZ shall never be treated as intra-State supply even if the supplier and the place of supply are in the same State or Union Territory.

Circular No. 48/22/2018 GST dated 14.06.2018 clarifies that supplies to a Special Economic Zone (SEZ) unit/developer are zero-rated, but not all supplies are zero-rated. In order for the supplier to be eligible for a refund of unutilized Input Tax Credit (ITC) or tax paid, it is necessary for the supplies to have been received by the SEZ developer or SEZ unit for authorized operations. This endorsement must be issued by the specified officer of the Zone. Therefore, as long as event

management services, hotel accommodation services, consumables, etc., are received by a SEZ unit/developer for authorized operations, as endorsed by the specified officer of the Zone, the supplier is entitled to the benefit of zero-rated supply in such cases. It should be noted that the provisions of section 17(5) of the CGST Act should also be taken into consideration.

Sending/ taking goods out of India for exhibition

By issue of Circular No. 108/27/2019 GST dated 18.07.2019 CBIC provides clarification regarding the activity of sending or taking goods out of India for exhibition or on consignment basis for export promotion and the key issues clarified in the Circular are as follows:

- (a) The activity of taking goods out of India on consignment basis for exhibition would not in itself constitute a supply under GST since there is no consideration received at this time.
- (b) The movement of these goods out of India shall be accompanied by a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.
- (c) Since taking such goods out of India is not a supply, it necessarily follows that it is also not a zero-rated supply. Therefore, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.
- (d) The goods taken out of India in this manner are required to be either sold or brought back within a period of six months from the date of removal.
- (e) The supply would be deemed to have taken place if the goods are neither sold abroad nor brought back within the period of six months. In this case, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of the quantity of goods which have neither been sold nor brought back. The benefit of zero-rating, including refund, shall not be available in respect of such supplies.
- (f) If the specified goods are sold abroad, fully or partially, within the period of six months, the supply shall be considered to have been effected, in respect of the quantity so sold, on the date of such sale. In this case, the sender shall issue a tax invoice in respect of such quantity of goods which has been sold. These supplies shall become zero-rated supplies at the time of issuance of invoice. However, refund in relation to such supplies

shall be available only as refund of unutilized ITC and not as refund of IGST.

- (g) No tax invoice is required to be issued in respect of goods which are brought back to India within the period of six months.

According to the circular, unless such activity meets the criteria outlined in Schedule I of the CGST Act, it does not qualify as a supply because there is no consideration involved at that point in time. Consequently, since this activity is not considered a supply, it cannot be classified as a “zero-rated supply” under section 16 of the IGST Act.

Exports are encouraged and domestic taxes and levies are not to be exported. To this end, rebate and refund of unutilized credit are options available in IGST Act to neutralize tax-effect on exports. In the coming article the ‘export of services’ and ‘deemed export of goods’ along with benefits under export promotion schemes will be narrated.

SEARCH, SEIZURE AND INSPECTION – CRITICAL ISSUES

Adv. Mukul Gupta

Search, Seizure and Inspection are necessary tools deterring the evaders from adopting unwanted mischievous transactions, thus for genuine dealers this is a good evil in the tax laws. Search, Seizure and Inspection are necessary ingredients for any tax system so that a fear of being heavily penalized for any misdeeds towards the possible evasion of tax. The utility of Search, Seizure and Inspection is more in GST Law as its design and application is based on trust and self-declaration by the tax payers. The power of Search, Seizure and Inspection is prescribed under Section 67 of the CGST Act, 2017.

As established Judicial procedures under the tax laws of the Country needs to be followed so a proper codified procedure have been prescribed in the recently introduced GST law for the purpose of Search, Seizure and Inspection and further proceedings thereafter.

Ingredients and Steps for invoking Section 67

- A. The proper officer, not below the rank of Joint Commissioner should have ‘reasons to believe’:[S. 67(1)]
 - a. For suppression of any Transaction pertaining to supply or has claimed excess ITC.
 - b. Transporting or keeping possession of goods which have escaped payment of tax.
- B. The proper officer, not below the rank of Joint Commissioner could confiscate any documents or books or things based on Reasons to Believe.[S. 67(2)]
- C. The documents, books or things not relied upon shall be returned within 30 days.[S. 67(3)]
- D. The officer authorised shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.[S. 67(4)]

- E. The effected persons shall be entitled to make copies of documents seized or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation. [S. 67(5)]
- F. The goods seized shall be released, on a provisional basis, upon execution of a bond and furnishing of a security on payment of applicable tax, interest and penalty. [S. 67(6)]
- G. Goods seized shall be returned within 6 months if no notice served, but period could be extended for another 6 months by officer on sufficient cause shown. [S. 67(7)]
- H. Provisions of Criminal Procedure Code pertaining to Search and Seizure would be *pari materia* applicable to GST laws. [S. 67(10)]
- I. Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution. [S. 67(11)]

Circulars/ Instructions by the CBIC in order to carry on the proper Investigation and to avoid abuse of power

As per INSTRUCTION NO. 1/2020-21 [GST INVESTIGATION/F. NO GST/ INV/DGOV REFERENCE/20-21], DATED 2-2-2021 the following guidelines must be adhered to while carrying out search proceedings:

- (i) Valid and justifiable reasons for authorizing a search, which shall be duly recorded in the file.
- (ii) Generation of DIN.
- (iii) The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person.
- (iv) In case of search of a residence, a lady officer shall necessarily be part of the search team.

- (v) The search shall be made in the presence of two or more independent witnesses.
- (vi) The officers conducting the search shall first identify themselves by showing their identity cards to the person-in-charge of the premises.
- (vii) The search authorization shall be executed before the start of the search and his/her signature with date and time shall be obtained.
- (viii) A Panchnama containing truthful account of the proceedings of the search shall necessarily be made and a list of documents/goods/things recovered should be prepared.
- (ix) In the sensitive premises videography of the search proceedings may also be considered and the same may be recorded in Panchnama.
- (x) While conducting search, the officers must be sensitive towards the assessee/party. Social and religious sentiments of the person(s) under search and of all the person(s) present, shall be respected at all times. Special care/attention should be given to elderly, women and children present in the premises under search. Children should be allowed to go to school, after examining of their bags. A woman occupying any premises, to be searched, has the right to withdraw before the search party enters, if according to the customs she does not appear in public. If a person in the premises is not well, a medical practitioner may be called.
- (xi) The person from whose custody any documents are seized may be allowed to make copies thereof or take extracts therefrom for which he/she may be provided a suitable time and place to take such copies or extract therefrom. However, if it is felt that providing such copies or extracts therefrom prejudicially affect the investigation, the officer may not provide such copies. If such request for taking copies is made during the course of search, the same may be incorporated in Panchnama, intimating place and time to take such copies.
- (xii) The officer authorized to search the premises must, sign each page of the Panchnama and annexures. A copy of the Panchnama along with all its annexures should be given to the person-in-charge of the premises being searched and acknowledgement in this regard may be taken. If the person-in-charge refuses to sign the Panchnama, the same may be pasted

in a conspicuous place of the premises, in presence of the witnesses. Photograph of the Panchnama pasted on the premises may be kept on record.

- (xiii) In case any statement is recorded during the search, each page of the statement must be signed by the person whose statement is being recorded. Each page of the statement must also be signed by the officer recording the statement as 'before me'.
- (xiv) After the search is over, the search authorization duly executed should be returned to the officer who had issued the said search authorization with a report regarding the outcome of the search. The names of the officers who had participated in the search should be written on the reverse of the search authorization. If search authorization could not be executed due to any reason, the same should be mentioned in the reverse of the search authorization and a copy of the same may be kept in the case file before returning the same to the officer who had issued the said search authorization.
- (xv) The officers should leave the premises immediately after completion of Panchnama proceedings.

Judgments

Arvind Goyal CA v. Union of India, (2023) 7 Centax 119 (Del.)

Since documents, books or things could only be seized under section 67 if same were useful or relevant to any proceedings under GST Act, therefore, seizure of currency by concerned officers was illegal and without any authority; and seized currency was returned.

Golden Cottage Industries v Union of India, 2019 (29) G.S.T.L. 587 (Guj.)

The statutory requirement of reasonable belief, rooted in the information in possession of Proper Officer under the Act, is to safeguard the citizen from vexatious proceedings. **'Belief' is a mental operation of accepting a fact as true, so, without any fact, no belief can be formed. It is true that it is not necessary for the Proper Officer under the Act to state reasons for his belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which his belief was formed,** as it has been held by the Supreme Court in Sheonath Singh's case (AIR 1971 SC 2451), that the

Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court.

TVL. RISING INTERNATIONAL CO. v COMMR. OF CENTRAL GST & C. EX., MADURAI, 2020 (43) G.S.T.L. 3 (Mad.)

Section 67(1) of the Act employs the expression “**has reason to believe**”. The Hon’ble Supreme Court in *Income Tax Officer, Calcutta and Ors. v. Lakhmani Mewal Das*, (1976) 3 SCC 757 held that the **existence of the belief can be challenged by the assessee but not the sufficiency of reasons for the belief**. The expression “**reason to believe**” **does not mean a purely subjective satisfaction on the part of the officer. It must be held in good faith. It cannot be merely a pretence**. It is open to the Court to examine **whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section**. To this limited extent, the action of the authority in initiating proceedings is open to challenge. Of course, as contended by the Learned Standing Counsel for the respondents this judgment was rendered in the context of Income-tax Act as regards the reopening of the assessment where income escaped assessment. But then, the same principles will govern the case on hand also. It is true that this Court cannot sit in appeal over the satisfaction of the proper officer. It is equally true as observed in 2004 (168) E.L.T. 298 (Mad.) (*Bhagwan R. Daswaniv. Collector of Central Excise, Coimbatore*), that whether the officer had materials to arrive at a reasonable belief or not before the search was conducted need not be tested under legal microscope.

