AIFTP

ETHICS EDUCATION EXCELLENCE

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All India Federation of Tax Practitioners
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INDEPENDENCE DAY Bonanza

REDUCTION OF LIFE MEMBERSHIP FEE

Dear All,

As per the decision of the National Executive Committee Meeting held on 4th August, 2023 at Bengaluru, Life Membership Fee has been reduced by Rs. 1770/- w.e.f. Saturday, 5th August, 2023 till 31st December, 2023. Earlier Life Membership Fee including ID Card & 18% GST was Rs. 6,018/- and now new Life Membership Fee including ID Card & 18% GST is Rs. 4248/- only upto 31st December, 2023.

Hence, all are requested to introduce as many as members to the family of All India Federation of Tax Practititoners.

We have updated our website with new rates of Life Membership Fee and the same has started from 9th August, 2023 onwards. The link is as under:-

https://aiftponline.org/subscription-form/?type=membership

Regards,

All India Federation of Tax Practitioners

For All India Federation of Tax Practitioners

Pankaj Ghiya
National President

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CONTENTS

SECTION: I

SECTION: II - GOODS & SERVICE TAX

SECTION: III - JUDGMENTS

SECTION: IV – MISCELLANEOUS

President's Message

Friends,

The history is being created by AIFTP as on the 77th Independence Day of India, AIFTP organized programmes of Flag hoisting at more than 150 places throughout India. It is record for the Federation that Independence Day has been celebrated in a grand manner with members hoisting the flag throughout India and more than 150 places. The list has been circulated and video celebrating the hoisting of Flag is also circulated on the social media. My special thanks to all the Office Bearers, National Vice Presidents and the Zone Chairmen for the efforts and also special thanks to all the Members who had on the call by AIFTP organized programmes. It is a record that we all are proud, and we are confident that the AIFTP will continue to achieve more heights.

We also had the RRC at Rameswaram on 12th– 14th August, 2023 and it was attended by more than 170 participants. The special feature was that it was a family RRC with attendance of spouses and kids. My special congratulations to AIFTP Southern Zone and Central Zone for the wonderful organization. It was an event which will be remembered always for the wonderful organization. Special thanks to Mr. G. Bhaskar, Chairman, Southern Zone, Mr. Sandeep Agarwal, Chairman, Central Zone, Mr. Sarvanann, Member, Southern Zone who worked day and night to make this RRC a great success. The Darshan at Rameswaram and at Madurai was arranged by the team and the transportation from Madurai to Rameswaram and back was also arranged. Inaugural and Technical Sessionswere organized at Hotel Residence Towers and it was a grand event. Learned Speakers deliberated on Income Tax and GST Subjects.

It was also the 100th function of AIFTP and it was a memorable celebration. The Cake was made and cut celebrating the 100th event of AIFTP of 2023. My special thanks to all the Members for continuing to attend and organize the events and making it possible to achieve organizing 100th event in the month of August itself.

National Tax Conference was organized on 7th – 8th July at Chennai by the AIFTP Southern Zone. It was attended by around 300 delegates. Hon'ble Mr. Justice R. Mahadevan, Judge, Madras High Court was the Chief Guest. Credit goes to Mr. G Bhaskar, Chairman, Southern Zone for it.

Thereafter, on 8th July Full Day Conference was organized by AIFTP Central Zone at Jaipur. It was attended by over 175 participants. Special Thanks to Mr. Vinay Kumar Jolly and Mr. Sandeep Agarwal for organizing such wonderful One Day Conference.

From 10th July to 21st July 2023 Eastern Zone organized Certificate Course on

GST on virtual platform with other Associations. It was well attended, and credit goes to National Vice President Mr. Vivek Agarwal for it.

A grand event was organized at Amritsar. It was the National Tax Conference organized by AIFTP Northern Zone. Hon'ble Mr. Justice Rajesh Bindal, Judge, Supreme Court of India was the Chief Guest and Hon'ble Mr. Justice ArunPalli, Judge, Punjab and Haryana High Court was the Guest of the Honour. It was attended by more than 300 delegates. The credit goes to Dr. Naveen Rattan, National Vice President, Mrs. Simmi Rattan, Conference Vice Chairman and Mr. Ranjit Sharma, Conference Chairman and Mr. O. P. Shukla, Chairman, Northern Zone for it.

One Day conference was organized at Siliguri on 22nd July 2023. It was attended by over 175 delegates. Dr. Ashok Saraf, Past President, AIFTP was the Chief Guest. Credit goes to the Siliguri Team led by Mr. ApurbaSaha and Mr. Vivek Agarwal, National Vice President and Mr. Basudeb Chatterjee, Zone Chairman for the successful Conference.

The Mega event was organized at Bengaluru on 4th, 5th and 6th August at Palace Ground, Bengaluru. It was attended by more than 700 delegates. The inauguration was made by Mr. Krishna Byregowda, Hon'ble Minister for Revenue, Government of Karnataka. The next day again Mr. BasavarajBommai, the Ex Chief Minister of Karnataka was the Chief Guest. The Technical Sessions covered Income Tax and GST and allied laws. The credit goes to Mr. S.N. Prasad and Mr. D. M.Bhattad for the wonderful and memorable Conference. Special efforts of Mr. S. Venkataramani, Mr. Prashanth, Mr. Siddeshwar and Mr. Kuber for the Technical sessions and the Co-ordination thereof has to be appreciated. Special thanks to Mr. Bhaskar, Zone Chairman, Southern Zone.

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. 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
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CHIEF-EDITOR'S COMMUNIQUE

"Every Journey becomes a destination."

Our Esteemed Members,

This August, 2023 will always be remarkable and momentous for India as well as for AIFTP. I am thrilled to hear and feel proud for incredible success of the recent two historic first time achievements. First, India has made history with Chandrayaan-3 Moon landing and Second, AIFTP has made history with 100 successful programs in current year. **Cheers for India and AIFTP** both and heartiest congratulations to all.

As we are in the end of August month and AIFTP has created a history of doing 100 successful programs (conferences, seminars, RRC etc.) in the current year and many more to come by the end of the current year. For this victory, I extend my heartfelt congratulation and Special thanks to one of the most passionate person and our National President (AIFTP) - Advocate Pankaj Ghiya Ji. After so many early mornings and late nights, he has built this achievement. His determination, thoughtfulness and ambition have taken AIFTP this far and I know he has many more amazing goals to reach. **Congratulations** Pankaj Ghiya Sir !! You're a true inspiration.

I want you all to remind that every journey we undertake in the vast realm of legal and financial intricacies becomes a destination in itself. It is with immense pleasure that I welcome you to this month's compilation of insightful articles, thought-provoking analyses, and expert perspectives on the intricate domains of indirect taxes and corporate law. I extend my heartfelt gratitude to everyone for all the love and support. The Journal has been applauded by the Professionals and it has received wide acceptance.

In a world that is ceaselessly transforming, our journal serves as a steadfast beacon, illuminating the ever-evolving landscapes of taxation and corporate governance. AIFTP remain committed to offering you a panoramic view of the latest developments, regulatory shifts, and emerging trends that shape the contours of our professional endeavors.

The August edition brings forth a collection of meticulously crafted articles that traverse the labyrinth of indirect taxation. Our distinguished contributors dissect

the intricate nuances of GST amendments, providing you with a comprehensive understanding of the evolving tax landscape. These insights are not mere abstractions; they are your guiding lights as you navigate the complex terrain of GST compliance.

I extend my heartfelt appreciation to our dedicated team of authors, reviewers, and editorial team whose unwavering commitment has brought this journal to fruition. Their dedication is the bedrock on which the edifice of our journal stands tall. 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. We also look forward to hearing from you and working together to advance the profession. 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 aiftpjournal@gmail.com.

Last but certainly not least, I extend my gratitude to you, our esteemed readers. Your engagement with our journal is the cornerstone of our mission. Your thirst for knowledge and your commitment to professional excellence are the driving forces behind our continuous efforts to raise the bar higher with each edition.

We remain committed to serving you with unwavering dedication, striving to create value and empower our members with the resources they need to thrive in their professional journeys. As you peruse the articles, analyses, and commentaries within these pages, I encourage you to take away not just theoretical understanding, but actionable insights that can shape your professional journey.

Thank you for your continuous trust and confidence.

Regards,

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Membership of All India Federation of Tax Practitioners as on 31 July, 2023					
Life Members					
Zone Name	**Associate**	**Individual**	**Association**	**Corporate**	**Total**
Central	0	1456	25	0	1481
Eastern	6	2115	37	0	2158
Northern	0	1517	21	1	1540
Southern	1	2351	23	2	2379
Western	5	2926	38	3	2972
Total	**12**	**10365**	**144**	**9**	**10530**

FORTH COMING PROGRAMMES		
Date & Month	**Programme**	**Place**
2nd & 3rd Sept, 2023	National Tax Conference (Northern Zone)	Vrindavan
9th Sept, 2023	One Day Tax Conference (Eastern Zone)	Kolkata
7th & 8th Oct, 2023	AIFTP Premier League (Northern Zone)	Chandigarh
14th & 15th Oct, 2023	Residential Refresher Course (Central Zone)	Khajuraho
1st to 15th Nov., 2023	Foundation Day Celebrations	All Zones
4th Nov., 2023	One Day Seminar (Eastern Zone)	Jamshedpur
5th Nov., 2023	Foundation Day Celebration & Conference (Northern Zone)	Varanasi

TIMELINE - GST

Adv. Deepak Garg

A. GOODS & SERVICE TAX

Sr. No.	Particulars	Form	Period	Due Date
(i)	Monthly Summary GST Return	GSTR-3B		
	(a) Regular Taxpayers		August, 2023	20th Sep. 2023
			September, 2023	20th Oct. 2023
(ii)	Detail of Outward Supplies: -	GSTR-1 (QUARTERLY)	August, 2023 (IFF)	13th Sep. 2023
	(a) QRMP		July-Sep, 2023	13th Oct. 2023
	(b) Monthly Filing	GSTR-1	August, 2023	11th Sep. 2023
			September, 2023	11th Oct. 2023
(iii)	Payment of Tax under QRMP	PMT-06	By 25th of next month	
(iv)	Quarterly return for Composite taxable persons	CMP-08	July-Sep, 2023	18th Oct. 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	August, 2023	10th Sep. 2023
			September, 2023	10th Oct. 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	August, 2023	10th Sep. 2023
			September, 2023	10th Oct. 2023

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RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Abhay Singla

NOTIFICATIONS–CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
17.08.2023	40/2023-Central Tax	Seeks to appoint common adjudicating authority in respect of show cause notice issued in favour of M/s United Spirits Ltd.
17.08.2023	39/2023-Central Tax	Seeks to amend Notification No. 02/2017-Central Tax dated 19.06.2017
04.08.2023	38/2023-Central Tax	Seeks to make amendments (Second Amendment, 2023) to the CGST Rules, 2017.
04.08.2023	37/2023-Central Tax	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons.
04.08.2023	36/2023-Central Tax	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers.
31.07.2023	35/2023-Central Tax	Seeks to appoint common adjudicating authority in respect of show cause notices in favour of against M/s BSH Household Appliances Manufacturing Pvt Ltd.
31.07.2023	34/2023-Central Tax	Seeks to waive the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions.
31.07.2023	33/2023-Central Tax	Seeks to notify "Account Aggregator" as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017.
31.07.2023	32/2023-Central Tax	Seeks to exempt the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.
31.07.2023	31/2023-Central Tax	Seeks to amend Notification No. 27/2022 dated 26.12.2022.
31.07.2023	30/2023-Central Tax	Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.
31.07.2023	29/2023-Central Tax	Seeks to notify special procedure to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.

31.07.2023	28/2023-Central Tax	Seeks to notify the provisions of sections 137 to 162 of the Finance Act, 2023 (8 of 2023).
31.07.2023	27/2023-Central Tax	Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021).
17.07.2023	26/2023-Central Tax	Seeks to extend amnesty for GSTR-10 non-filers
17.07.2023	25/2023-Central Tax	Seeks to extend amnesty for GSTR-9 non-filers
17.07.2023	24/2023-Central Tax	Seeks to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62
17.07.2023	23/2023-Central Tax	Seeks to extend time limit for application for revocation of cancellation of registration
17.07.2023	22/2023-Central Tax	Seeks to extend amnesty for GSTR-4 non-filers
17.07.2023	21/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-7 for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur
17.07.2023	20/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-3B for quarter ending June, 2023 for registered persons whose principal place of business is in the State of Manipur
17.07.2023	19/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-3B for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur
17.07.2023	18/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-1 for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur

NOTIFICATIONS–CENTRAL TAX (RATE)

DATE	NOTIFICATION NO.	REMARKS
26.07.2023	10/2023-Central Tax (Rate)	Seeks to amend No. 26/2018- Central Tax (Rate) to implement the decisions of 50th GST Council.
31.07.2023	Corrigendum	Corrigendum to notification no. 10/2023 Central Tax (Rate)
26.07.2023	09/2023-Central Tax (Rate)	Seeks to amend No. 01/2017- Central Tax (Rate) to implement the decisions of 50th GST Council.
26.07.2023	08/2023-Central Tax (Rate)	Seeks to amend notification No. 13/2017-Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.

26.07.2023	07/2023-Central Tax (Rate)	Seeks to amend notification No. 12/2017-Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.
26.07.2023	06/2023-Central Tax (Rate)	Seeks to amend notification No. 11/2017-Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.

NOTIFICATIONS–INTEGRATED TAX

DATE	NOTIFICATION NO.	REMARKS
31.07.2023	01/2023- Integrated Tax	Seeks to notify all goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid.

NOTIFICATIONS–COMPENSATION CESS (RATE)

DATE	NOTIFICATION NO.	REMARKS
26.07.2023	03/2023-Compensation Cess (Rate)	Seeks to amend No. 1/2017- Compensation Cess(Rate) to implement the decisions of 50th GST Council.

CIRCULARS–CENTRAL TAX

DATE	CIRCULAR NO.	REMARKS
01.08.2023	201/13/2023-GST	Clarifications regarding applicability of GST on certain services
01.08.2023	200/12/2023-GST	Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023
17.07.2023	199/11/2023-GST	Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons
17.07.2023	198/10/2023-GST	Clarification on issue pertaining to e-invoice
17.07.2023	197/09/2023-GST	Clarification on refund-related issues
17.07.2023	196/08/2023-GST	Clarification on taxability of share capital held in subsidiary company by the parent company
17.07.2023	195/07/2023-GST	Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period
17.07.2023	194/06/2023-GST	Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction
17.07.2023	193/05/2023-GST	Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021
17.07.2023	192/04/2023-GST	Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

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ANALYSIS ON KEY PROPOSALS IN THE CGST AND IGST AMENDMENT BILLS, 2023

1. Proposal to prescribe place of supply of goods where supply is made to unregistered person

A new clause (ca) is proposed to be inserted in Section 10(1) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') to prescribe the place of supply in the case where the supply of goods is made to an unregistered person. It is provided that the place of supply in such cases shall be the location as per the address of the said person recorded in the invoice issued in respect of the said supply. Where the address of the said person is not recorded in the invoice, the place of supply would be the location of the supplier. The given place of supply would have an overriding effect on clause (a) or clause (c) of the said Section.

This clause is proposed to be introduced to address the situations where goods are purchased over-the-counter in one State and subsequently carried to another State by the recipient. In these cases, certain suppliers were imposing CGST and SGST instead of IGST. Further, there were instances where several tax authorities were issuing directions to charge CGST and SGST instead of IGST in such a situation.

This issue was initially discussed during the 37th GST Council Meeting, wherein it was proposed to provide suitable clarification through a Circular. The intention was to categorize such scenarios under the scope of Section 10(1)(a) of the IGST Act, if the unregistered recipient's address was provided. However, if the recipient's address is not available on records, it would fall under Section 10(1)(c) which would be the location (over the counter) where goods are handed to the recipient, which is typically the supplier's place of business. However, the Council eventually decided to revisit this clarification as it was deemed to be beyond the scope of the relevant provisions governing the determination of place of supply.

Subsequently, during the 50th GST Council Meeting, this issue was revisited, and a recommendation was made to amend Section 10(1) of the IGST Act by introducing the new clause (ca). It is important to note that Rule 46 of the CGST Rules outlines the mandatory details to be included in a tax invoice:

(a) Name and address of the recipient and the address of delivery, along with the name of the State and its code where the recipient is unregistered and the value of taxable supply is Rs. 50,000 or more

(b) However, where the recipient is unregistered and the value of taxable supply is less than Rs. 50,000, the tax invoice must contain the details mentioned in point (a) above if the recipient requests that such details be recorded on the tax invoice

In conclusion, wherever an unregistered recipient provides the details of the address for inclusion on the invoice, the place of supply in such cases would be the location of such address recorded in the invoice. Where address is not recorded on the invoice, the place of supply would be the supplier's place of business *i.e.* where the goods are handed over to the recipient, thereby implying that such cases would be considered as intra-state supply, and CGST and SGST would be levied.

2. Proposal to shift customs-based levy to inter-state IGST levy for notified import of goods

Proviso to Section 5(1) of the IGST Act provides for the manner of levy of IGST on the goods imported into India. It provides that IGST on the import of goods is to be levied and collected in accordance with Section 3 of the Customs Tariff Act, 1975 on the value determined under the provisions of the Customs Act and at the point where duties are levied under Section 12 of the Customs Act, 1962. Hence, currently, IGST on import of goods is levied in terms of provisions of Customs law.

The recent proposal to amend the aforesaid provision, through the IGST (Amendment) Bill, 2023, suggests the exclusion of certain notified goods from the levy of IGST in terms of the Customs law provisions. These goods would be notified by the Government, based on the recommendation of the Council, and the taxes on import of such notified goods would be levied and collected as an inter-State supply in terms of the levy provisions of the IGST Act, instead of the Customs law.

3. Amendments proposed in CGST Act for enabling taxability on online money gaming, casinos and horse racing

Based on the suggestions put forth during the 50th and 51st meetings of the GST Council, and with the objective of facilitating the imposition of 28% GST on the transactions pertaining to online money gaming, casinos, and horse racing, significant changes have been proposed under both the CGST Act and the IGST Act. Notably, the proposed amendments involve the insertion of definitions of online money gaming, Virtual Digital Assets (VDAs), specified actionable claims, *etc*. and changes in the definition of 'supplier' to include digital platforms within its scope, thereby influencing their GST obligations.

Relevant provisions and proposed amendments

1. **Schedule III of the CGST Act:**

Para 6 of Schedule III is proposed to be amended to substitute the words 'specified actionable claims' in place of 'lottery, betting and gambling'.

Currently, Para 6 provides that the supply of actionable claims, apart from betting, gambling and lottery, are neither considered as supply of goods nor supply of services. However, in order to bring certain actionable claims such as online money gaming, casinos and horse racing within the ambit of GST law, a list of actionable claims would be excluded from the scope of Para 6 of Schedule III. Such list of actionable claims is proposed to be termed as 'specified actionable claims'. Further, the new term 'specified actionable claims' is proposed to be separately defined under the GST law to include all such actionable claims which would be taxable under the GST law such as betting, gambling, casino, horse racing, *etc*.

2. **Section 2 of the CGST Act:**

Specified Actionable Claim: Clause 102A is proposed to be inserted to define the term 'specified actionable claim' as the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery or online money gaming.

Online Money Gaming: Clause 80B is proposed to be inserted to define 'online money gaming' as online gaming in which players pay or deposit money or money's worth, including VDAs, in the expectation of winning money or money's worth, including VDAs, in any event including game, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

Online Gaming: Clause 80A is proposed to be inserted to define 'online gaming' as offering of a game on the internet or an electronic network and includes online money gaming.

Virtual Digital Asset: Clause 117A is proposed to be inserted to provide that 'virtual digital asset' would have the same meaning as assigned to it in Section 2(47A) of the Income-tax Act, 1961.

Amendment in definition of 'supplier': In the definition of 'supplier', as contained in Clause 105, a proviso is proposed to be inserted to include a person who organises or arranges, directly or indirectly, supply of specified

actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply. Such a person shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

3. **Section 24 of the CGST Act:**

Section 24 provides categories of persons who are mandatorily liable to obtain registration under the GST law. Every person supplying online money gaming from a place outside India to a person in India has also been proposed to be included within the scope of such category.

The aforementioned series of proposed amendments were anticipated in accordance with the suggestions put forth by the GST Council. The term 'online money gaming' has been precisely introduced to encompass solely those games wherein the money deposited by a player is at stake, *i.e*., which are in the nature of actionable claims. Notably, the GST Council in its 51st Council meeting also recommended to bring changes in the valuation rules under the CGST Rules to provide for the manner of valuation of online money gaming and actionable claims in casinos. As per the recommendation, in such cases, the taxable value would be the amount paid or payable to or deposited with the supplier, by or on behalf of the player (excluding the amount entered into games/ bets out of winnings of previous games/ bets) and not on the total value of each bet placed. Thus, the objective is to tax the online money gaming on the full value of bets placed/amount deposited by the players at the rate of 28%. These amendments are yet to be notified by the Government.

Whereas, in the cases where there is no money involved at stake, it would not be covered within the scope of online money gaming. This suggests that such instances would be categorized simply as online gaming and will be considered distinct from online money gaming. Such instances would not be taxed on the full value of bets placed/amount deposited by the players. Instead, tax would likely be taxed on the value of the services *i.e.* the platform fee charged by the platforms.

Moreover, in line with expectations, there will be no differentiation in taxability between games of skill and games of chance. Also, the levy of GST on online

money gaming would not be impacted by whether it is permissible under any other legal framework or not.

Further, the definition of the 'supplier' has been amended to include the person who owns, operates or manages digital or electronic platform for supply of specified actionable claims. The person would be treated as a supplier of these actionable claims, regardless of whether the claims are supplied by them or through them. The liability to pay GST would arise on such supplier whether the consideration for such supply is in the form of money, money's worth, or virtual digital assets.

4. Taxability on online money gaming, casinos and horse racing for offshore entities

Similar to the CGST Act, amendments have been proposed in the IGST Act to enable the taxability of online money gaming for suppliers located in the non-taxable territory. These amendments are discussed in the below table:

Relevant provisions and proposed amendments

1. **Section 2 of the IGST Act:**

   Clause 17 defines the term Online Information and Database Access or Retrieval ('OIDAR') services to include online gaming within its scope. Notably, the said provision has been proposed to be amended to provide that online money gaming as defined in Section 2(80B) of the CGST Act would be excluded from the scope of OIDAR. Hence, OIDAR services would include online gaming other than online money gaming in its scope.

2. **Section 14A of the IGST Act:**

   New Section 14A is proposed to be inserted in the IGST Act to provide for the levy of IGST on suppliers situated outside the taxable territory for the supply of online money gaming to the persons located within the taxable territory.

   In order to discharge the IGST liability and the liability to get mandatory GST registration, a Simplified Registration Scheme has been provided for such overseas suppliers of online money gaming. Notably, the said registration scheme is similar to the one notified for OIDAR service providers.

   Alternatively, any person located in the taxable territory representing such an overseas supplier in the taxable territory can obtain the registration and pay IGST on behalf of the supplier.

   Further, where such overseas supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he is

required to appoint a person in the taxable territory for the purpose of payment of IGST. Such appointed person would be liable to pay IGST on behalf of such overseas supplier under the GST law.

It has also been proposed that where the supplier of the online money gaming services or the person appointed by the supplier fails to comply with the provisions of the GST law, his website access by the public is liable to be blocked.