Paresh Nathalal Chauhan v State of Gujarat, 2020 (32) G.S.T.L. 342 (Guj.)

Sub-section (2) of Section 67 does not empower the officer concerned to record statements of family members through force or coercion or to record their conversations in their mobile phones. In exercise of powers under sub-section (2) of Section 67 of the CGST Act, it is **not permissible** for the authorised officer **to use coercive measures against family members** to find out the whereabouts of the taxable person. It is shocking to see that in a premises where there are three ladies, namely, the petitioner’s mother, wife and young daughter, male officers together with a CRPF Officer have stayed throughout day and night despite the fact that the goods, articles and things were already seized on 11-10-

2019. The entire exercise carried out by the concerned officers from 12-10-2019 to 18-10-2019 was totally without any authority of law and in flagrant disregard of the provisions of the Act and the rules and in total abuse of the powers vested in them under the Act. 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.

SHREE GANESH MOLASSES TRADING CO. v. SUPERINTENDENT, OFFICE OF THE COMMISSIONER, (2023) 4 Centax 37 (Guj.)

Coercing petitioner in reversing input tax credit at midnight during search and seizure operation **could not be said to be voluntary payment**; ITC so reversed was to be refunded.

VALLABH TEXTILES v. SENIOR INTELLIGENCE OFFICER, (2022) 1 Centax 241 (Del.)

Where **payments made during search proceedings for which acknowledgement were not issued in Form DRC-04 were not voluntary**, department was to be directed to refund same along with interest.

BHUMI ASSOCIATE V UNION OF INDIA, 2021 (46) G.S.T.L. 36 (GUJ.)

We propose to pass an interim order issuing the following directions.

“The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions :

- (1) **No recovery in any mode** by cheque, cash, e-payment or adjustment of input tax credit should be made **at the time of search/inspection proceedings under Section 67** of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.
- (2) Even if the assessee comes forward to make **voluntary payment** by filing Form DRC-03, the assessee should be asked/advised to file such Form DRC-03 on the **next day after the end of search proceedings** and after the officers of the visiting team have left the premises of the assessee.”

In the new regime of GST, the role of Search, Seizure and Inspection has tremendously increased; specialized agencies has been created within the GST Department to execute such special drives against such offenders who are involved in the chain of the transactions creating and utilizing the fictitious Input Tax Credit. The duplication of activities by multiple agencies on same set of tax payers is a big problem in the trade and industry, moreover the Search parties and sometime Notices from the investigating agencies are coming from far off places resulting into great inconvenience in clarifying their issues. The procedure prescribed under GST Act or directions given in the Judgments or instructions provided in the Circular needs to be followed in their true spirit by the Search parties rather than becoming just a mute spectator, however the taxpayer needs to be aware of these provisions so that they could legally protect themselves during and after the search.

CASE DIGEST ON LATEST JUDGEMENTS IN GST REGIME

Compiled by CA (Dr.) Arpit Haldia, CA Akhash Phophalia

Section 5

- 1. Petitioner needs to participate in the summon proceedings to know that whether State Authority are prosecuting the petitioner once again on the same matter on which Central Authority had already initiated action against the petitioner**

In this writ petition impugned Summons were challenged on the ground that both Central and State Authorities do not have powers to initiate proceedings against the petitioner simultaneously under the respective GST Acts regarding the same subject matter. The petitioner stated that he was already facing proceedings initiated by the Central Authority and therefore, the question of the State Authority initiating proceedings against the petitioner will not arise as per Section 6(2)(b) of the GST Act, 2017.

The High Court observed that truth will come out only when the petitioner appears before the State Authority pursuant to the Summons received by him and not otherwise. If it is the same subject matter, the State Authority cannot prosecute the petitioner once again as the Central Authority had already initiated action against the petitioner in respect of the very same subject matter. The petitioner had sent a detailed reply on 27.10.2022 to the impugned Summons dated 18.10.2022 and even without allowing the same to be considered by the State authority on merits, the petitioner approached the Court prematurely by filing this Writ Petition.

The High Court held that the petitioner would have to participate in the personal hearing and state all his objections with regard to the action launched by the State Authority and then State Authority shall consider the petitioner's objections on merits and in accordance with law and thereafter, decide as to whether the petitioner can be prosecuted once again under the TNGST Act, 2017 when the Central Authority has already prosecuted him under the CGST Act, 2017.

Tvl Metal Trade Incorporationv. Special Secretary [2023] 151 taxmann.com 36 (Madras)

2. Refund of IGST paid on Ocean Freight

The High Court held that since Entry No.10 of Notification No.10/2017- IGST (Rate) dated 28.6.2017 has already been declared ultravires by Hon'ble Apex Court, therefore amount of Rs. 6,98,00,420/- paid by the petitioner as IGST on ocean freight of goods imported during July, 2017 to December, 2019 be refunded alongwith the statutory rate of interest.

Case Referred- ADI Enterprises v. UOI being Misc. Civil Application No. 1 of 2020 in Special Civil Application No. 10479 of 2019

Krishak Bharati Co-operative Ltd.v. Union of India [2023] 151 taxmann.com 42 (Gujarat)

3. Refund of IGST paid on Ocean Freight

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Etc Agro Processing (India) (P.) Ltd.v. UOI [2023] 150 taxmann.com 376 (Gujarat)

Section 7

4. Allotment of Car Parking Space not a composite Supply

The Authority observed that a sanctioned plan may have open parking spaces but the appellant has no right to transfer ownership or lease out or allow right to use of the said spaces to allottees. The owners' association on joint agreement of its members may lease out the open parking space on rent at a future date. A customer of a flat may avail car parking facility even after the issuance of completion certificate of the project. A customer may choose to opt or not opt for car parking at the time of purchase/booking of an apartment.

Therefore, Authority held that it is evident that sale/right to use car parking service and construction services are separate services which are not dependent on sale and purchase of each other. The amount charged by the appellant for right to use of car/two-wheeler vehicle parking space, though not permissible

as per RERA, constitutes a separate supply under GST Act and appellant is liable to pay tax @ 18% on such supply

Eden Real Estates (P.) Ltd [2023] 150 taxmann.com 517 (AAAR-WEST BENGAL)

5. Manpower supplied to Central/State Government for housekeeping, cleaning, security data, entry operator not exempt.

The appellant contended that the manpower services provided by them to the Government authorities/ entities are exempted supplies as they are provided by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.

It was held that if the intention of the legislature was to exempt all the services provided to Central Government, State Government or Union Territory or Local authority then there was no need to specify activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. Even though the appellant is providing services to the Government offices concerned, but they are in no way related to the function entrusted to a Panchayat under article 243G of the Constitution or function entrusted to a Municipality under article 243 W of the Constitution which is carried out by the Government concerned.

[2023] 150 taxmann.com 507 (AAAR-GUJARAT)Sankalp Facilities and Management Services (P.) Ltd

6. Diesel Reimbursement to form part of Vehicle Hire Charges

The Authority held that without fuel the motor vehicle does not operate (run) and without running i.e. moving from one place to another, the act of motor vehicle hire services does not happen. The motor vehicle hire services have the integral component of running/ operating the vehicle from one place to another for transportation. Therefore, to claim to provide the said services, actual transportation has to take place and without fuel this cannot happen. The contract entered between the applicant and the provider of services is for motor vehicle hire services, wherein the liability to arrange fuel and the maintenance of the vehicle, so deployed lies with the service provider and is a

comprehensive contract with the consideration which varies depending upon the kilometer travelled. Therefore, reimbursement of expenses for providing said services, under any head is nothing but the additional consideration for the provision of said services and attracts GST on the total value.

Cases Referred- M/s. Goodwill Auto's, Hubballi; Dharwad (Karnataka AAR), M/s Vinayak Air Products Pvt. Ltd (Uttarakhand AAR), M/s Gurjinder Singh Sandhu (Uttarakhand AAR), M/s Tara Genset Engineers (Uttarakhand AAR).

Uttarakhand Public Financial Strengthening Project [2023] 151 taxmann.com 5 (AAR-UTTARAKHAND)

7. Supply of Work contract services by appellant to BSNL which in turn are being provided by BSNL to Navy are eligible for rate under Entry 3(vi) of n.no. 11/2017-CTR Dated 28/06/2017

Entry 3(vi) inserted in N. No.11/2017 vide notification No. 24/2017- CTR dt. 21.09.2017 primarily amongst other conditions state that works contract services supplied to Government Entity are eligible for concessional rate provided it should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union Territory or a local authority, as the case may be.

In the instant case, AAR held that supply of Work contract services by appellant to BSNL which in turn are being provided by BSNL to the Navy (Under the Ministry of Defence) are eligible for the concessional rate up till 31st December 2021.

Sterlite Technologies Ltd [2023] 151 taxmann.com 33 (AAAR-MAHARASHTRA)

Section 9

8. To bear GST Burden in case of Pre and Post GST Contracts wherein impact of GST was not considered while preparing BOQ

The matter in the instant petition was to give by way of direction upon the respondent authority concerned to bear the additional tax liability for execution of subsisting Government contracts either awarded in the pre-GST regime or in the post GST regime without updating the Schedule of Rates (SOR) incorporating the applicable GST while preparing Bill of Quantities (BOQ) for inviting the bids.

The High Court disposed of the writ petition by giving liberty to the petitioner to file appropriate representations in the aforesaid regard before the Additional Chief Secretary, Finance Department, Government of West Bengal within four weeks from date. On receipt of such representations the Additional Chief Secretary, Finance Department was directed to take a final decision within four months from the date of receipt of such representation after consulting with all other relevant departments concerned.