Also, the provisions of blocking the website access to the public on non-compliance with the provisions of GST law would have an over-riding effect on the provisions of Section 69A of the Information Technology Act, 2000 ('Information Technology Act). The Information Technology Act provides scenarios where access to the information on a computer resource can be blocked by the Government for the public. The overriding effect of GST law on such services means that where such supplier does not comply with the provisions of the GST law, access to his website can be restricted for the public even if the same is not liable to be restricted as per the provisions of the Information Technology Act.

Importantly, a distinction has been made between the supply of online money gaming and OIDAR services in respect of discharging tax liability. When OIDAR services are provided by an overseas entity to a non-taxable online recipient *i.e.* an unregistered person in the taxable territory, they are subject to IGST in the hands of the OIDAR service provider under forward charge mechanism. On the other hand, if these OIDAR services are provided to a registered person, the responsibility to pay IGST shifts to the registered recipient under the reverse charge mechanism. This mechanism shifts the tax payment burden on the registered recipient rather than on the foreign supplier.

However, no such distinction has been proposed in case of overseas suppliers of online money gaming. The IGST liability would always arise on such overseas suppliers when the supply is made to a person within a taxable territory, whether or not such recipient is registered under the GST law.

Furthermore, in cases where offshore entities fail to comply with the registration and tax payment provisions, the Government will use the Information Technology Act to block access to their websites. It implies that online money gaming have been excluded from the scope of OIDAR services to place more stringent provisions on online money gaming.

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RECENT CHANGES IN CGST RULES, 2017

1. Rule 88 D inserted

Rule 88D inserted to provide manner of dealing with difference in Input Tax Credit (ITC) available inAuto-generated Statement containing the details of ITC (FORM GSTR-2B) and that availed in FORMGSTR-3B Return

The registered person shall be intimated of such difference in Part A of FORM GST DRC-01C electronically onthe common portal, and on his registered email ID, highlighting the said difference and directing him to:

pay the amount equal to the excess tax credit availed in FORM GSTR3B, along with interest, throughFORM DRC-03 within 7 days

or

Explain the reason for the aforesaid difference in ITC on the common portal within 7 days

In case such person does not pay the amount equal to the excess ITC or does not furnish reply explainingthe reasons, his facility to file FORM GSTR-1 or using Invoice Furnishing Facility (IFF) may be blocked

This will help in reducing ITC mismatches & misuse of ITC facility in GST

For more details, please refer to Rule 59 (6)(e), Rule 88D of the **CGST Rules, 2017** read with **Notification No.38/2023-Central Tax dated 04.08.2023**

2. Rule 142(B) has been inserted in CGST Rules, 2017, for intimation of amounts liable to be recoveredunder Section 79 of CGST Act

- The registered person shall be intimated, electronically on the Common portal through **FORM GST DRC–01D** indicating the amount of tax and Of interest recoverable under section 79, directing the person indefault to pay the said amount, within 7 days of the said intimation and the said amount shall be posted inPart-II of Electronic Liability Register in FORM GST- PMT-01
- The intimation shall be treated as the notice for recovery

For details, please refer to Notification No. 38/2023-Central Tax dated 04.08.2023

3. Registration may be suspended in case Bank Account Details are not furnished by the RegisteredPerson on Common Portal with the time limit stipulated in Rule 10(A)

Registration may be suspended in case Bank Account Details are not furnished by the Registered Person oncommon portal within the time limit stipulated in Rule 10(A)

The details of Bank Account are to be furnished on common portal within 30 days of grant of registration orbefore furnishing the details of outward supplies under section 37 of CGST Act in FORM GSTR-1 or usingInvoice Furnishing Facility (IFF), whichever is earlier.

During suspension of registration, the said registered person may not be allowed to furnish the details ofoutward supplies in FORM GSTR-1 or IFF.

Where the registration has been suspended for contravention of provisions of Rule 10A and the registration hasnot already been canceled by the proper officer under Rule 22, the suspension of registration shall be deemed tobe revoked upon compliance with the provisions of Rule 10(A).

Central Goods and Services Tax (Second Amendment) Rules 2023 issued to amend sub Rule (2A) & sub Rule(4) of Rule 21A, Rule 59(6) of CGST Rules 2017

For more details, please refer to **Notification No. 38/2023-Central Tax dated 04.08.2023**

4. An Appeal to the Appellate Authority shall be made in FORM GST APL-01 electronically. However,the same appeal may be filed manually in FORM GST APL-01 along with the relevant documents, only if

- theCommissioner has so notified, or
- the same cannot be filed electronically due to non-availability of the decision or order to be appealedagainst on the common portal,

In such a case, a provisional acknowledgement shall be issued to the Appellant immediately.

For details, please refer to Rule 108 of CGST Rules, 2017 read with **Notification No. 38/2023-Central Taxdated 04.08.2023**

5. Rule 64 and **FORM GSTR-5A** of CGST Rules, 2017 have been amended so that OIDAR service providershave to provide details of supplies made

to registered person in India and online recipients (as defined in**Integrated Goods and Services Tax Act, 2017**) in his return in **FORM GSTR-5A**

For more details, please refer to Rule 64 and FORM GSTR-5A of CGST Rules, 2017 read with **Notification No.38/2023-Central Tax dated 04.08.2023**

6. FORM GSTR-3A is amended to provide for issuance of notice to the registered taxpayers for Non filing ofAnnual return in FORM GSTR-9 or **FORM GSTR-9A**

7. Compliance burden reduced in case of Supply of Taxable Services by or through an ECO or by asupplier of OIDAR services to an unregistered recipient

In such cases,

- mentioning name and full address of the unregistered recipient, on the tax invoices is not required,
- now mentioning name of the State of the recipient on such tax invoices shall be deemed to be address onrecord of the recipient

Central Goods and Services Tax (Second Amendment) Rules 2023 issued to amend clause (f) of rule 46 ofCGST Rules 2017

For more details, please refer to **Notification No. 38/2023-Central Tax dated 04.08.2023**

8. Physical Verification of Business Premises in Certain Case

Rule 25 of CGST Rules, 2017 has been amended as under:

Where physical verification of the place of business of a person is required after the grant of registration,the proper officer may verify the such place and verification report along with the other document,including photographs shall be uploaded in FORM GST REG-30 ON THE COMMON PORTAL within15 working days from the date of such verification

Where physical verification of the place of business of a person is required before the grant of registration,the proper officer shall verify such place of business and the verification report along with the otherdocuments, including photographs shall be uploaded in FORM GST REG-30 ON THE COMMONPORTAL at least five working days prior to the completion of the time period specified in the proviso toRule 9(1)

For more details, please refer to **Notification No. 38/2023-Central Tax dated 04.08.2023**

9. Procedure of Physical Verification of Business Premises Simplified

Now, the Physical verification of business premises can be done even in absence of the person applying forGST Registration

Central Goods and Services Tax (Second Amendment) Rules 2023 issued to amend sub-rule (1) of Rule 9 ofCGST Rules 2017

For more details, please refer to **Notification No. 38/2023-Central Tax dated 04.08.2023**

10. Furnishing of Bank Account details on Common Portal after issuance of Registration Certificate

Now, the details of Bank Account is to be furnished on common portal **within 30 days** of grant of registration orbefore furnishing the details of outward supplies under section 37 of CGST Act in Form GSTR-1 or usinginvoice furnishing facility, whichever is earlierCentral Goods and Services Tax (Second Amendment) Rules 2023 issued to amend Rule 10(A) of CGST Rules2017

For more details, please refer to **Notification No. 38/2023-Central Tax dated 04.08.2023**

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REVISION OF ORDER BY REVISIONAL AUTHORITY UNDER GST LAWS

CA Siddeshwar Yelamali

Introduction:

Resorting to revision of order by the revisional authority under the Income Tax law and under the indirect tax law is a feature which every tax expert would come across. Revisional powers have been a contentious issue under the tax laws on whether the powers vested with the revisional authority have been exercised appropriately or excessively.The object of revisional powers is to safeguard the interest of revenue of the State. In this article nuances of powers of revisional authority under the Central Goods and Services Tax Act, 2017 (for brevity, 'CGST Act') is discussed.

Revisional Authority:

Section 2(99) of the CGST Act defines Revisional Authority (for brevity, 'RA') to mean an authority appointed or authorised for revision of decision or orders as referred to in section 108. Central Board of Indirect Taxes and Customs vide Notification 5/2020 Central Tax dated 13.01.2020 has authorised the following officers as RA under Section 108 of the CGST Act –

(a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and

(b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax

Powers of Revisional Authority:

Section 108 (1) of the CGST Act provides that the RA on his own motion or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax call for and examine the record of any proceedings under the CGST Act.

Upon examination of proceedings, if the RA considers that ***any decision or order*** passed under CGST Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by ***any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is***

illegal or improper or has not taken into account certain material facts,whether available at the time of issuance of the said order or not, then the RA can stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

RA can also exercise power under the said section based on the observation of the Comptroller and Auditor General of India related to a decision or order. Where RA is a Principal Commissioner or Commissioner of Central Tax, then such RA can also revise an order of appeal passed by Joint Commissioner of Appeal or Additional Commissioner of Appeal.

Unlike the power under Section 263 of Income Tax Act, 1961 where revisional power can be exercised when order passed is erroneous in so far as it is prejudicial to the interests of the revenue, power of RA for revision under the CGST Act is not limited only to decision or order when it is prejudicial to the interest of revenue and is illegal but also extends when decision or order is improper or certain material facts are not taken into account. One may note that twin conditions are required to be fulfilled for invoking Section 108 of the CGST Act i.e. (i) order should be erroneous and (ii) is prejudicial to the interest of revenue and is illegal *or* improper *or* has not taken into account certain material facts. If one of the conditions is absent, recourse cannot be had to revisions.

A moot question arises as to whether RA can call for fresh information and production of records. The phrase in Section 108 (1) 'whether available at the time of issuance of the said order or not' gives a flavour that the RA can call for fresh information and production of records. However, one may have to test this under the GST law as in the erstwhile Andhra Pradesh General Sales Tax Act, 1957 the Hon'ble Andhra Pradesh High Court in the case of ***Agarwal Industries Limited (2013) 61 VST 346 (AP) (DB)*** held that Commissioner calling for fresh information and production of records and based thereon revises an order passed by an officer subordinate with him on the ground which is different from the ground on which subordinate officer had passed the order of revision would amount to re-assessment and not revision.

Restrictions of power and time limit

The RA shall not exercise revisionary powers if

1. an appeal has been against order to the Appellate Authority under section 107 or the Appellate Tribunal under section 112 or High Court under section 117 or Supreme Court under section 118; or
2. period of six months mentioned in Section 107(2) has not expired or more than three years has expired after passing of decision or order; or
3. order has already been taken for revision under section 108 at an earlier stage; or
4. revisionary order has already been passed once.

The RA should pass an order within one year from the date of order passed in an appeal on any point which has not been raised and decided in an appeal or within three years from the date of passing such decision or order sought to be revised, whichever is later.

The time spent between the date of decision of the Appellate Tribunal and the date of decision of the High Court or the date of decision of the High Court and the date of decision of Supreme Court shall be excluded in computing the period of limitation of three years. Further, where issuance of an order under Section 108(1) of the CGST Act is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation of three years.