[2023] 151 taxmann.com 11 (Calcutta) Benay Bhusan Palit Memorial Education Society v. State of West Bengal

9. Stay Petition on GST on Mining Royalty dismissed

The High Court observed that the counsel for the petitioner was not in a position to dispute the fact that the issue regarding demand of GST on royalty paid to the respondent - Mining Department towards mining lease has already been decided by the Court in Sudershan Lal Gupta's and Shree Basant Bhandar Int Udyog's case. In view of the above, high court dismissed the writ petition in terms of the orders passed by the Court in Sudershan Lal Gupta's case and Shree Basant Bhandar Int Udyog's case). The stay petition was also dismissed.

Case Referred- Shree Basant Bhandar Int Udyog v. Union of India & Ors. (D.B. Civil Writ Petition No.5678/2022) and Sudershan Lal Gupta v. Union of India & Ors. (D.B. Civil Writ Petition No.8109/2022)

Rajasthan Granite Mining Association v. Union of India [2023] 150 taxmann.com 501 (Rajasthan)

10. General Power Attorney Holder is liable to get registered and pay tax on rent as they are involved in the act of leasing of property and receives and retains, income from property, including rent.

The applicant being a non-resident Indian, residing at California, USA, owned a commercial property in Bengaluru and rented the said premises from which is in receipt of rental income. The owner i.e. applicant has given General Power of Attorney ("GPA" to his mother Smt. Prabhavathi quoting that he is working outside India and thus unable to take care of said commercial property owned by him).

The AAR observed reading through the provisions of GPA, that the act of

leasing of immovable property was taken up by the GPA holder and as per GPA, the incomes from the property, including the rent were received and retained by the GPA holder. Thus, the GPA holder is the supplier of service of leasing of the building for commercial purposes and thus liable to be registered and required to pay tax on supply of Renting of Immovable Property service of the commercial building.

Nagabhushana Narayana [2023] 150 taxmann.com 304 (AAR - KARNATAKA)-

Section 15

11. Activity of Gold Jewellery being melted into gold lumps, not eligible to avail the benefits of Rule 32(5) of CGST Rules, 2017

Authority held that when applicant melts the gold jewellery into gold lumps, the nature of goods changes in as much as the characteristics of the articles and the classification changes. Since the processing done by the applicant changes the nature of goods, they are not eligible to avail the benefits of Rule 32(5) of CGST Rules, 2017. The HSN Code for Old Gold Jewellery is 7113 and after melting into gold lumps or irregular shapes of gold the HSN Code is 7108.

White Gold Bullion (P.) Ltd. [2023] 151 taxmann.com 45 (AAR - KARNATAKA)

Section 17

12. Input Tax Credit not allowed for Pre-Fabricated Sheds as it is an immovable Property

Applicant is constructing a Pre-fabricated shed ('PFS') on land and it is intended to be used as a permanent structure for the purpose of conducting business, which has beneficial enjoyment of the land on which it is being built. The applicant intends to use technology, for the construction of the 'PFS', which involves the application of pre-fabricated structures and also civil work for supporting the pre-fabricated structure and developing the RCC platform of the 'PFS'. If not for the purpose of beneficial enjoyment by way of conducting business on the RCC platform, the 'PFS' has no separate existence. The 'PFS' being constructed is, therefore, an immovable property and the input tax credit is not admissible on the inward supplies, which may include Works contract

services, for its construction, as the credit of such tax comes under category of blocked credits as per section 17(5)(d) and section 17(5)(c) of the CGST/ TGST Act'2017.

Cases Referred-Solid & Correct Engineering Works (2010) 252 ELT 481 (SC), Sirpur Paper Mills Ltd 97 ELT 3 (SC), Triveni Engineering & Industries Ltd. & Anr. V. Commissioner of Central Excise 2000 (120) ELT 273 (SC), Quality Steel Tubes (P) Ltd. V. CCE, U.P. 1995 (75) ELT 17 (SC), Mittal Engineering Works (P) Ltd. V. CCE, Meerut 1996 (88) ELT 622 (SC), Circular No. 58/1/ 2002-CX dated 15/01/2002.

[2023] 150 taxmann.com 506 (AAR- TELANGANA)Sanghi Enterprises

Section 29

13. Penalty/Late Fee for delay in filing of Return cannot be levied upon Taxpayer when the application for revocation of cancellation of registration was rejected without any valid Show cause notice and reason.

The High Court observed that the order dated 14.12.2020, rejecting the petitioner's application for revocation of cancellation of GSTIN registration was unsustainable. It provided no reason as to why the petitioner's application was rejected. The only reason was that the petitioner had not responded to the Show Cause Notice dated 27.10.2020. It was hard to accept that there could be any meaningful response to the said Show Cause Notice. It provided no reason at all for proposing to reject the petitioner's application for revocation of cancellation.

The petitioner's principal contention was that it had already complied with the requirement of filing the returns on the date when the order cancelling its registration was passed and, therefore, the said order was unsustainable.

The High Court was thus of the view that from the date of the petitioner filing an application for revocation of its cancellation, that is, 16.10.2020, the petitioner cannot be held responsible for not filing its returns during the period when the registration stood cancelled. Thus, for the purpose of calculating any penalty for the late filing of the returns, the period, 16.10.2020 to 22.04.2022, is liable to be excluded.

Ishwar Chand Proprietor of Bhagwati Trading Co. v. Union of India [2023] 150 taxmann.com 294 (Delhi)

14. Cancellation of Registration-Restoration of Proceedings to be considered afresh considering High Courts observation.

The registration of the taxpayer was cancelled for failure to file returns. The petitioner at the time of filing of first appeal stated that he filed response but could not appear for personal hearing because he was suffering from lungs disease and was advised bed rest which had a cascading effect on his business including the failure to file monthly returns. The petitioner's appeal was rejected on the ground of limitation.

The High Court held that if the petitioner can demonstrate bonafides, there would be no need to take a pedantic approach. The reasons assigned by the petitioner could be bonafide and the petitioner must have another opportunity of hearing to establish the same. The third respondent was therefore directed to extend an opportunity and consider the circumstances that are relied upon by the petitioner

Rangappa Krishnappa v. Commissioner of Central Tax (Appeals - 1) [2023] 150 taxmann.com 518 (Karnataka)

15. Decision of Appellate Authority on issues neither part of Show Cause Notice and nor part of Order.

The High Court held that the order dated 01.12.2020 fell short of the requirement of Article 14 of the Constitution of India and the appellate order dated 30.12.2021 clearly exceeds the power conferred upon the appellate authority as it decides the appeal on the issues which were neither a part of the show-cause notice nor was a consideration when the order dated 01.12.2020 was passed.

Cases Referred- M/s Chandra Sain, v. U.O.I & Ors. (Writ Tax No.147 of 2022) decided on 22.09.2022 as well as M/S Precitech Engineers v. State of U.P. & Ors. (Writ Tax No.1583 of 2022) decided on 14.03.2023.

Ajay Building Material v. State of U.P.[2023] 151 taxmann.com 6 (Allahabad)

16. Petitioner directed to file application for revocation of Cancellation of Registration as per notification no. 3/2023-CTdt 31-3-23.

The High Court observed that the notification dated 31.03.2023 has been issued

providing for revocation of cancellation of the registration. Since the cancellation was under the provisions of Section 29(2) of the CGST Act and such cancellation was before 31.12.2022, and an application for revocation was not filed, the High Court stated that application be submitted that in terms of this notification.

Anandkumar Ramdeo Singh v. Commissioner (Appeals-I) GST and Central Tax [2023] 151 taxmann.com 13 (Karnataka)

17. Principle of Natural Justice not followed before cancellation of registration

The petitioner was aggrieved by the first respondent's order dated 30.11.2022. It was contended by the petitioner that when he was still in custody, department cancelled the GST registration on 30.11.2022 recording that on examination of the petitioner's case against cancellation they were of the opinion that it should be cancelled. If the petitioner was in custody from 16.11.2022 until 08.12.2022 when he was admitted to bail and released, the petitioner could not have been served with Show Cause Notice dated 17.11.2022 and he could not have issued any response, but the GST registration was cancelled based on the said Show Cause Notice holding that petitioner's response was considered.

The High Court observed that the department has recorded what appears to be a stereotype opinion because in the circumstances of the case it cannot even be argued that the petitioner could have issued response. Therefore, the Court interfered with the impugned order on the ground of arbitrariness and allowed petitioner to furnish the returns for the period for which the returns were not filed as a condition for revocation of the cancellation as against a cancellation by this order without any condition.

S.P. Metals v. Assistant Commissioner of Commercial Taxes [2023] 150 taxmann.com 498 (Karnataka)

18. SCN being cryptic, one liner and not containing any fact or reasoning

SCN dated 26.8.2022 was issued in Form GST REG-17/31 stating that "in case, registration has been obtained by means of fraud, willful misstatement or suppression of facts." The petitioner challenged it on the ground that SCN is in one line cryptic notice, principles of natural justice has not been followed by not giving of any opportunity of being heard and SCN does not contain any reasoning and does not record any details and facts relating to the allegations.

The High Court directed the authority to undertake fresh exercise and pass fresh order and impugned notice dated 28.6.2022 was set aside.

Rathod Enterprisev. State of Gujarat[2023] 151 taxmann.com 37 (Gujarat)

19. Appeal filed before Appellate Authority rejected on account of limitation period; High Courts remands back for fresh consideration as registration was suo-motu cancelled

In the instant case, appellate authority rejected the appeal as it was filed beyond the period of extended limitation.