Some issues on the powers, restrictions and time limits are discussed below:

1. Section 108 (2) (b) of the CGST Act prescribes the time limit within which the records should called for examination by the RA. However, it is interesting to read Proviso to Section 108(2) which is reproduced below

   > 'Provided that the Revisional Authority ***may*** pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later'

   The proviso uses the word 'may'. Therefore, it appears that there is only time limit for calling / commencing of revisional proceedings and there is no time limit prescribed to pass an order if the revisional proceedings have been commenced within the time limits prescribed. However, assuming

that there is no time limit to pass an there should be reasonableness within which an order should be passed. At this juncture it would be relevant to note the following judgements on the reasonable time

a. ***Coventry Estates Pvt. Ltd. W.P. No. 4082 of 2022 dated 25.07.2023 Bombay High Court*** – Where almost after 10 years of time from issuance of show cause notice a notice for personal hearing was received by the petitioner the Hon'ble High Court held that

> 'An inordinate delay is seriously prejudical to the assessee and the law itself would manifest to weed out any uncertainty on adjudication of a show cause notice, and that too keeping the same pending for such a long period itself is not what is conducive. Merely for the reason that there was shifting of the Commissionerates and Re-Organisation of its office would be no reason to abdicate and/or not comply with the obligations under the Actto promptly and/or expeditiously adjudicate the show cause notice, to be taken to its logical conclusion. We do not accept such reasons to be any justification much less any lawful justification. In fact accepting such justification would amount to defeating the statutory provisions.'

b. ***M/S Mass Awash Pvt.Ltd. 397 ITR 305 Allahabad High Court*** – The Hon'ble High Court held that

> 'Though no time limit was prescribed under Section 201, but time is the core of every action under law. If legislature is silent in prescribing a particular time limit, then action should have been taken within a reasonable time. In our view, the dictum laid down by Apex Court in the cases referred above is very clear. While exercising power of judicial review in the case like present one, it would be appropriate to consider whether power has been exercised by competent authority within a reasonable period and whether delay is unjust, arbitrary, whimsical or it is for valid reasons. If Court finds that delay in exercise of power is for valid and bonafide reasons, alleged delayed exercise of power cannot be held invalid.'

2. Principal Commissioner or Commissioner of Central Tax can invoke proceedings under Section 108 in respect of proceedings dropped by the Additional or Joint Commissioner of Central Tax. Reference may be made

to the judgment of the Hon'ble Karnataka High Court in the case of ***Mallika Metal Foundry (1994) 95 STC (Kar)*** under the erstwhile Karnataka Sales Tax Act, 1957,wherein it was held that orders passed by the Deputy Commissioner dropping revision proceedings is an order which can be revised by the Commissioner.

3. While no revisional jurisdiction is to be exercised in respect of the matter which is the subject-matter of appeal before the Tribunal, there is no prohibition in law for the revisional authority to exercise the revisional jurisdiction in respect of the matter which is not the subject-matter of appeal before the Tribunal – ***O.P. Developers (2012) 47 VST 207(Kar) – Karnataka High Court***.

4. If a similar or identical issue or question is pending for consideration in an appeal before the Appellate Tribunal or had already been decided in appeal by the Appellate Tribunal, the Commissioner cannot exercise suo motu power in respect of the same issue by issuing a show cause notice for exercising power of revision - ***Indo National Limited (2012) 49 VST 161 (SC) Supreme Court.***

This article is written with a view to incite the thoughts of a reader who could have different views of interpretation. Disparity in views, would only result in better understanding of the underlying principles of law and lead to a healthy debate or discussion. The views written in this article is as on 14.08.2023.

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EXPORT OF SERVICES IN GST REGIME

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Service Sector in India

The service sector in India plays a dominant role in the country's economy, contributing the most significant share to its GDP, accounting for over 50%. This sector encompasses a wide range of industries such as trade, tourism, aviation, telecom, shipping, ports, communication and storage, financing, insurance, transportation, real estate, business services, software services, IT-BPM, and more. Notably, the IT services and BPO segments alone employed approximately 4.47 million people directly and over 12 million indirectly during the 2020-2021 period. India's economic prosperity is heavily reliant on its services exports, with the value of exports showing impressive growth. Comparing the export values from April-January 2022-23 to the previous year, there was a remarkable positive growth of 29.82%. In the entire fiscal year 2021-22, the total export of services from India reached US$ 254.35 billion, a notable increase from US$ 208.42 billion in the previous year. Furthermore, the trade surplus for Indian services exports during 2021-22 was US$ 105.2 billion, marking a 24% rise compared to 2019-20. India's services are in high demand worldwide, with major importers being the USA, UK, and Japan.

Export of Services

Export of services from India,in general, involve providing services from an Indian taxpayer to a recipient located outside the country(Non-taxable territory). These supplies are considered "zero-rated" under the GST law, meaning no GST is charged on outward supplies of services. This favourable treatment also applies to services provided to Special Economic Zone Units/Developers, ensuring no GST is levied on such transactions. The concept of zero-rated exports and SEZ clearances also applies to the export of goods. This approach helps in maintaining competitiveness of goods and services in the global market andavoids the cascading effect of taxes.

However, in respect of supplies of goods and services to SEZ (units) and SEZ (developer) restrictions are imposed with effect from the date to be notified. The appropriate part of the section 16(1) of IGST Act is reproduced for ease of reference. -***'IGST Act 2017 - Section 16. Zero rated supply. -*** *(1) "zero rated*

supply" means any of the following supplies of goods or services or both, namely: -(a) export of goods or services or both; or(b) supply of goods or services or both *****[for authorised operations]*** *to a Special Economic Zone developer or a Special Economic Zone unit.[**Inserted (w.e.f. a date yet to be notified) vide sec 123(a) of the Finance Act, 2021 dated 28.03.2021.]'*

To qualify as an "export of service" under Section 2(6) of the IGST Act 2017, the following conditions must be met:

(1) The service supplier must be based in India.

(2) The service recipient must be located outside India.

(3) The place of supply of service must be outside India.

(4) Payment for the service should be received in convertible foreign exchange or Indian rupees (wherever permitted by the Reserve Bank of India).

(5) The service supplier and recipient must not be mere establishments of a distinct person as per Explanation 1 in Section 8.

According to the explanation given to section 8(2) of the GST Act, if a person has establishments both inside and outside India, these entities are considered distinct persons.

However, a ruling by the Gujarat High Court in the case of Linde Engineering India Pvt. Ltd. &Ors. Vs. Union of India (refer https://indiankanoon.org/doc/182424602/) clarified that services provided by an Indian subsidiary to its foreign parent company, or a separately registered foreign company (not in a taxable territory) should not be treated as services provided to mere establishments of distinct persons. Therefore, holding-subsidiary relationships are excluded from being considered distinct persons. However, if a company outside India establishes a branch office in India, it will be treated as an establishment of the same entity and not qualify as an export of services.

By issuing Circular no 161/17/2021 - Central Tax dated 20th September 2021 CBIC has addressed the concerns related to the export of services and its applicability to certain business scenarios. The main elements discussed in and clarified in the circular are as follows:

1. Explanation 1 of Section 8 of the IGST Act clarifies the conditions under which establishments of a person would be treated as establishments of distinct persons. For instance, an establishment in India and another

establishment outside India of the same person would be considered distinct persons.

2. Explanation 2 of Section 8 stated that a person conducting business through a branch, agency, or representational office in any territory would be treated as having an establishment in that territory.
3. The term "person" was defined under the CGST Act 2017 and made applicable to the IGST Act. It included various entities such as individuals, companies, firms, associations, etc.
4. The definitions of "company" and "foreign company" were provided under section 2 of the Companies Act 2013.

Based on the legal analysis, the circular concluded the following:

(a) Supply of services made by a branch, agency, or representational office of a foreign company (not incorporated in India) to any establishment of the same foreign company outside India would be treated as a supply between establishments of distinct persons and not be considered as "export of services" under condition (v) of sub-section (6) of section 2 of IGST Act.

(b) Similarly, any supply of service by a company incorporated in India to its branch, agency, or representational office located in any other country (not incorporated under the laws of that country) would also be considered a supply between establishments of distinct persons and not qualify as export of services.

(c) However, a company incorporated in India and a body corporate incorporated under the laws of a country outside India (referred to as a foreign company under the Companies Act) are considered separate persons under the CGST Act. Thus, they are not merely establishments of a distinct person as per Explanation 1 in section 8. Therefore, supply of services by an Indian subsidiary/sister concern/group concern of a foreign company to the establishments of the said foreign company located outside India (incorporated outside India) would not be barred by condition (v) of sub-section (6) of section 2 of the IGST Act 2017. Such supplies would be considered as export of services, subject to fulfilling other conditions as provided under sub-section (6) of section 2 of IGST Act. Similarly, supplies from a company incorporated in India to its related establishments outside

India (incorporated under the laws outside India) would also qualify as "export of services," subject to meeting other conditions under sub-section (6) of section 2 of IGST Act 2017.

Options for Exporters to Comply with GST

Exporters must have GST registration as the unregistered persons under GST laws cannot make zero-rated supplies and seek refund of tax paid on inputs. The registration requirement ensures compliance with the rules governing the export of services.An Exporter has two choices to comply with GST laws:

Option 1 – Export of Services with IGST payment, without a Bond or Letter of Undertaking (LUT) – Section 16(3) of IGST Act 2017 read with Rule 96 of CGST rules 2017. According to GST laws, the exporter can opt to pay IGST on exports and subsequently apply for a refund. This refund can be claimed within 2 years from the relevant date.

'Relevant Date' for claiming (applying) for refund

1. Refund of tax paid on services exported out of India: a. When the supply of service is completed before payment is received: The relevant date is the date of receipt of payment in convertible foreign exchange. b. When services are received in advance prior to the date of issuing the invoice: The relevant date is the date of issue of the invoice.
2. Refund of unutilized Input Tax Credit: The end of the financial year in which the claim for refund arises.

Option 2 – Export of Services without IGST payment, under a Bond or Letter of Undertaking (LUT) – Section 16(4) of IGST Act 2017 read with Rule 96A of CGST rules 2017.

A registered supplier also has the option to export services under a Bond or LUT and claim a refund of unutilized Input Tax Credit. Previously, only specific exporters were eligible for LUT submission, but after the release of GST Circular No. 8/8/2017 dated 4th Oct 2017, all exporters became eligible, except in certain cases where Bonds were required.However, individuals charged with tax evasion of INR 2.5 Crore and above are not eligible for LUT. If a taxpayer fails to comply with the conditions specified in LUT within the required time, Bonds must be submitted. The validity of LUT is 1 year, and a fresh LUT needs to be provided every financial year.

To submit a Bond or LUT, the Registered Supplier must use the specified format in Form RFD-11 on the letterhead and submit it to the jurisdictional commissioner before exporting. Upon acceptance, an Acknowledgement Reference Number (ARN) is received. In cases of Bonds, additional documents like a bond on stamp paper, Bank Guarantee, and supporting documents are also furnished.A Running Bond can be submitted, where the terms and conditions remain the same for all transactions. For instance, if a taxpayer gives a Running Bond of INR 1 Crore, they can export services worth tax up to INR 1 Crore in multiple transactions. Once the conditions of a particular transaction are met, the Bond is free for that amount and can be reused for the next set of transactions.

The Bond or LUT is an undertaking or promise to the President of India that the taxpayer will pay taxes along with interest if services are not rendered within 1 year of issuing the export invoice. The tax must be paid within 15 days from the end of 1 year or within a period as allowed by the commissioner. After services are rendered beyond 1 year, the exporter becomes eligible for benefits. Refund of unutilized Input Tax Credit can be claimed by filing the form RFD-01/ RFD-01A, even if exports are made after 1 year.

Exports of Services under FEMA

Exports of Services under FEMA are regulated by clause (a) of sub-section (1) and sub-section (3) of Section 7 of the Foreign Exchange Management Act, 1999 (42 of 1999), in conjunction with the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and FEMA Notification No. 23(R)/2015-RB dated January 12, 2016. These notifications, issued by the Reserve Bank of India, along with the prevailing Foreign Trade Policy released by the Directorate General of Foreign Trade (DGFT), provide guidance for conducting Export Trade from India.

For Service Exports, the Import Export Code (IEC) is generally not required, unless the service provider intends to avail benefits under the Foreign Trade Policy (FTP). Unlike the Export of Goods, Service Exports do not involve the use of forms and declarations. While customs clearance by the customs is crucial in case of export of goods, as explained in the earlier article (July 2023), it has no role managing export of services. Service Exporters can provide services to overseas buyers without the need to submit any forms or declarations. However, they are responsible for realizing the amount of foreign exchange due into India and must adhere to the provided guidelines.

Invoicing & Realization Timelines

All export contracts must be denominated in either freely convertible currency or Indian Rupees. Export proceeds should be realized in freely convertible currency. In the case of specific exports, proceeds may be realized in Indian Rupees if received through a freely convertible vostro account of a non-resident bank in any country other than a member of the Asian Clearing Union or Nepal or Bhutan. A vostro account is an account held by a foreign bank with a domestic bank in the domestic currency. Exporters are obligated to realize and repatriate the full value of services into India within 9 months from the date of rendering the service. RBI has granted AD Category-I banks the authority to extend the period for export realization beyond the stipulated timelines, up to a period of 6 months at a time.

Manner of Receipt & Payment: The full value of exported services should be received through an AD Bank as specified in the notification vide Notification No. FEMA 14 (R)/2016-RB dated 02 May 2016. When payments for services rendered to overseas buyers are received during their visits:

- AD Category-I banks should receive the funds in their Nostro account (a foreign currency account held by a bank with another bank), or
- The exporter can obtain a certificate from the Credit Card servicing bank certifying that an equivalent amount has been received in Foreign Exchange, or
- AD Category-I banks may receive payment for exports made out of India by debiting the credit card of an importer, with reimbursement from the card issuing bank received in foreign exchange.

Exports receipts through Online Payment Gateway Service Providers (OPGSPs): AD Category-I banks are permitted to offer the facility of export realization through standing arrangements with OPGSPs, subject to certain conditions.Export invoices raised in freely convertible currency can be settled in the currency of the beneficiary, which though convertible, does not have a direct exchange rate, subject to specific conditions.

Receipt of Advance Against Exports

Exporters receiving an advance payment from a buyer outside India should ensure that the services are rendered within 1 year from the date of receipt of advance. The rate of interest (if applicable) on such advance payment cannot exceed the

London Inter-Bank Offered Rate (LIBOR) + 100 basis points. If the exporter fails to render the services partially or fully within the stipulated time frame, a refund of advance payment after 1 year would require prior approval from RBI. AD Category-I banks may allow Exporters to receive advance payment for a period beyond 1 year if the export of services will take more than 1 year and the export agreement allows such a time frame.

Unlike goods exporters, service exporters cannot directly obtain a GST refund into their bank accounts. To claim a refund, service exporters must file a set of documents with the jurisdictional GST officer where the company is situated. Since services are usually intangible, there is limited documentation trail for the export of services, making this differentiation in the refund process necessary. In contrast, goods exporters have clearer trails with customs, shipping, transport, and other bills, which simplifies their GST refund process.

Documents Required for GST refunds

Documents required by the Exporter of the Services to be filed for getting a GST refund are as follows:

i. A covering Letter

ii. Bank Realization Certificates or Foreign Inward Remittance Certificates (In case of export of services, they should have obtained FIRC/BRC from the concerned bank for receipt of foreign exchange.)

iii. Export Invoices

iv. Form GSTR 3B and GSTR 1

v. Application for Refund in the Form GST RFD 01

vi. cancelled cheque

vii. If GST refunds claims exceed ₹ 2 lakhs (₹ 200,000 or ~$3,000) per quarter a certificate from a Chartered Accountant/Cost Accountant. All the above-mentioned documents are all mandatory, GST refund cannot be claimed without these documents.

Process for claiming a GST refund

Step 1: The application for GST refund has to be forwarded to the proper officer with all the documents above mentioned. It must include

i. A statement containing the date and number of invoices and the Bank

Realization Certificates or, Foreign Inward Remittance Certificates. The officer shall within 3 days of filing, issue an acknowledgment, in Form GST RFD-02.

Step 2:The officer shall make an order, in Form GST RFD-04, sanctioning the amount of refund on a provisional basis, within a period of 7 days from filing of the application.

Step 3:The officer, will issue payment advice, in Form GST RFD-05 which will be electronically credited to the bank account of the applicant as mentioned in the application. Ninety percent of the amountis credited at this stage.

Step 4:Remaining ten percent of the amount is payable after a scrutiny of the documents (verification of all physical documents with the available online data in the GST portal). Then form GST RFD-06 will be issued sanctioning the balance ten percent amount if all the documents are found in order with the online data available in the GST portal.

In case of delays of the refund due,

i. Cases beyond sixty days will get an interest at the notified rate not exceeding 6% till the date of refund if the refund has been sanctioned.

ii. Cases which may be adjudicated by Appellate or Adjudicating authority interest shall be paid at the notified rates not exceeding 9% till the date of refund.

There are certain situations in which the zero-rated supply does not apply. These instances are detailed below: a. When the service is provided within India but to a person located outside India. For instance, leasing a property in Mumbai to a person residing in London or an Indian agent providing services to a person in London exporting goods to the UAE. b. If the consideration for a service is received in Indian Currency or any other non-convertible currency. For example, a Consultancy Firm offering services to a foreign entity, but the payment is made by the Indian Branch of that overseas entity in Indian Rupees. c. In cases where the supply of services was made to a foreign branch, but it is not considered an “export of service” due to specific exclusions. This would require reversing the input tax credits as such services are considered non-taxable.

Tax Treatment of Sub-Contracting Services

Circular No. 78/52/2018 GST, dated 31.12.2018, provides guidance on the tax

treatment of sub-contracting services by an exporter of services to a person located outside India. In such cases, where an exporter outsources a portion of the services contract to a foreign entity, there might be instances where the full consideration for the outsourced services is not received in India.The circular clarifies the tax treatment of such scenarios, stating that two supplies are taking place:

1. Supply of services from the exporter of services in India to the recipient located outside India for the full contract value.
2. Import of services by the exporter of services in India from the supplier of services located outside India, concerning the outsourced portion of the contract.

The total value of services agreed upon in the contract between the Indian exporter and the foreign recipient will be considered as an export of services if all conditions under section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) read with section 13(2) of the IGST Act are met.

It is clarified that the Indian supplier of services will be liable to pay integrated tax on a reverse charge basis for the import of services related to the outsourced portion provided by the foreign supplier to the recipient located outside India. The Indian supplier will also be eligible to claim input tax credit on the integrated tax paid.

Even if the full consideration for the services, as per the contract value, is not received in convertible foreign exchange in India because the recipient located outside India directly pays the foreign supplier for the outsourced part, that portion of the consideration will still be treated as receipt of consideration for export of services under section 2(6)(iv) of the IGST Act, provided two conditions are met: (i) Integrated tax has been paid by the Indian supplier for the import of services on the portion directly provided by the foreign supplier to the recipient located outside India. (ii) The Reserve Bank of India (RBI), either through general instruction or specific approval, has allowed a part of the consideration for such exports to be retained outside India.

Illustration: If ABC Ltd. India receives an order for services worth $500,000 for a US-based client but is unable to provide the entire service from India, and they ask XYZ Ltd. Mexico (not merely an establishment of ABC Ltd. India) to provide 40% of the services. If ABC Ltd. India raises the invoice for the entire amount, they will be considered the exporter of services for the total value. The services

provided by XYZ Ltd. Mexico to the US-based client will be treated as an import of services by ABC Ltd. India, and they will be liable to pay integrated tax on this under reverse charge while being eligible to claim input tax credit for the tax paid. Even if only 60% of the consideration is received in India and the rest is directly paid by the US-based client to XYZ Ltd. Mexico, 100% of the total contract value will be considered as consideration for the export of services by ABC Ltd. India, provided the conditions mentioned earlier are fulfilled. In such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

Place of Supply outside India

For service to qualify as 'export of service' under GST, it is important that the place of supply is outside India. Section 13 of the IGST Act mandates deemed provisions for determining the 'place of supply of services', which is defined as follows:

A. General Principle (Section 13(2) of IGST Act, 2017): Under this principle, the default place of supply of services is the location of the recipient of the service. However, if the location of the recipient is not available in the ordinary course of business, then the place of supply shall be the location of the supplier of the service.

B. Specific Situations (Section 13(3) to Section 13(13) of IGST Act, 2017): The Act also provides specific situations where the place of supply is determined differently for certain types of services. These situations are described in sections 13(3) to 13(13).

1. Section 13(3)(a): Deals with services supplied concerning goods that are required to be physically made available by the recipient. If the supplier performs services on goods made available by the recipient or any person acting on their behalf, the place of supply will be where the services are performed. However, if the services are performed remotely through electronic means, the place of supply shall be where the goods were situated. This provision does not cover situations where goods are temporarily imported into India for repairs and then exported after repairs.
2. Section 13(3)(b): Covers services supplied to an individual that require physical presence. If the services supplied to an individual, either as the recipient or on their behalf, necessitate the physical presence of the receiver

or the person acting on their behalf with the supplier, the place of supply will be where the service is provided.

3. Section 13(4): Pertains to the supply of services in relation to immovable property. The place of supply will be where the immovable property is located or intended to be located. This includes services directly related to an immovable property, hotel accommodations, granting of rights to use immovable property, and services related to construction work.
4. Section 13(5): Deals with the supply of services in relation to admission to events. The place of supply will be where the event is actually held.
5. Section 13(6) and 13(7): These sections cover situations where services referred to in sections 13(3) to 13(5) are supplied both in foreign countries and in India. In such cases, the place of supply is considered to be in India.
6. Section 13(8): Deals with the supply of services by banking companies, NBFCs, and intermediaries. Intermediary, as defined in Section 2(13) of IGST Act, means a broker, agent, or any other person who arranges or facilitates the supply of goods or services or securities between two or more persons but does not include a person who supplies such goods or services or securities on their own account. The Place of Supply in all such cases shall be location of the Supplier of Services.
7. Section 13(9): Deals with the supply of services by the transportation of goods (other than courier and mail), and the place of supply is the destination of the goods.
8. Section 13(10): Covers the supply of passenger transportation services, and the place of supply is where the passenger embarks on the conveyance for a continuous journey.
9. Section 13(11): Pertains to services provided on board a conveyance during the course of a passenger transport operation, and the place of supply is the first scheduled point of departure of that conveyance.
10. Section 13(12): Covers services provided for online information and database access or retrieval services. The place of supply of service shall be the location of the recipient of service if certain conditions are met.
11. Section 13(13): Grants the power to the Central Government to notify any description of service or circumstance in which the place of supply shall be

the place of effective use and enjoyment of a service, in order to prevent double taxation or no-taxation.

Supply of Export of Services between two Distinct persons is Exempt from GST

According to clause 10F of notification 9/2017 IGST (Rate) service made to distinct person shall be exempt from tax provided the place of supply of the service is outside India in accordance with section 13 of Integrated Goods and Services Tax Act, 2017. Therefore, no tax should be charged if other conditions are fulfilled. Para 10F of the Notification 9/2017 is reproduced as under:

	Description of Services	**Rate**	**Condition**
10F Chapter 99	Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in section 8 of the Integrated Goods and Services Tax Act, 2017.	NIL	Provided the place of supply of the service is outside India in accordance with section 13 of Integrated Goods and Services Tax Act, 2017

FAQs from CBIC on Export of Services

Some of the important FAQs published by CBIC relating to export of services are as follows.

Question1: How soon will refund in respect of export of goods or services be granted during the GST regime?

Answer: (a) In case of refund of tax on inputs used in exports: Refund of 90% will be granted provisionally within seven days of acknowledgement of refund application. Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects. Interest @ 6% is payable if full refund is not granted within 60 days. (b) In the case of refund of IGST paid on exports: Upon receipt of information regarding furnishing of valid return in Form GSTR-3 by the exporter from the common portal, the Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

Question2: Will the principle of unjust enrichment apply to exports?

Answer: The principle of unjust enrichment is not applicable in case of exports of goods or services as the recipient is located outside the taxable territory.