The High Court observed that though the lower appellate authority may be right in holding that while it may allow filing of an appeal beyond the limitation of three months for a further period of one month, but the delay beyond the extended period of one month cannot be condoned, however, such a stand may adversely affect the petitioner. This is more so because registration was suo-motu cancelled on the ground of non-filing of returns and as GST Tribunal has not been constituted under Section 109 of the CGST Act, petitioner would be left without any remedy. The High Court thus remanded the entire matter back to reconsider the case of the petitioner and thereafter to pass appropriate order in accordance with law.

Narayanpet Municipalityv. Superintendent of Central Tax [2023] 150 taxmann.com 303 (TELANGANA)

20. Cancellation of registration of the recipient for wrongful availment of ITC as the supplier did not deposit the tax

The registration of the petitioner was cancelled on account of the allegation that they have availed excess credit than the ITC accrued in GSTR-2A/2B in violation of Provisions of Section 16. It was contended by the petitioner that they had duly paid the amount to the supplier but supplier neither filed the return and nor filed GSTR-1.

The High Court observed that the claim of the petitioner than they have paid the entire amount to the supplier needs verification that whether at all the entire amount being paid by them was towards the invoices raised by the supplier. The High Court directed that in case the verification exercise reveals that even after due payment to the supplier, the same has not been deposited, it

would be open for the competent authority to take appropriate decision.

Electro Steel Corporation v.State of Jharkhand [2023] 150 taxmann.com 407 (Jharkhand)

Section 30

21. Appellant directed to avail benefit of N. No. 03/2023-CT Dt. 31.03.2023 for Revocation of cancelled registration

The cancellation of GST Registration was ordered on the ground that the tax payer had not filed GST returns for more than six months and that the tax payer has not responded by filing such returns. The Assistant Government Pleader produced copy of the Notification No. 03/2023-Central Tax Dated 31.03.2023 issued under Section 148 of the Central Goods and Service Tax Act, 2017 before the High Court.

The High Court thus held that Clause (c) of the Notification would apply to the facts of this case for which there is no dispute. As the Notification would indisputably apply to the facts of this case, the petitioner was directed to approach the competent authority to avail the benefit of the Notification and seek revocation of the cancellation of registration.

[2023] 150 taxmann.com 341 (Gujarat) Radhe Packaging v. Union of India

Section 54

22. RFD-08 being issued for issues to be covered by RFD-03 and opportunity of hearing not given as file contemplated to be attached with Notice was never provided to the assessee.

The High Court observed that in the present case Petitioner had applied for a refund. The Petitioner received an acknowledgment under Form GST RFD-02 with a Nil remark, meaning, thereby, the application for refund was acknowledged. There were no lacunae pointed out under the said acknowledgment. No deficiency was pointed out; neither deficiency memo, as contemplated under Rule 90 (3) of the CGST Rules of 2017 in Form GST RFD-03, was issued to the Petitioner. The Petitioner directly received Form GST RFD-08 under Rule 92 (3) of the CGST Rules of 2017 for rejection of the application for refund. There were no reasons given in the said Form GST RFD-08, and it was stated that the Exports Defects Memo Knowledge Capital-

pdf.pdf is a file that is attached. However, the said file was not annexed to the reply affidavit.

The High Court observed that the deficiencies ought to have been communicated to the Petitioner under Form GST RFD -03 as per Rule 90 (3) of the CGST Rules of 2017. Instead, these deficiencies were made a ground to issue a show cause notice for rejection of the refund. Thereafter, application was rejected on the ground that no reply was received to the show cause notice. There was no opportunity given to the Petitioner to rectify lacunae, and the deficiencies which were to be informed through Form GST RFD-03 were sent in a file attached in Form GST RFD08. This deprived the Petitioner to submit a fresh refund application as contemplated under Rule 90 (3) of the CGST Rules of 2017. there was nonadherence with the procedure envisaged under the Rules to use the correct Forms prescribed. Not only Form GST RFD-03 was not issued, but a file is sought to be attached to Form GST RFD-08, which has a different Form. The matter was remanded by the High Court to decide afresh directing that if there are deficiencies in the Petitioner's application, the same may be informed to the Petitioner as per Form-GST-RFD-03, and if not, the application be processed as per law.

[2023] 150 taxmann.com 515 (Bombay) KnowledgeCapital Services (P.) Ltd. v. Union of India

23. Rule 89(4) is not applicable in case of refund on account of export of services with payment of tax.

The proper officer had rejected petitioner's claim of refund on account of export of services without payment of tax by referring to Sub-clause (D) of Rule 89(4) of the Rules on the ground that the turnover reflected for the month of October, 2018 ought to be considered as the turnover for the month of November, 2018 when the remittances were received. The petitioner appealed against the decision of proper officer rejecting the refund contending Rule 89(4) of the Rules does not apply. The petitioner submitted that Rule 89(4) of the Rules applied only for refund in respect to exports made without payment of integrated tax. The petitioner pointed out that it was not seeking refund of accumulated ITC but integrated tax as paid by him and that there was no dispute that the petitioner had discharged his liability of payment of integrated tax.

The High Court held that the opening sentence of Rule 89(4) of the Rules makes it amply clear that it applies only in cases of zero-rated supply of goods or services, without payment of tax under bond or letter of undertaking and thus Rule 89(4) of the Rules is inapplicable to cases of refund of integrated tax paid on zero rated supply.

OHMI Industries Asia (P.) Ltd. v. Assistant Commissioner, Central Goods and Services Tax [2023] 150 taxmann.com 497 (Delhi)

Section 65

24. Rectification of Audit Report

The petitioner was aggrieved with the audit report issued under section 65(6) and the non-consideration of the rectification application filed the petitioner under Section 161 of the Act.

The High Court observed that re-examination of the Audit Report by application under section 161 is not a permissible exercise. The Assessing Officer had rightly found that there was no error apparent on the face of the record, which could be rectified under section 161 and that in any event, section 73 proceedings had been initiated based on the final audit report. The Assessing Officer has also noted that submission if any made by the tax payer would be taken on record. The Proper Officer has looked at the audit report and has recorded his satisfaction in the show-cause notice on items raised in the audit report and which enables assessee to raise objections against the same.

Therefore, the High Court was of the opinion that there was no reason why writ petition should be entertained when the rectification application, on which basis the proceedings under section 73 is sought to be kept in abeyance. If the Assessing Officer has not completed the proceedings, the petitioner would be entitled to file his objections and seek for consideration of the same before the Assessing Officer.

Singh Caterers and Vendors v. Union of India [2023] 151 taxmann.com 3 (Patna)

Section 69

25. Bail granted as petitioner had faced incarceration for more than 1½ years, complaint still at summon stage, other accused extended benefit of bail.

The High Court observed that the quantum of amount which the petitioner was involved was yet to be decided at the time of trial. The petitioner had already faced incarceration for more than 1½ years. The complaint is still at the summoning stage. The other two accused had already been extended the benefit of default bail and one more co-accused was granted regular bail by the Court who is stated to be at parity with the present petitioner.

Thus, the High Court considering the aforesaid facts and circumstances and also considering the total custody of the petitioner which was more than 1½ years, this Court deems it fit and proper to grant regular bail to the petitioner.

Kawaljot Singh v. Superintendent Preventive, CGST[2023] 151 taxmann.com 4 (Punjab & Haryana)

26. Rejection of Anticipatory Bail

The Supreme Court held that looking to the role attributed to the petitioner(s) and the observations made by the High Court that the GST number, name of the firm were fabricated and other details were found to be non-existent, there was no case for anticipatory bail. The Special Leave Petitions were thus dismissed.

[2023] 151 taxmann.com 9 (SC) Sheetal Mittal v. State of Rajasthan

27. Grant of Bail on deposit of amount and execution of personal bond

The High Court observed that petitioner was arrested on 04.11.2022 and since then, he was in judicial custody. The challan of the case had already been presented and no investigation was pending.

Taking into consideration the investigation and evidence so collected, in the opinion of the High Court, the trial would take considerable time and it may happen, if denied bail, the judicial custody be prolonged beyond the statutory period of punishment which was for five years. The High Court granted 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 and execution of 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.

Case Referred- Vinay Kant Ameta v. UOI (Criminal Appeal No. 60/2022) decided on 10.01.2022 (SC)

[2023] 151 taxmann.com 44 (Rajasthan)Gaurav Kakkarv. Directorate General of GST Intelligence, Jaipur Zonal Unit

Section 73

28. Second Officer cannot initiate proceedings by issuing DRC-01 and passing the order on the same matter which is already seized by the first officer by issuing DRC-01A

In the instant case, the issue before the High Court was whether an officer (referred as “second officer”) could have initiated fresh proceedings by issue of DRC-01 and passing order thereafter, when another officer (referred as “first officer”) was seized of the matter and intimation in Form GSTDRC-01A dated 05.03.2021 was issued to which the appellants had submitted their reply dated 08.03.2021 and the said reply was neither considered nor rejected and the matter was kept pending. The case of the appellant was that he was not aware of the said notice for being uploaded in the portal and they came to know of the same only after the sum of Rs. 1,84,930/- was paid from their electronic credit ledger and immediately thereafter, the appellants applied for a copy of the order and thereafter preferred the appeal but by then the period of limitation for filing the appeal had expired.

The High Court observed that the option which was available to the first officer was to consider the representation/reply and if not satisfied, could have proceeded to issue SCN under Section 74(1) of the Act which option the first officer did not exercise and the matter was left to linger. Thus, the preliminary proceedings could not have been initiated by the second officer when proceeding initiated by the first officer for the very same amount on the very same allegation was not taken to the logical end. It was further observed that when the statutory appeal for the order passed by the second officer was pending before the appellate authority, the first officer had dropped the proceedings. From the final report of the first officer, it was seen that the proceedings were closed by the first officer only on 24.01.2023. Thus, for all purposes, it was deemed that the proceedings initiated by the first officer pursuant to intimation dated 05.03.2021 had attained finality and on the said date, the appeal as against the proceedings initiated by the second officer was already pending before the appellate authority.

Thus, the High Court considering peculiar facts and circumstances held that the appeal should not be treated to be as time barred.

Section 74

29. A vague notice is violation of provision in Section 75 since the Statute itself prescribes for affording reasonable opportunity and any deficiency in that regard vitiates the result.

The High Court observed that even though the petitioner had not specifically raised the said ground before the appellate authority but the fact remained that mandatory provisions of Section 74 of GST Act make it incumbent upon the Revenue to ensure the show cause notice to be speaking enough to enable the assessee to respond to the same. However, SCN revealed that it neither contained the material and information nor the statement containing details of ITC transaction under question. It was further observed that Section 75 of GST Act is a complete Code which prescribes for various stages for determination of wrongful utilization of ITC while following the concept of reasonable opportunity of being heard to the assessee. Since the Statute itself prescribes for affording reasonable opportunity, it is incumbent upon the Revenue to afford the same and any deficiency in that regard vitiates the result. The High Court held that it had no manner of doubt that the very initiation of the proceedings by way of show cause notice was vitiated for the same being vague.

Case Referred- Sidhi Vinayak Enterprises v. The State of Jharkhand & ors) including WP(T) No.745/2021 14thth, September 2022.

[2023] 151 taxmann.com 12 (Madhya Pradesh)Balaji Electricalsv. Appellate Authority & Joint Commissioner State Tax

30. Once the appellate authority considers the entire documents on record in case of an ex-parte assessment, then there is no need to interfere in the order passed by the appellate authority

The petitioner's premises were inspected by the Special Investigation Branch on 06.12.2017. On the basis of the report submitted by the Special Investigation Branch, the notice under Section 74 of UPGST Act, 2017 was issued to petitioner demanding Rs.48,96,000/- amount of tax penalty and interest. Since petitioner neither replied to the SCN and nor did it produce relevant documents for assessing the correct tax from July, 2017 to March, 2018, ex-parte order dated 11.11.2021 considering the turnover as one crore was assessed.

The Appellate Authority, from the entries, as found in the diary recovered by the Special Investigation Branch, noticed that the petitioner had received much more advance i.e. Rs.17,95,000/- than it was shown in the returns i.e. Rs. 3,73,983.05/- however, Appellate Authority based upon the records reduced amount from Rs 48,96,000 by Rs 38,56,680/-.

The High Court on the appeal of the petitioner held that it does not find any substance in the submission of the learned counsel for the petitioner that the assessment order is based on presumption. The appellate authority had examined each and every document submitted by the petitioner as well as the documents recovered by the Special Investigation Branch.

Jalsa Resorts v.State of U.P. [2023] 150 taxmann.com 306 (Allahabad)

31. A vague notice is violation of provision in Section 75 since the Statute itself prescribes for affording reasonable opportunity and any deficiency in that regard vitiates the result

The petitioner contended that SCN was vague to the extent of not communicating the relevant information and material thereby disabling the petitioner to respond to the same, and therefore, all consequential actions of passing of order and dismissal of appeal are vitiated in law.

The High Court observed that even though the petitioner had not specifically raised the said ground before the appellate authority but the fact remained that mandatory provisions of Section 74 of GST Act make it incumbent upon the Revenue to ensure the show cause notice to be speaking enough to enable the assessee to respond to the same. However, SCN revealed that it neither contained the material and information nor the statement containing details of ITC transaction under question. It was further observed that Section 75 of GST Act is a complete Code which prescribes for various stages for determination of wrongful utilization of ITC while following the concept of reasonable opportunity of being heard to the assessee. Since the Statute itself prescribes for affording reasonable opportunity, it is incumbent upon the Revenue to afford the same and any deficiency in that regard vitiates the result. The High Court held that it had no manner of doubt that the very initiation of the proceedings by way of show cause notice was vitiated for the same being vague.

Case Referred- Sidhi Vinayak Enterprises v. The State of Jharkhand &

ors) including WP(T) No.745/2021 14thth, September 2022

Durge Metals v.Appellate Authority and Joint Commissioner State Tax [2023] 150 taxmann.com 333 (Madhya Pradesh)

32. Ex-Parte order passed in violation of principle of natural justice is illegal and is a fit case for interference by the High Court

In the instant case, ITC claim of the petitioner was rejected and tax, including interest and penalty, had been imposed, without providing any further notice to the petitioner.

The High Court observed that notwithstanding the statutory remedy, it was not precluded from interfering where, ex facie, the order was bad in law on account of the two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed ex parte in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, ex parte in nature, passed in violation of the principles of natural justice, entails civil consequences. The matter was thus remanded back.

Lucky Traders v. State of Bihar [2023] 150 taxmann.com 338 (Patna)

33. Assessment order based upon amount mentioned in eway bill being different from Invoice quashed considering the human error in generating Eway Bill

In the case, petitioner had generated a tax invoice for an amount of Rs.1,97,047.86. As, he did not have the computer, the same was a self-generated document. Further an e-Way Bill was prepared, wherein the total taxable amount was shown to be Rs.19,70,47,086.00. This figure was a typographical mistake. Therefore, though the figure is tallying but the paise has been entered in rupees, which has created difficulty on the part of the petitioner, because he is a small dealer and cannot have taxable amount of Rs.19,70,47,086.00

The department contended that the assessment order had been passed by the assessing authority under Section 74 of the OGST Act with intimation through DRC-01A for the cause of less filing of return for the period of 2019-20, as per the information under possession of the authority, and whereas, no response received against the above-mentioned intimation for which online notice in

DRC-01 was issued and, as such, no response was received on above.

The High Court held there was a palpable error in the way bill, which may be construed to be a human error. If this fact was to be brought to the notice of the assessing authority, the same could be considered in accordance with law and fresh assessment order could be passed. Thus, the High Court quashed the order and matter was remitted back to the assessing authority for reconsideration in accordance with law.

Jena Trading and Co. v. CT and GST Officer [2023] 150 taxmann.com 339 (Orissa)

34. SCN requiring the assessee to appear for personal hearing on the “date, time and venue, if mentioned in table below”, but no date, time and venue for personal hearing shown in the notice.

The petitioner contended that SCN under Section 74 was issued making mention about personal hearing to the effect that “you may appear before the undersigned for personal hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below”, but no date, time and venue for personal hearing was shown in the notice.

The High Court held that in the table given, captioned as “Details of personal hearing etc.”, no Date, Time and Venue of personal hearing was shown and in front of columns 3,4&5 of Date, Time and Venue, NA was mentioned, which was sufficient to infer that no personal hearing was given to the petitioner before passing the impugned order dated 24.08.2022. The High Court further observed that it is well settled that when due opportunity of hearing, as required under the law, has not been afforded and principle of natural justice has not been followed, then the question of availability of alternative remedy does not come in the way for exercising jurisdiction under Article 226 of the Constitution of India. The impugned order was held to be not sustainable and was quashed and remitted back.

Case Referred- Bharat Mint & Allied Chemicals Vs. Commissioner of Commercial Tax, 2022 (59) G.S.T.L. 394 (All.)

Concord Tieup (P.) Ltd. v. State of Madhya Pradesh [2023] 151 taxmann.com 41 (Madhya Pradesh)

Section 83

35. Operation of order provisionally attaching bank account ceases to be operative after expiry of one year

The High Court held that it is clear from Section 83(2) of the CGST Act that the operation of an order provisionally attaching the bank account would cease to be operative after the expiry of the statutory period of one year. In the aforesaid circumstances, the impugned order dated 13.01.2021 was declared to be ceased to be operative and thus it was held that no orders were required for setting aside the same.

Merlin Facilities (P.) Ltd. v. Union of India [2023] 150 taxmann.com 373 (Delhi)

Section 98

36. Decision of AAR is void-abinitio when the fact regarding pendency of proceedings was not brought before the AAR.

Applicant had obtained advance ruling when proceedings were pending against it. IT did not disclose pendency of proceedings at any stage of advance ruling. Therefore, the question before the court was whether its application for advance ruling was maintainable when proceedings were pending against it. Section 98(2) of the CGST/TGST Act, 2017 states that Authority for Advance Ruling shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act. Therefore, the application was liable to be rejected under Section 98(2) of the CGST/TGST Act, 2017. Taxpayer has not brought the issue to the notice of the Authority for Advance Ruling at any stage of the Advance Ruling proceedings including at the time of the personal hearing dated 28.06.2022. Therefore, the applicant has obtained the Advance Ruling by suppressing the facts and hence the Order issued in the reference 5th cited is liable to be declared as void ab initio.

Srico Projects (P.) Ltd. [2023] 150 taxmann.com 295 (AAR-TELANGANA)

Section 99

37. Architectural Services provided to Local Authority for purposes referred in 2nd Schedule of Article 243W of Constitution of India.

‘Architectural Consultancy Service’ provided by the applicant to Surat Municipal Corporation [SMC] for construction of SMIMER Hospital & College Campus is covered under entry no. 3 of notification No. 1212017-Central (Rate) dated 28.6.2017 & thus is exempt from GST.

If the applicant provides sub contract of pure services to another contractor of the SMC the supply would not fall within the ambit of entry no. 3 of the notification No. 1212017-Central (Rate) dated 28.6.2017 and would be leviable to GST

Ajit Babubhai Jariwala [2023] 150 taxmann.com 292 (AAR - GUJARAT)

Section 100

38. Extension of the limitation period for filing Appeal before AAAR beyond the period allowed for condonation of delay in the Statute

The High Court held that since the appeal was filed before the AAAR on 14.02.2020, which was beyond the period of sixty days from the date on which the petitioner received the order dated 28.06.2019 or from the date it became aware of the constitution of the Appellate Authority, the delay was in excess of the period that could be condoned by the appellant. In view of the above, High Court held that they were unable to find fault with the decision of the Appellate Authority in declining to entertain the petitioner’s appeal under Section 100 of the Act.