Question 3: Will the requirements of Letter of Undertaking or Bond be required to be complied with in the case of Life Insurance Premium where the conditions of export of services are satisfied before or at the time of supply of the Life Insurance Service?

Answer: Yes. As per Section 16(3) of the IGST Act, 2017, read with Rule 96A of the CGST Rules, 2017, an exporter is required to submit a Letter of Undertaking or Bond in case the export of service is made without payment of integrated tax.

Question 4: Whether insurance policies issued to Non-Resident Indians, where the premium is paid through the Non- Resident External Bank account, will be 'export of services? Would the insurance premiums be taxable in cases where the same is not received in convertible foreign exchange or from the NRE Accounts?

Answer: No. The amounts paid from the Non-Resident External Accounts are paid in Indian Rupees and are not received in convertible foreign exchange. Therefore, the conditions for export of services as provided under section 2(6) of IGST Act, 2017 are not satisfied. Life Insurance services in such cases would be treated as inter-State supplies and subject to GST.

Question 5: Stockbrokers who deal withnon-residents of India clients - like Foreign Portfolio Investors, Non-Resident Indians, Persons of Indian Origin, etc. Will brokerage earned from such clients who are not resident in India qualify as "export of service" under section 2(6) of the IGST Act, 2017?

Answer:The stockbroker being an intermediary, this situation shall be covered under the provisions of section 13(8)(b) of the IGST Act, 2017 which provides that the place of supply shall be the location of thesupplier of services. Thus, such a supply will be treated as an intra-State supply and would be subject to Central tax and State tax / Union territory tax, as the case may be.

Question 6: Are services supplied by a Bank to its branch / head-office outside India, which are neither intermediary services nor services to account holders, taxable under GST?

Answer:GST is a destination-based consumption tax. Such services provided by a

Bank or the branch of a foreign Bank in India to its offshore branch / head-office, which are neither intermediary services nor services to account holders, are inter-State supply of services between distinct establishments (as per section 7(5)(a) read with Explanation to section 8 of the IGST Act, 2017), and will be taxable in India, as the location of the supplier is in India and the place of supply is outside India. Such services will not be treatedas exports in view of the sub-clause (v) of section 2(6) of the IGST Act, 2017 read with Explanation 1 to section 8 of the IGST Act, 2017.

Question 7: Is GST payable on Agency Commission earned by buying agents of foreign buyers?

Answer:Yes. Since commission is received by agents in India, and the place of supply of service is in India, GST will be payable.

Export of Software Services

Question 1: Whether software is regarded as goods or services in GST?

Answer:In terms of Schedule II of the CGST Act 2017, development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services. But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523.

Question2: Whether exports of software services attract GST?

Answer: Exports and supplies to SEZ units and SEZ developers are zero-rated in GST. Zero-rating effectively means that no tax is payable on exports, but the exporter/supplier is entitled to the input tax credit on inputs/ input services used in relation to exports. The exporters have two options for zero rating, which are as follows: (1) To pay integrated tax on supplies meant to be exported and get refund of tax so paid after the supply is exported. (2) To make export supplies under a bond or letter of undertaking and claim refund of taxes suffered on inputs and input services in relation to such exports.

Question 3: How doescondition 5 viz the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8 of the IGST Act, 2017 impacts the taxability?

Explanation I in section 8(2) of the IGST Act, 2017 states that where a person has an establishment in India and any other establishment outside India then such establishments shall be treated as establishment of distinct persons. Where the Indian arm is set up as a liaison office or a branch they would be treated as establishments of the same entity and hence the supply inter se shall not qualify as export of services. However, if the Indian arm is set up as a wholly owned subsidiary company incorporated under the Indian laws, the foreign company and the Indian subsidiary would not be governed by the provisions of distinct person or related person as both are separate legal entities.

Information Technology Enabled Services

"Information technology enabled services"means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely*:— (*i*) back office operations; (*ii*) call centres or contact centre services; (*iii*) data processing and data mining; (*iv*) insurance claim processing; (*v*) legal databases; (*vi*) creation and maintenance of medical transcription excluding medical advice; (*vii*) translation services; (*viii*) payroll; (*ix*) remote maintenance; (*x*) revenue accounting; (*xi*) support centres; (*xii*) website services; (*xiii*) data search integration and analysis; (*xiv*) remote education excluding education content development; or (*xv*) clinical database management services excluding clinical trials, but does not include any research and development services whether or not in the nature of contract research and development services.* The Circular No. 107/26/2019 - Central Tax, dated 18-Jul-2019, provides clarifications regarding the supply of Information Technology enabled Services (ITeS services) and Intermediaries to overseas entities under GST law, determining their qualification as "export of services" or otherwise. The key points from the circular are as follows:

1. The term "Intermediary" is defined in section 2(13) of the Integrated Goods and Services Tax Act, 2017. An intermediary is a person who arranges or facilitates the supply of goods, services, or securities between two or more persons but does not supply such goods, services, or securities on their own account.
2. Information Technology enabled Services (ITeS services) are not explicitly defined under GST law, but they are defined under the Income-tax Rules,

1962, pertaining to Safe Harbour Rules for international transactions. ITeS services mainly involve various business process outsourcing services with the assistance or use of information technology.

3. The circular examines different scenarios when a supplier of ITeS services in India provides services on behalf of a foreign client and whether they qualify as an "intermediary" under the IGST Act:

- Scenario-I: If the supplier of ITeS services provides services on their own account to their client or the customer of their client, they will not be categorized as an intermediary.

- Scenario-II: If the supplier of backend services in India arranges or facilitates the supply of goods or services between the client abroad and the customers of the client, they will be considered an intermediary.

- Scenario-III: If the supplier provides ITeS services on their own account along with arranging or facilitating support services during pre-delivery, delivery, and post-delivery on behalf of the foreign client, whether they are classified as an intermediary will depend on the specific facts and circumstances of each case.

It is clarified that a supplier of ITeS services who does not qualify as an intermediary can avail the benefits of "export of services" if they meet the criteria mentioned in section 2(6) of the IGST Act, which involves factors such as the location of the supplier and recipient, the place of supply, payment received in foreign exchange, and the establishment status of the supplier and recipient.

Important Decision on Export of Services

In the case of Vodafone Idea Ltd vs. Union of India (2022-TIOL-997-HC-MUM-GST), the central question was whether the telecommunication services provided by Vodafone Idea Limited (VIL), an Indian Telecom Service Provider, to inbound international subscribers of Foreign Telecom Operators (FTOs) could be considered an "Export of Service" and, consequently, a "Zero Rated Supply."

Vodafone Idea Limited (VIL), a registered entity under the Maharashtra GST, had entered into an agreement with Foreign Telecom Operators (FTOs) to provide international long-distance call and roaming telecom services to their overseas subscribers while they were in India. Since the FTOs did not possess a telecom license in India, they contracted with VIL to allow their subscribers to use VIL's

network within the country. VIL issued invoices to the FTOs for the services provided, and the consideration received was in convertible foreign exchange.

The Adjudicating Authority initially rejected VIL's claim for an IGST refund, arguing that the place of supply of services was in Maharashtra, where the FTO subscribers were located, making the services non-exported. However, the Appellate Authority ruled in favor of VIL and allowed the refund claim. Subsequently, the department filed a Writ Petition before the Bombay High Court, contending that the services provided by VIL were supplied to the FTO subscribers in India, based on Section 13(3)(b) of the IGST Act, and were not exports.

The Bombay High Court considered various provisions of the CGST and IGST Acts in its judgment. It noted that the definition of "recipient of supply of service" as per Section 2(93) of the CGST Act was relevant in this case. The court observed that the consideration for the services provided by VIL was paid by the FTOs in convertible foreign exchange, and the subscribers did not directly engage with VIL or make payments to VIL. Therefore, any service-related issues for the subscribers were the responsibility of the overseas FTOs.

The court further examined Section 13(3)(b) of the IGST Act, which applies when services are supplied to an individual. However, in this case, services were supplied to the FTOs, who, in turn, provided them to their subscribers. The court upheld the principle that the "customer's customer" (the FTO subscribers) could not be considered VIL's customers under Section 13(3)(b) of the IGST Act.

Moreover, the court considered Section 13(2) of the IGST Act, which specifies that the place of supply of services shall be the location of the recipient of services, except for certain sub-sections. Since the recipients of services were the FTOs, whose services did not fall under the excepted sub-sections, the location of the recipient of service (FTOs) was outside India. As a result, the services provided by VIL to the FTOs qualified as an export of service.

In conclusion, the Bombay High Court ruled in favor of VIL, stating that the telecommunication services offered by VIL to inbound international subscribers of Foreign Telecom Operators (FTOs) were considered an "Export of Service" and, therefore, a "Zero Rated Supply."

In the coming part deemed exports in GST regime will be deliberated.

Benefits of Export of Services

Boost to Exports: Zero-rating of export of services under GST enhances the competitiveness of Indian service providers in the global market. It encourages cross-border trade and helps in increasing foreign exchange earnings for the country.

1. Simplicity and Transparency: The GST regime has simplified the tax structure by unifying multiple indirect taxes, making it easier for exporters to comply with tax regulations and claim refunds.
2. Cash Flow Improvement: The timely refund of unutilized ITC ensures that exporters do not face working capital issues, leading to improved cash flow.
3. Global Recognition: Zero-rated exports under GST promote a positive image of India as a business-friendly nation, encouraging foreign investment and collaborations.

Challenges and Way Forward

Under GST regime, despite the benefits, many challengespersist in the export of services and some of them are as follows:

1. Procedural Hurdles: The refund process involves several steps, which can be time-consuming and bureaucratic. Simplification of forms and refund procedures can alleviate this challenge.
2. Timely Refunds: Delays in processing GST refunds can impact the liquidity of exporters. Timely and efficient refund mechanisms need to be established. For Authorised Economic Operator (AEO) holders more liberal approach could be extended for refund in respect of export of goods as well as services.
3. Competition from Other Countries: Other countries also offer tax incentives for their service exporters, and therefore India, to stay competitive in global market, need to continuously assess tax policies to attract foreign buyers.

The export of services from India in the GST regime has been a significant contributor to the country's economic growth and international competitiveness. The zero-rated tax provision and input tax credit (ITC) mechanism have encouraged businesses to explore global markets and attract foreign investments. However, certain challenges such as compliance issues and delays in refunds need to be addressed to facilitate a seamless export process. As the service export sector continues to expand, it is crucial for the government to provide a supportive framework that promotes investment, innovation, and overall sustainability of the industry.

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HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6739/2021

Date : 17.08.2023

Deepak Khandelwal Proprietor
M/S Shri Shyam Metal .....Petitioner

versus

Commissioner of CGST, Delhi West
& Anr .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Jain, Mr. Virag Tiwari & Mr. Ramashish, Advs.

For the Respondents : Mr. Harpreet Singh, SSC with Ms. Suhani Mathur & Mr. Jatin Kumar Gaur, Advs.

Coram

Hon'ble Mr Justice Vibhu Bakhru

Hon'ble Mr. Justice Purushaindra Kumar Kaurav

JUDGMENT

GST : During search, proper officer cannot seize currency and other valuable assets in exercise of powers under sub-section (2) of section 67; even if so done, same are required to be returned by virtue of sub-section (3) of section 67 when assets and currency had not been relied upon in notice issued subsequently

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia,* praying that directions be issued to the respondents to unconditionally release the two silver bars (weighing 29.5 Kgs. and 14.5 Kgs. respectively); Rs. 7,00,000/- Indian currency; and, Mobile Phones, which were seized by the respondents from the residential premises of the petitioner. The petitioner also prays that the search of his residential premises and seizure effected, be declared illegal.

Factual Context

2. The petitioner carries on business of trading in non-ferrous metals, *inter alia*, in the name of his sole proprietorship concern, Shri Shyam Metal. He is

registered under the Central Goods and Services Tax Act, 2017 (hereafter '**the Act**') under the registration: GSTIN- 07AGCPK1126B2Z5.

3. On 28.01.2020, a search was conducted at the petitioner's residence, House No. 3-4, Pocket 6, Sector-24, Rohini, Delhi, under Sub-section (2) of Section 67 of the Act. During the aforementioned operations, certain items and currency were seized from the ground floor of the petitioner's residence. The relevant extract of the order of seizure (Form GST INS-02) listing out the goods and items seized by the respondent authorities, is reproduced hereinbelow:

"**A) Details of goods seized:**

Sr No.	Description of Goods	Quantity/ Units	Make /Mark or Model	Remark
01	Silver Bar	Silver Bar 29872 (29.5 kgs)	2017	
02	Silver Bar	Silver Bar 14948(14.5 kgs)	2018	

B) Details of Books/Documents/ things seized:

Sr. No.	Description of books/ documents/ Equipments things seized	Page No.
1.	Sale Bill Book	251-300
2.	Axis Bank Cheque Book 917020084690138	125593-125605
3.	PNB Cheque Book 0155002106140506	260829-260920
4.	PNB Cheque Book 0155002106140506	610455-610460
5.	PNB Cheque Book 0617000100149333	705753-705770
6.	PNB Cheque Book 0617000100292510	929211-929250
7.	PNB Cheque Book 6582002100002424	034980-034990
8.	Green Colour Saraswati Note Book	01-01(Written Page)
9.	Red Colour Redmi 6A Mobile	IMEI 1 No. : 869956041874739 IMEI 2 No. : 869956041874747
10.	Blue Colour Redmi 6A Mobile	IMEI 1 No. : 869956048349958 IMEI 2 No. : 869956048349966

11.	One Plus Brand Mobile	IMEI 1 No. : 99001345485110 IMEI 2 No. : 869430049682205
12.	IPhone 11 Pro	IMEI 1 No. : 353844103083170 IMEI 2 No. : 353844103043356
13.	CASH INDIAN Currency	7 Lakh (10*50*100+50*50*100+ 500*4*100+2000*1*100)
14.	Kachha Parchi	Yellow Packet
15.	Stamps	M/s. Nitin Metal, M/s. Adi Shree, M/s. Shree Ganesh Trading Co.,"

4. Thereafter on 29.01.2020, the petitioner was arrested by the Central Tax Officers of GST Commissionerate, North Delhi, as it was alleged that he had committed offences, punishable under Clause (i) of Sub- section (1) of Section 132 of the Act. The petitioner was released on bail on 21.03.2020 by the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.

5. The Sales Tax Officer Class II/AVATO, Ward 30: Zone 1: Delhi (Delhi State GST Officer) issued a notice under Section 74 of the Act on 10.11.2020 proposing a demand of ₹ 24,20,900/- including penalty of a sum of ₹ 12,10,450/-. The petitioner responded to the said notice by his letter dated 16.11.2020. The petitioner contended that, no reliance was placed on any of the documents, Indian currency, or any other items which were seized on 28.01.2020, as detailed in the seizure report, in the said notice.

6. The petitioner, by letter dated 23.03.2021, requested the Additional Commissioner, Central Tax GST, West Delhi, to release the goods, documents and cash seized from his premise on 28.01.2020. The petitioner contended that even if the proviso to Sub- section (7) of Section 67 of the Act was applicable, no notice was issued with respect to the seizure of goods, within a period of six months from the date of seizure. Therefore, the seized goods were liable to be restored.

7. The petitioner has filed the present petition under Article 226/227 of the Constitution of India, being aggrieved by the failure on the part of the respondents to release his goods even after lapse of one year from the date of the seizure.

Submissions

8. It is the petitioner's case that the proper officer does not have any powers under Section 67 of the Act to seize currency as the same is not 'goods' as defined under the Act. The petitioner contends that the proper officer has the power to seize the goods under Sub-section (2) of Section 67 of the Act only if he has reasons to believe that the same are liable for confiscation. The petitioner also claims that the goods seized are liable to be returned if no notice in respect of the said goods is served within a period of six months from the date of seizure of the said goods.

9. It is contended that since no notice under Sub-section (2) of Section 67 of the Act was issued in respect of the seized silver bars, which fall within the definition of goods, within the stipulated period of six months, the said goods are liable to be released.

10. Mr. Rajesh Jain, learned counsel appearing for the petitioner contended that the Sub-section (2) of Section 67 of the Act is *pari materia* Section 105 and Sub-sections (1), (2) and (3) of Section 110 of the Customs Act, 1962, and referred to the decision of the Supreme Court in ***I.J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Another: (1989) 3 SCC 202***. On the strength of the said decision, he contended that if a notice is not given within a period of six months from the date of seizure of the goods and the said period is not extended within the said period of six months, the seized goods are liable to be returned.

11. He submitted that currency neither fell within the definition of the terms 'goods' nor could be considered as 'things'. He contended that the term 'things' was required to be construed by applying the doctrine of *ejusdem generis*, as taking colour from the preceding words, 'documents' and 'books'.

12. Mr. Harpreet Singh, learned counsel appearing for the Revenue countered the contentions advanced on behalf of the petitioner. He contended that silver bars and cash seized by the proper officer were not covered under the definition of 'goods' and therefore, there was no requirement for issuing any show cause notice

for confiscation of the same. He submitted that the silver bars and cash were seized as 'things' and not as 'goods' that were liable for confiscation. He referred to the definition of the word 'goods' under the Act and contended that 'money' and 'securities' were excluded from the said definition. He contended that silver bars were 'securities' and were seized as such.

13. He countered the submission that the proper officer did not have any power to seize cash. He submitted that the proper officer had the power to seize 'things' under Sub-section (2) of Section 67 of the Act and the said term was required to be interpreted in an expansive manner. He referred to the decision of the Madhya Pradesh High Court in ***Kanishka Matta v. Union of India & Ors.: 2020 SCCOnline MP 4564*** decided on 26.08.2020 in support of his contention.

Reasons & Conclusion

14. The principal controversy to be addressed in the present petition is whether the proper officer has the power to seize the currency and other valuable assets under Section 67 of the Act, even though he has no reason to believe that the same are liable for confiscation. The controversy, essentially, relates to interpretation of Section 67 of the Act. The said section is set out below:

> "67. **Power of inspection, search and seizure.**— (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—
>
> (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
>
> (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,
>
> he may authorise in writing any other officer of central tax to inspect any

places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) 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.

(5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof 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.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word ¯Magistrate, wherever it occurs, the word ¯Commissioner were substituted.

(11) 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.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

15. In terms of Sub-section (1) of Section 67 of the Act, the proper officer, not below the rank of Joint Commissioner, is empowered to authorize any officer of the central tax to inspect any place of business of a taxable person or persons engaged in the business of transporting or storing of goods. However, such inspection can be authorized only if the proper officer has reasons to believe that the taxable person has (i) suppressed any transaction relating to supply of goods or services or both; or (ii) suppressed the stock of goods in hand; or (iii) has claimed input tax credit in excess of his entitlement; or (iv) has otherwise contravened any provision of the Act or the Rules made thereunder, to evade payment of tax. Such inspection can also be authorized if the proper officer believes that any person who is engaged in the business of transporting goods, or operating a warehouse or a godown or any other place, is keeping goods that have escaped payment of tax or has kept his accounts or goods in such a manner, which is likely to cause evasion of tax payable under the Act.

16. It is apparent from the above, the power of inspection under Sub-section (1) of Section 67 of the Act is conferred to unearth any evasion of tax or any attempt to evade tax. Sub-section (1) of Section 67 of the Act is not a provision for recovery of tax or for securing the same.

17. The power to seize goods is specified in Sub-section (2) of Section 67 of the Act. In terms of the said Sub-section, if the proper officer has reasons to believe

that any goods, which are liable for confiscation, or any documents or books or things, which in his opinion will be useful or relevant for any proceedings under the Act, are secreted at any place; he may either search and seize the said goods, documents or books or things, or authorize any officer of the Central Tax to do so.

18. It is clear from the plain language of Sub-section (2) of Section 67 of the Act that only those goods can be seized, which the proper officer has reasons to believe are liable for confiscation. Insofar as seizure of documents or books or things is concerned, the same is permissible provided the proper officer is of the opinion that the said documents or books or things shall be useful or relevant to any proceedings under the Act.

19. The first proviso to Sub-section (2) of Section 67 of the Act provides that if it is not practical to seize such goods – that is, goods that are liable for confiscation – the proper officer or any officer authorized by him may direct the owner or custodian of the goods, not to remove or part with the same.

20. The second proviso to Sub-section (2) of Section 67 of the Act clarifies that insofar as seized documents or books or things are concerned, the same shall be retained only so long as it is necessary for their examination and for any inquiry or proceedings under the Act. It is, thus, clear that seizure of documents or books or things are only for the purpose of examination or inquiry or any proceedings under the Act. And, the seized documents or books or things can be retained only so long as it is necessary for the said purpose – for their examination, any inquiry, or proceedings under the Act.

21. Sub-section (3) of Section 67 of the Act further requires that documents or books or things as referred to in Sub-section (2) of Section 67 of the Act or any other documents or books or things produced by the taxable person or any other person "which have not been relied upon" for the issue of notice under the Act or Rules made thereunder shall be returned to such person, within the period not exceeding thirty days from the issue of such notice.

22. In terms of Sub-section (6) of Section 67 of the Act, the goods seized under Sub-section (2) of Section 67 of the Act are required to be released on provisional basis upon execution of a bond and furnishing of a security, in such manner and of such quantum, as may be prescribed or on payment of applicable tax, interest and

penalty payable as the case may be.

23. In terms of Sub-section (7) of Section 67 of the Act where goods are seized under Sub-Section (2) of Section 67 of the Act and no notice, in respect thereof, is given within the period of six months of seizure of the goods, the goods are required to be returned to the person from whom the same were seized. This period of six months can be extended on sufficient cause being shown.

24. In terms of Sub-section (8) of Section 67 of the Act, the Government also has the power to specify goods, which are required to be disposed of by the proper officer, as soon as may be, after its seizure under Sub-section (2) of Section 67 of the Act. Such goods are required to be specified having regard to the perishable or hazardous nature of the goods, constraints of storage space, depreciation in the value of goods with the passage of time, or other relevant consideration.

25. In terms Sub-section (11) of Section 67 of the Act, the proper officer may seize accounts, registers or documents produced before him if he has reason to believe that any person has evaded or attempting to evade payment of tax. However, it is necessary for him to record the reasons in writing for seizure of the accounts, register or documents. However, such accounts, registers or documents can be retained only as long as it is necessary in connection with any proceedings under the Act or the rules made thereunder for prosecution.

26. The question whether the proper officer has any power to seize cash or other asset is required to be addressed bearing in mind the aforesaid scheme of Section 67 of the Act.

27. The expression 'goods' is defined in Sub-section (52) of Section 2 of the Act as under:

> "(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;"

28. The expression 'goods' covers all movable property other than 'money' and 'securities'. The expression 'securities' as defined in Sub-section (101) of Section 2 of the Act has the same meaning as assigned to it in Clause (h) of Section 2 of

the Securities Contract (Regulation) Act, 1956.

29. Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 reads as under:

"2(h) "securities" — include

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;"

30. It is at once clear from the above that silver bars being movable assets are not securities within the meaning of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956. The contention that silver bars are 'securities', as advanced on behalf of the Revenue, is insubstantial. Although the definition of the term 'securities' is an inclusive definition, the same cannot be read in disregard of Sub-clauses (i) to (iii) of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 or the scope of that enactment. Plainly, as silver bars do not fall within the definition of 'securities' under Sub- section (101) of Section 2 of the Act read with Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956. Thus, silver bars are included in the term 'goods' as defined under Sub-section (52) of Section 2 of the Act.