Case Referred-State of Goa v. Western Builders: (2006) 6 SCC 239 and Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and Ors.: 2010 (5) SCC 23.

Indian Institute of Corporate Affairs v. Delhi Appellate Authority for Advance Ruling [2023] 150 taxmann.com 505 (Delhi)

Section 107

39. No power to entertain the application for condonation of delay beyond permissible period provided

The High Court held that there is no power to entertain the application for condonation of delay beyond permissible period provided under the Act of 2017. The High Court further held that petitioner has wrongly contended that the period of delay has wrongly been assessed by Appellate Authority in the

light of the order of Hon'ble Supreme Court in case of Re-cognizance for extension of limitation (Supra), the matter be remitted back to the First Appellate Authority as even after excluding period between 15.03.2020 to 28.02.2022, filing of an appeal would not come within extended period of limitation as ordered by Hon'ble Supreme Court and therefore, said exercise would serve no purpose.

Cases Referred-Nandan Steels And Power Limited Vs. State of Chhattisgarh & Ors. in W.A. No. 104 of 2021, decided on 10.08.2022.

Farhat Construction v. State of Chhattisgarh [2023] 150 taxmann.com 334 (Chhattisgarh)

Section 112

40. Status of Recovery of demand on account of non-constitution of Tribunal

The High Court held that subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

Case Referred- AJ Food Products Pvt. Ltd. v. The State of Bihar & Others in C.W.J.C. No. 15465 of 2022

Flipkart India (P.) Ltd. v. Additional Commissioner of State Tax (Appeal) [2023] 151 taxmann.com 10 (Patna)

41. Status of Recovery of demand on account of non-constitution of Tribunal

The High Court held that subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of

balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

Case Referred- Angel Engicon Private Limited v. the State of Bihar & Anr. passed in C.W.J.C No. 1920 of 2023

SAJ Food Products (P.) Ltd.v.State of Bihar [2023] 151 taxmann.com 34 (Patna)

42. Status of Recovery of demand on account of non-constitution of Tribunal

The High Court held that subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

Case Referred-SAJ Food Products Pvt. Ltd. vs. The State of Bihar & Others in C.W.J.C. No. 15465 of 2022

Ritesh Infratech (P.) Ltd. v. Union of India [2023] 150 taxmann.com 340 (Patna)

Section 129

43. Transporter can seek release of the conveyance on deposit of specified amount under Section 129(6)

The High Court held that Section 129 provides for various situations where release of conveyance and goods may be sought and Section 129(6) being specific to a transporter, thus enables a transporter to seek release of the conveyance in the circumstances mentioned therein, being, upon payment of penalty under sub-section (3) or a sum of Rs.1.00 lakh, whichever is less.

Lodha Roadways v. Deputy State Tax Officer, Inspection Cell-4 [2023] 150 taxmann.com 375 (Madras)

44. Exercise of powers under Section 129 and thereafter switching over to Section 130 and passing order thereunder without availing the petitioner the benefits of release of goods under Section 129

The petitioner contended that when the goods were in transit, the authorities intercepted the goods and confiscated them. In other words, authorities sought to derive their powers for taking possession of the goods of the petitioner which were in transit under Section 129 of the Act. It was submitted that the said Section begins with non obstante clause and it is a provision independent of Section 130. In that context, it was submitted that exercise of powers under Section 129 and thereafter switching over to Section 130 and passing order thereunder without availing the petitioner the benefits of release of the goods under Section 129, could be said to be without jurisdiction.

The High Court, by way of interim relief, directed that the goods of the petitioner as well as vehicle shall be released upon satisfaction of conditions and admitted the petition and also directed the same to be listed with Special Civil Application No.8353 of 2022.

Rohit Company v. Union of India [2023] 150 taxmann.com 379 (Gujarat)

45. Once order is stayed, officer can release the goods subject to such other safeguards that may be imposed by the appellate authorities under the respective Acts

An order of detention in Form GST MOV-06 was issued. Petitioner filed appeal under Section 107 of the CGST Act, 2017 before the Appellate Authority and paid 25% of the disputed penalty, whereas, respondents had imposed penalty equivalent to 100% value of goods that was detained. It was submitted that once there was a pre-deposit of the amount in terms of Section 107(6), the respondents ought to have released the goods.

The High Court held that once order is stayed, the respondents can release the goods subject to such other safeguards that may be imposed by the appellate authorities under the respective Acts. The very purpose of fixing the mandatory pre-deposit is to do away with the procedure of granting stay after hearing, which was delaying the disposal of the appeal earlier. The Officer who detained the goods becomes functus officio, once there is a mandatory pre-deposit, the order has no force and all further recovery proceedings will be subject to the final outcome of the appeal. The High court directed the petitioner to deposit the maximum penalty of 200% of the tax to safeguard the interest of the revenue.

Cases Referred- TCI Freight v. Assistant Commissioner (ST) [2022] 143 taxmann.com 115 (Madras)

Haresh Kumarv. Assistant Commissioner (ST) [2023] 150 taxmann.com 380 (Madras)

Section 130

46. Conveyance to be released on deposit of Rs 1,00,000/- and a bond equal to fine levied in lieu of conveyance

In the instant case, goods which were confiscated were auctioned and amount was recovered through auction. The petitioner contended that since the goods been auctioned by authority, in such circumstances of the case, conveyance may be released and the petitioner is ready and willing to give sufficient amount of bond for the remaining amount of fine in lieu of conveyance. The respondents counsel submitted that the goods which have been auctioned had not fetched the full amount of tax, fine and penalty and also submitted that the major chunk of tax, fine and penalty was yet to be recovered.

The High Court held that once the bond is furnished towards fine of Rs.25,86,486/- in lieu of confiscation of conveyance and the amount of Rs.1,00,000/- is deposited with the respondent authority, the respondent concern may release the conveyance immediately.

Tanmit SinghV.State of Gujarat [2023] 150 taxmann.com 332 (Gujarat)

47. Order being passed in the name of driver does not preclude cosignor or the consignee to challenge the confiscation of goods along with supporting documents evidencing their ownership

It was contended by the petitioner that since the impugned order was passed against the driver, it would not be open for the cosignor or the consignee to challenge such order before the appropriate forum. It is otherwise not disputed that the impugned order is appealable under the statute.

The High Court observed that the cosignor or the consignee were always at liberty to challenge the confiscation of goods along with the supporting documents evidencing their ownership and merely because the order had been addressed to the driver of the vehicle would not be to the prejudice of the rights and contentions of the cosignor or the consignee and thus court was not inclined to entertain the challenge to the order impugned directly in the writ petition.

Delhivery Limitedv. State of U.P. [2023] 151 taxmann.com 43 (Allahabad)

Section 140

48. Unadjusted VAT TDS allowed to be carried forward to the GST regime

The High Court not observed that the order was a non-speaking order as no reasons had been given for rejecting the petitioner's request for carrying forward of the unadjusted VAT TDS to the GST regime that too when the law was well settled by the decision of the learned Single Judge, which also had attained finality as no Appeal had been filed against the said order as fairly admitted by the learned Government Advocate appearing for the respondents. The impugned order was thus quashed.

Case Referred- M/s. DMR Constructions v. Assistant Commissioner, Commercial Tax Department, Rasipuram, Namakkal District reported [2021] 125 taxmann.com 252 (Mad.)/[2021] 86 GST 82 (Mad.)

P & C Projects (P.) Ltd. v. Assistant Commissioner of (ST)(FAC) [2023] 151 axmann.com 46 (Madras)

Section 142

49. Condition as per N. No. 27/12-CE(NT) dt. 18.06.12 regarding debit of CENVAT Account for claim of refund is incorrect and eligible refund of pre-GST Regime applied in Post GST Regime cannot be denied on this condition.

The petitioner had credit of CENVAT of a sum of Rs.10 lakh (approx) for the months of April, May, June, 2017. The law entitled assessee to seek refund of CENVAT credit within a period of one year from the date of export. It all started with an application dated 25.10.2017 where the petitioner sought refund of CENVAT credit under Rule 5. With the onset of GST, the petitioner was required to make a debit to the CENVAT credit account at the time of effecting the claim but the same was disabled and thus the assessee could not apply for the refund. The petitioner thereafter filed an application for refund under Section 54 of the Act on 17.01.2019. The claim was rejected as against which a first appeal was filed which also came to be rejected on 30.07.2020. The reasoning set out in the order of the appellate authority was based on the provisions of Section 54 and the second proviso to Section 142(4) of the Act as well as a circular issued by the Board on 15.03.2018. The petitioner while not challenging the order of the Appellate Commissioner, made a further representation on

28.08.2020. The impugned order had been passed on 03.11.2010 on the sole ground that, as the order of the first appellate authority dated 30.07.2020 has attained finality, the question of refund does not arise.

The High Court held that the eligibility of the petitioner to refund on a substantive basis has itself, never been questioned. The denial was based solely on a technical basis. That apart, the fact that Notification No.27/12 (which propounded credit to be debited from Cenvat Account) had been held to propound an incorrect condition by the High Court as well as by the CESTAT ought to have merited consideration with the authority. Instead he does not advert to this aspect of the matter at all. Further, the claim was fully supported by the provisions of Section 142(3) of the Act. Thus, impugned order was held to wholly incorrect in law and was held liable to be set aside.

Section 174

50. GAIL cannot be asked to pay amount to DGGSTI since GAIL did not owe any amount to other party

Petition was filed against the order dated 08.03.2018 issued by DGGSTI under Section 87(b) of Chapter-V of the Finance Act, 1994 read with Section 174(2)(e) of the 'CGST Act' calling upon GAIL to pay a sum of Rs. 13,13,07,485/- which, DGGSTI believes, is owed by GAIL to the other party. The High Court held that there was no material to show that any such amount was due and payable by GAIL. GAIL and DGGSTI are ad-idem that the only amount that GAIL was required to pay was approximately Rs. 6.54 crores after the other party has issued the invoice of Rs. 1.01 crores. In view of the above, the impugned order was set aside and GAIL was however restrained from making any payments to other party for a period of four weeks.

Gail (India) Ltd.v. Directorate General of GST Intelligence [2023] 150 taxmann.com 335 (Delhi)

INTERPLAY OF PROVISIONS OF ARREST AND OFFENCES UNDER GST ACT & CODE OF CRIMINAL PROCEDURE, 1973

Adv. Mukul Gupta

The CGST Act, 2017 provides power of arrest for certain specified offences provided under Section 132. But, the question which arises is that what procedure would prevail during and after the arrest is made, as arrest is something which affects the personal liberty of the individual against whom some investigation for possible evasion of GST is in progress. Article 21 of the Constitution of India clearly states that “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”

The Department Officers shall kept in mind in their proceedings that they cannot in any manner violate or go against Article 21 of the Constitution of India. Therefore, proper codified procedure should be followed at the time of arrest and further proceedings thereafter. For the said purposes, Code of Criminal Procedure shall be followed as in the said Code, there is a scope of Judicial Interference and as the Judicial Mind is well versed with the Constitutional provisions, therefore applicability of the provisions of the Cr.P.C. in the GST laws would safe guard the personal liberty of the person from the high handedness of the Department.

It may be noted that as per Sec 69(1) only if the Commissioner has ‘reasons to believe’ then he may order or authorize any officer to arrest the offender.

Section 69. Power to arrest. -

*(1) Where the Commissioner has **reasons to believe** that a person **has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132** which is punishable under **clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.***

The offences under which Commissioner can authorize to arrest the offender are as follows:

*(a) **supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder,***

with the intention to evade tax;

- (b) *issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*
- (c) *avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;*
- (d) *collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*

shall be punishable-

- (i) 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;

It is necessary that per Sec 69(2) of the said Act, where a person is arrested has a right to be informed about the 'grounds of arrest' and have to be produced before the Magistrate within 24 hours, which is also mandatory under Section 57 of Cr.P.C. The relevant extract is as under:

Section 69. Power to arrest. -

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.

The issue which arise is that except for the offences provided in Sec 132 (1)(a), (b), (c) & (d) there is no provision for producing the arrested person before Magistrate. Such offences are as under:

- (d) **collects any amount as tax but fails to pay** the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g)
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j)
- (k); or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f), (h) and (i) of this section,

The above said offences are bailable and non-cognizable as per Section 132(4) and Section 132(5) of the CGST Act, 2017. Thus, as per Section 69(3)(a) if a person is booked under the above said offences, then the bail shall be granted by the GST Officers itself and if the bail has not been granted, then the person shall be forwarded to the custody of the magistrate, however the issue arises that under what power the person shall be arrested for these offences, as Sec 69(1) only mentions about the offences described under Sec 132 (1) (a), (b), (c) & (d).

By virtue of Sec 69(3)(b), the Deputy Commissioner or the Assistant Commissioner have been vested with the powers of officer-in-charge of a police station while providing bail, that means surprisingly the legislature has neither intended to give judicial interference after the arrest or to record 'reasons to believe' prior to the arrest by the Commissioner or any other proper officer in the said offences. The relevant provision of Section 132(4), (5) and Section 69(3)(a) is reproduced as under:

Section 69. Power to arrest. -

- (3) ***Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),-***

- (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

Section 132. Punishment for certain offences.-

- (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, **except the offences referred to in sub-section (5) shall be non-cognizable and bailable.**
- (5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under **clause (i) of that sub-section shall be cognizable and non-bailable.**

CrPC2. Definitions.—In this Code, unless the context otherwise requires,—

- (a) **“bailable offence”** means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and **“non-bailable offence”** means any other offence;
- (c) **“cognizable offence”** means an offence for which, and **“cognizable case”** means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

Since in the whole GST Laws, the **procedure of arrest** has not been determined, therefore in the absence of any procedural provisions, the provisions of Cr.P.C. would be applicable alongwith provisions of arrest pertaining to Section 69 and 132 of the CGST Act, 2017. This contention is supported by the provisions contained in Section 2(n), 4 and 5 of the Cr.P.C., the provisions of Cr.Procedure Code would be *parimateria* applicable to GST Laws also. The relevant extract of the provisions of Cr.P.C. are as under:

2. Definitions.—In this Code, unless the context otherwise requires,—

- (n) **“offence”** means any act or omission made punishable by **any law** for the time being in force and

4. Trial of offences under the Indian Penal Code and other laws.—

- (1) All offences under the Indian Penal Code (45 of 1860) shall be

investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

*(2) All offences under **any other law** shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.*

*5. **Saving.**—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.*

Rights of the arrested person under the Cr.P.C.

There are some rights of the accused also, which have been prescribed under Cr.P.C. and are essentially needed to be observed by the GST Officers at the time of arrest. Since, the GST officer has been given the same power as of a police officer as per provisions of 69(3)(b) of the GST Act, 2017, so he has to adhere with the provisions of Cr.P.C. including the following notable provisions:

***41D. Right of arrested person to meet an advocate of his choice during interrogation.**—When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.*

***49. No unnecessary restraint.**—The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.*

***50. Person arrested to be informed of grounds of arrest and of right to bail.**—(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.*

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

56. Person arrested to be taken before Magistrate or officer in charge of police station.—*A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.*

57. Person arrested not to be detained more than twenty-four hours.—*No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.*

60A. Arrest to be made strictly according to the Code.—*No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.*

Apart from the provisions pertaining to anticipatory bail provided under Sec 438 Cr.P.C., there is inherent powers of High Court under Sec 482 Cr.P.C. which would also prevail as the procedure pertaining to Cr.P.C. would be applicable in the cases of arrest under offences for evasion of GST.

Some of the important case laws pertaining to the applicability of Cr.P.C. over GST Laws and 'Reasons to Believe', which has a very important bearing, are as under:

ANTICIPATORY BAIL

NITESH WADHWANI v State of MP, 2020 (41) G.S.T.L. 155 (M.P.)

*15. It emerges from most of the judgments on the issue of granting anticipatory bail cited by the respondent that the Hon'ble Courts have held that the facts of a particular case are the paramount consideration for granting or refusing the protection of a pre-arrest bail. **It is nowhere stated that the anticipatory bail is barred by law or cannot be granted in a case registered under the GST Act.***

HANUMANTHAPPA PATHRERA LAKSHMANA Versus STATE, SENIOR INTELLIGENCE OFFICER, D.G. OF GST INTELLIGENCE, BENGALURU

2020 (38) G.S.T.L. 447 (Kar.)

15. *On bare reading of Section 69 of the CGST Act clearly empowers the Commissioner to authorize any Officer to arrest a person, if the Commissioner has reasons to believe that if a person committed the offence specified in Clause (a) or (b) or (c) or (d) of sub-section (1) of Section 132 and as per Section 132(4) of the CGST Act, if any offence is committed, other than the offence, Clause (a) or (b) or (c) or (d) of sub-section 1 of Section 132 shall be non-cognizable and bailable. As per sub-section (5) of Section 132, the offences specified in Clause (a) or (b) or (c) or (d) of sub-section (1) of Section 132 shall be cognizable and non-bailable and punishable under Clause (i) up to 5 years and fine. Therefore, if the petitioner is arrested for the offences other than the offence stated under sub-section (4) of Section 132 of the CGST Act which are non-cognizable and bailable, wherein the Deputy Commissioner or Assistant Commissioner has power to release the petitioner on bail. If the Commissioner has reasoned to believe that the petitioner is arrested for the offence committed under Section 132(1)(a) or (b) or (c) or (d) which is punishable under sub-section (5) of Section 132 of the CGST Act, which is cognizable and non-bailable offence, the Officer authorized by the Commissioner after informing the grounds of arrest has to produce before the Magistrate within 24 hours. If the assessee is arrested and produced before the Magistrate, the petitioner/assessee is likely to be remanded to judicial custody. Therefore, when the offences punishable under sub-section 1 Clause (a) or (b) or (c) or (d) of Section 132 of the CGST Act which falls under the provisions of sub-section 5 of Section 132 of the CGST Act is a cognizable and non-bailable offence punishable with imprisonment up to 5 years and fine. **Once a person apprehends his arrest in the hands of the Commissioner under Section 69 of the CGST Act, the assessee has statutory right to seek anticipatory bail under Section 438 of the Cr.P.C.***

CHARGE SHEET

NITIN NIKHRA v State of MP, 2019 (28) G.S.T.L. 199 (M.P.)

10. *This is a case where the applicant is facing heat of investigation under Section 132 of the Act. Section 132 of the Act prescribes punishment for certain offences and maximum sentence which can be awarded, is five years. Section 167(2) of the Cr.P.C. provides 60 days time to the investigating agency*

to submit charge sheet for the offences where investigation relates to any offence other than total imprisonment for life or imprisonment for a term of not less than 10 years. Here the maximum sentence punishable is imprisonment for five years therefore, respondent had to file the charge sheet within 60 days. But admittedly, charge sheet has not been filed, therefore, right of 'default bail' accrued to the applicant after completion of 60 days. **It was the duty of the investigating agency to submit charge sheet within the stipulated period, but same has not happened. Apex Court in the case of Rakesh Kumar Paul (supra) has categorically outlined the concept of 'default bail' and held that in the case of indefeasible right, right is said to be accrued to the accused if the charge sheet is not filed within the stipulated period (60 days in the present case). In the case of Achpal alias Ramswaroop (supra) said principle has been reiterated by the Apex Court.**

REASONS TO BELIEVE

ABDUL SHAJI V CCE, 2021 (50) G.S.T.L. 33 (KER.)

7. Section 69 of the CGST Act appears to empower the Commissioner to authorise any officer to arrest persons who he believes to have committed some of the aforementioned offences. From a perusal of the aforementioned provisions, it appears that certain safeguards against abuse of the powers to arrest have been inserted under the CGST Act itself. The power to arrest has been granted only in respect of certain specific offences. These offences include cases where the act in question is committed with an intention to evade tax or where it results in monetary loss to the Government exchequer. In addition to the nature of the offences, the legislature has also added an additional layer of restriction on the power to arrest for most first time offenders by stating that such power can only be exercised when the aforementioned offences involve an amount exceeding Rupees one hundred lakh or more. Notably, the aforementioned monetary threshold is not applicable to all offences. In certain cases, the amount involved in the offence is not relevant. For instance, in cases where any of the specified offences are committed for the second time, the power to arrest is applicable regardless of the amount involved. Similarly, in cases where one commits or abets the commission of offences such as falsification of records, or obstructing an officer from conducting his duty, or tampering or destruction of material evidence, the

*amount involved is immaterial, and the power to arrest exists regardless. Therefore, it appears that the grant of such powers under the CGST Act have been allowed based on the combined assessment of the severity of the offence and the amount involved therein. The safeguards in the form of pre-arrest authorisation have also been inserted in the text of the CGST Act itself. As noted above, Section 69 of the CGST Act permits the Commissioner GST to authorise arrests in certain cases, based on the seriousness and the amount involved, **but in all other cases, arrests are to be conducted according to provisions of the Code of Criminal Procedure ('Cr.PC')**. There appears to be an inversely proportional relationship between the gravity of the offence in question and the safeguards applicable thereon. However, the provisions still appear to comply with basic standards as even in cases of the grave offences under the Act, the Commissioner who is a Senior GST official is permitted to authorise arrest only if he has reason to believe that a person has committed an offence. **The Senior Intelligence Officer is not permitted to conduct arrests under the CGST Act till the Commissioner records his satisfaction on 'reasons to believe' authorizing him to arrest the assessee.** The scope of the expression 'reason to believe' has been examined in several cases. **The expression 'reason to believe' must not be purely subjective satisfaction and must have a rational connection with, or a relevant bearing on the formation of the belief.** The insertion of the phrase 'reason to believe' demonstrates the legislature's intention to make an affirmative attempt to circumscribe the discretionary powers and permit their exercise only in a bona fide manner, to further the interest of revenue. Thus, the discretion of the Commissioner to authorise arrest is in the most serious offences listed under the CGST Act. The CGST Act also provides the process to be followed once arrests are conducted by a central tax officer on the authorisation of the Commissioner. The officer in question is required to inform the arrested person of the grounds of his arrest and must produce such person before the Magistrate within twenty four hours of arrest. This is in line with the safeguards provided under Section 49 of the Cr.PC and Article 22 of the Constitution of India.*

Further, the question arises that no requirement in the present GST Law has been surprisingly envisaged requiring the satisfaction of the Commissioner or any Proper Officer in the shape of recording of "Reasons to Believe" to arrest the accused

for the offence committed as mentioned in Clause (iii) & (iv) of Section 132 (1) of the CGST Act, 2017. Even though these Clauses prescribes the offences of lesser magnitude but still arrest can be made by the GST Officers which is pre-judicial to the 'right of liberty' of a person as per Article 21 of the Constitution of India.

The power to arrest a person is missing in the GST Law for the offences prescribed under Section 132(1)(e), (f), (h), (i) & (l), as Section 69(1) only find specific mention about the offences described under Section 132(1)(a), (b), (c) & (d) while offences specified under Section 132(1)(e), (f), (h), (i) & (l) are not included in Section 69(1) which provides 'power to arrest'. This leads to the conclusion that the Legislature do not intend to arrest any person for the offences prescribed under Section 132(1)(e), (f), (h), (i) & (l).

COMMERCIAL NEWS

CA Sakshi Ghiya

Brought GST under PMLA purview to empower investigators in fighting financial fraud: Centre

The Centre's move to bring the Goods and Services Tax Network (GSTN) under the purview of the Prevention of Money Laundering Act (PMLA) was to empower the relevant investigating agencies to deal with tax fraud and money laundering matters, and not giving outright access to data to any party, said revenue secretary Sanjay Malhotra.

“Under the recent finance ministry notification, it was clarified that it will only empower our tax authorities with more information,” the secretary told reporters Tuesday after the 50th GST Council meet here in the national capital.

“GSTN is a recipient of information. It was clarified that ED is not getting any information, neither it is providing any information through this notification.”

“The Director FIU (Financial Intelligence Unit) shall provide information to empower authorities wherever they feel there's chance of tax evasion or money laundering,” he added.

The central government on Saturday issued a notification to bring the Goods and Services Tax Network (GSTN) under the Prevention of Money Laundering Act (PMLA). With the implementation of the said order, the information stored on the GST Network can now be shared, as may be required, under the PMLA Act.

Meanwhile, the Delhi National Capital Territory government has opposed the Centre's move to bring the Goods and Services Tax Network (GSTN) under the PMLA, and demanded a discussion on it.

“A very important was raised by several Finance Ministers, including that of Delhi – why GST has been brought under PMLA. A gazette was issued on 7th July as per which the entire GST system was brought under Prevention of Money Laundering Act. It means that those who pay GST can now be prosecuted by ED under PMLA (on the pretext of fraud),” Delhi NCT Revenue Minister Atishi told reporters after the 50th GST Council meeting.

Atishi said some other Opposition-ruled too raised this issue in the GST Council meeting.

“We have seen how ED (Enforcement Directorate) is used to harass and arrest people... We oppose this, we demanded a discussion. But the Centre

and FM (finance minister) Sitharaman are not ready for a discussion on the same,” Atishi added.

Union Finance Minister Nirmala Sitharaman, who heads the GST Council, chaired the meeting on Tuesday.

Source from economic times

Multi-crore GST scam: Three more held, total arrests 18

The Noida Police has arrested three more persons in connection with a multi-crore GST scam which has resulted in loss of revenue to the government, taking the total number of arrests in the case to 18, officials said. **The scam pertains to thousands of bogus companies being floated on the basis of forged Aadhar cards, fake invoices being raised by them and input tax credit (ITC) being claimed on their behalf, according to the police. “The Sector 20 police station here is investigating the GST fraud. On Sunday, the police arrested three persons who were wanted in this case. The trio has been identified as Amit alias Monty (42), Ajay alias Mintu (41) and Mahesh (20). They all were involved in fake invoicing,”** Additional DCP (Noida) Shakti Mohan Avasthy said.

According to police, the trio is part of a larger syndicate whose 15 members have been arrested earlier. These three accused lived in Sirsa, Haryana and worked for the last five years in the gang.

Their work involved collecting and transferring money received from fake GST Bills and they had transactions in entire NCR and parts of Haryana, police said.

Last month **the Noida Police busted a gang involved in what is now known as the “GST Scam” wherein around 3,077 bogus companies were unearthed on whose behalf ITC was being claimed. Initial police investigations showed transactions of around Rs 8,500 crore from these bogus firms,** according to senior officials.

The police said they have recovered seven mobile phones with fraudulently procured SIM cards, three Aadhar cards, six tax invoice documents, and impounded two cars from the trio on Sunday.

The accused have been booked under Indian Penal Code sections 420 (cheating), 467, 468 and 471 (all related to forgery), 120 B (party to criminal conspiracy) and sent to jail, police added.

Source from economic times

Geocoding Functionality Now Live for All States and Union Territories

GSTN is pleased to inform that the functionality for geocoding the principal place of business address is now live for all States and Union territories. This feature, which converts an address or description of a location into geographic coordinates, has been introduced to ensure the accuracy of address details in GSTN records and streamline the address location and verification process.

GSTN has successfully geocoded more than 1.8 crore addresses of principal places of business. Furthermore, all new addresses post-March 2022 are geocoded at the time of registration itself, ensuring the accuracy and standardization of address data from the outset.

Here's how taxpayers can access and use this functionality:

1. **Accessing the Functionality:** You can find this functionality under the Services/Registration tab in the FO portal.
2. **Using the Functionality:** The system-generated geocoded address will be displayed, and you can either accept it or update it as per your requirements. In cases where the system-generated geocoded address is unavailable, a blank will be displayed, and you can directly update the geocoded address.
3. **Viewing the Geocoded Address:** The geocoded address details will be saved separately under the "Place of Business" tab on the portal. They can be viewed under My profile >>Place of Business tab under the heading "Principal Geocoded" after logging into the portal. Please note that this will not change your existing addresses.
4. **One-time Activity:** The geocoding link will not be visible on the portal once the geocoding details are submitted by you. This is a one-time activity, and once submitted, revision in the address is not allowed. The functionality will not be visible to the taxpayers who have already geocoded their address through new registration or core amendment. Please note that the address appearing on the registration certificate can be changed only through the core amendment process. This geocoding functionality would not impact the previously saved address record.
5. **Availability:** This functionality is available for normal, composition, SEZ units, SEZ developers, ISD, and casual taxpayers who are active, cancelled, and suspended.

Source fromgst portal

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