31. Cash (Indian currency) is clearly excluded from the definition of the term 'goods' as the same falls squarely within the definition of the word 'money' as defined in Sub-section (75) of Section 2 of the Act

32. Having stated the above, we are of the view that it would not be apposite to construe the word 'things' under Sub-section (2) of Section 67 of the Act to be mutually exclusive to the term 'goods'. The term 'goods' as used in Sub-section (2) of Section 67, essentially, relates to goods, which are subject matter of supplies that are taxable under the Act. Admittedly, the goods that can be seized under Sub-section (2) of the Act are goods, which the proper officer believes are liable for confiscation. In this regard, it is relevant to refer to Section 130 of the Act, which provides for confiscation of goods and conveyances. Sub- section (1) of Section 130 of the Act specifies the goods and conveyances that may be liable for confiscation under the said Act and is set out below:

"**130. Confiscation of goods or conveyances and levy of penalty.—** (1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."

33. A plain reading of Clauses (i) to (iv) of Sub-Section (1) of Section 130 of the Act indicates that the goods, which are supplied or received in contravention of the provisions of the Act with the intent to evade payment of tax; goods which are unaccounted for and chargeable to tax; supply of goods chargeable to tax, by a taxpayer, without applying for registration; and cases where the taxpayer contravenes any provision of the Act with the intent to evade payment of tax, are liable for confiscation.

34. The word 'goods' as defined under Sub-section (52) of Section 2 of the Act is in wide terms, but the said term as used in Section 67 of the Act, is qualified with the condition of being liable for confiscation. Thus, only those goods, which are subject matter of or are suspected to be subject matter of evasion of tax. During the course of search under Sub-section (2) of Section 67 of the Act, the officer conducting the search may find various types of movable assets. Illustratively, in an office premises, one may find furniture, computer, communication instruments, air conditioners etc. Those assets although falling under the definition of 'goods' cannot be seized, if the proper officer has no reasons to believe that those goods are liable to be confiscated.

35. Sub-section (6) of Section 67 of the Act provides for provisional release of the goods so seized on payment of applicable tax, interest and penalty. This also indicates that the goods, which may be seized under Sub-section (2) of Section 67 are goods that are subject matter of evasion of tax or are supplies in respect of which the proper officer has reason to believe, taxes would not be paid.

36. Sub-section (7) of Section 67 of the Act mandates that the goods seized under Sub-Section (2) would be returned to the person from whose possession the goods were seized, if no notice in respect of those goods is issued within a period of six months. It is apparent that a notice in respect of such goods can be issued only where taxes, interest or penalty in respect of the said goods have not been paid or there are reasons to believe so.

37. If the goods are of the nature specified in Sub-section (8) of Section 67 of the Act, that is, are perishable or hazardous; or are depreciable with the passage of time; are subject to constraints of storage space and are so specified by the Government, the same may be disposed of, after their seizure.

38. The second category of items – that is, items other than goods, which the proper officer believes are liable for confiscation – which can be seized are 'documents or books or things'. Sub-section (2) of Section 67 of the Act makes it amply clear that such items – that is, documents or books or things – may be seized if the proper officer is of the opinion that it shall be useful or relevant to any proceedings under the Act. The words 'useful for or relevant to any proceedings under the Act' control the proper officer's power to seize such items.

39. Documents and books are also covered under the wide definition of 'goods' under Sub-section (52) of Section 2 of the Act but the same are not goods that are liable for confiscation. Seizure of such documents or books is not contemplated for the reason that they are subject matter of supplies in respect of which tax has been evaded; seizure of books and documents is contemplated only for the purpose that they may contain information, which may be useful or relevant for any proceeding under the Act. Hence, the purpose of providing for seizure of such items is to secure material information, which may be useful or relevant for the proceedings under the Act.

40. It is clear from the schematic reading of Section 67 as well as other provisions of the Act that the purpose of Section 67 of the Act is not recovery of tax; it is not a machinery provision for enforcing a liability. The purpose of Section 67 of the Act is to empower authorities to unearth tax evasion and ensure that taxable supplies are brought to tax. In respect of goods and supplies, which are subject matter of evasion, the proper officer has the power to seize the goods to ensure that taxes are paid. Once the department is secured in this regard – either by discharge of such liability or by such security or bond as the concerned authority deems fit – the goods are required to be released in terms of Sub-section (6) of Section 67 of the Act.

41. The second limb of Section 67(2) of the Act permits seizure of documents or books or things so as to aid in the proceedings that may be instituted under the Act. The documents or books or things cannot be confiscated and have to be returned. This is amply clear from the plain language of the second proviso to Sub-section (2) of Section 67 of the Act. In terms of the second proviso to Sub-section (2) of Section 67, the documents or books or things seized are required to be retained

only for so long as it may be necessary "*for their examination and for any inquiry or proceedings under the Act*". Once the said purpose is served, the books or documents or things seized under Sub- section (2) cannot be restrained and are required to be released.

42. The second proviso, although couched as a proviso, is an integral part of Sub-section (2) of Section 67 of the Act. The same clearly reflects that the legislative intent of empowering seizure of documents or books or things is for enabling their use in aid of the proceedings under the Act. Thus, seizure of such documents or books or things is conditional upon the proper officer's opinion. That the same are "*useful for or relevant to"* such proceedings.

43. Sub-section (3) of Section 67 of the Act, consistent with the legislative intent of permitting seizure of books or documents or things, provides that if the documents or books or things seized under Sub-Section (2) are not relied upon for issue of a notice under the Act or Rules made thereunder, the same shall be returned within a period of thirty days. Although, there is no ambiguity in the language of Sub-section (2) of Section 67 of the Act that seizure of books or documents or things is permissible only if the same are considered useful for or relevant to the proceedings under the Act; Sub-section (3) of Section 67 makes it amply clear that the purpose of seizure of books or documents or things is only for the purpose of reliance in the proceedings under the Act. It, thus, posits that if the documents or books or things are not relied upon in any notice that is issued, the same are liable to be returned.

44. It follows from the contextual interpretation of Sub-section (2) and Sub-section (3) of Section 67 that seizure of books or documents or things are only for the purpose of relying on such material in proceedings under the Act.

45. It is also relevant to refer to Sub-section (11) of Section 67 of the Act. The said Sub-section empowers the proper officer to seize, for reasons to be recorded in writing, the accounts, registers or documents, which are produced before him and to retain the same so long as it is necessary "*in connection with any proceedings under this Act or the rules made thereunder for prosecution*".

46. It is clear from the Scheme of Section 67 of the Act that the word 'things' is required to be read, *ejusdem generis,* with the preceding words 'documents' and 'books'. It is apparent that the legislative intent of using a wide term such as

'things' is to include all material that may be informative or contain information, which may be useful for or relevant to any proceedings under the Act. Although, documents and books are used to store information; they are not the only mode for storing information. There are several other devices that are used to store information or records such as pen-drives, personal computers, hard disks, mobiles, communication devices etc. The word 'things' would cover all such devices and material that may be useful or relevant for proceedings under the Act. The word 'things' must take colour from the preceding words, 'documents' and 'books'. It denotes items that contain information or records, which the proper officer has reason to believe is useful for or relevant to the proceedings under the Act. The context in which the word 'things' is used makes it amply clear that, notwithstanding, the wide definition of the term 'things', the same is required to be read *ejusdem generis* with the preceding words. It is apparent that the legislative intent in using a word of wide import is to include all possible articles that would provide relevant information, records, and material which may be useful for or relevant to proceedings under the Act.

47. We are unable to accept that the word 'things' must be read expansively to include any and every thing notwithstanding that the same may not yield and / or provide any material useful or relevant to any proceedings under the Act as contended on behalf of the Revenue. It is necessary to bear in mind that power of search and seizure is a drastic power; it is invasive of the rights of a taxpayer and his private space. Conferring of unguided or unbridled power of this nature would fall foul of the constitutional guarantees. It necessarily follows that such power must be read as circumscribed by the guidelines that qualify the exercise of such power, and the intended purpose for which it has been granted. As stated above, it is contextually clear that exercise of such power is restricted only in cases where in the opinion of the proper officer, seizure is useful for or relevant to any proceedings under the Act. The second proviso of Sub-section (2) and Sub-section (3) of Section 67 of the Act makes it amply clear that the purpose of seizure is for the purpose of relying on the same in proceedings under the Act.

48. It is relevant to refer the decision of the Bombay High Court in ***Emperor v. Hasan Mama: AIR 1940 Bom 378***. In the said case, the accused was convicted under Section 152 of the Bombay Municipal Boroughs Act, 1925. The allegation

against the accused was that he had allowed the hand driven lorries containing fruits to remain on a public street at Ahmedabad for more than half an hour. Section 152 of the Bombay Municipal Boroughs Act, 1925 reads as under:

> "(1) Whoever in any area after it has become a municipal district, or borough
>
> (a) shall have built or set up, or shall build or set up, any wall or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction, or
>
> (b) shall deposit or cause to be placed or deposited any box, bale, package or merchandise or any other thing,
>
> in any public place or street … shall be punished …"

49. The Division Bench of the Bombay High Court rejected the contention that the hand driven lorry containing fruits could be considered as 'thing' either under Clause (a) or Clause (b) of Sub- section (1) of Section 152 of the Bombay Municipal Boroughs Act, 1925. It is held that the word 'thing' in both the clauses is required to be construed *ejusdem generis*. The hand driven lorry thus could not be considered as a stall or any projecting structure or a box, bale, package or merchandise. The Court further held as under:

> "The question is whether the hand-cart, which the accused had kept in the street, fell within the prohibition contained in s. 152, sub-s. (*1*), of the Bombay Municipal Boroughs Act. It was conceded in the lower Court that the case did not fall within sub-s. (*1*)(*a*) of that section. But Mr. G.N. Thakor, who seldom concedes anything, did not concede that proposition. He says that the act of the accused amounted to setting up a stall. No doubt you may have a stall on wheels, but I am clearly of opinion that introducing into a street a lorry on wheels with goods for sale upon it does not amount to setting up a stall within s. 152(*1*)(*a*). In my opinion that sub-section deals with making some form of addition or annexe, more or less permanent, to a building in the street. It is directed against the man who has a shop or house in the street, and who encroaches upon the street by making some sort of addition to his house or shop.
>
> I think the real question is whether the case can be brought within s. 152,

> sub-s. (1)(b). In my opinion the words "or any other thing" must be read ejusdem generis as the words "box, bale, package or merchandise". Those words seem to cover merchandise, and things in which merchandise can be packed, and any other thing must be of the same kind or genus and does not include a vehicle. In my view a motor car or a motor lorry or a horse drawn or hand-propelled vehicle, though containing merchandise and left standing in a street, cannot be said to come within the section. The hand lorry of the accused clearly falls within the definition of vehicle contained in s. 3, sub-s. (21), of the Bombay Municipal Boroughs Act. The control of vehicles in streets is dealt with by the Bombay District Police Act. Whatever the powers of the police may be under that Act, I am of opinion that the learned Sessions Judge was right in the view he took that a vehicle does not fall within the mischief of s. 152."

50. The contextual interpretation of all Sub-sections of Section 67 of the Act clearly indicates that the same do not contemplate seizure of valuable assets, for securing the interest of Revenue.

51. In the case of ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.: (1987) 1 SCC 424,*** the Supreme Court held as under:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known. With this knowledge, the statute must be read first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses the court must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of

> the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

52. In ***Balram Kumawat v. Union of India & Ors.: AIR 2003 SC 3268***, the Supreme Court observed that:

> "20. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole, statute relating to the subject-matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature."

53. In the case of ***State of West Bengal v. Union of India: AIR 1963 SC 1241***, the Supreme Court held as under:

> "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

54. Section 67 of the Act is not a machinery provision for recovery of tax; it is for ensuring compliance and to aid proceedings against evasion of tax. Section 79 of the Act provides for the machinery for recovery of tax. Section 83 of the Act provides for provisional attachment of any property belonging to a taxable person to safeguard the interests of the Revenue. Section 67 of the Act must be read schematically along with other provisions of the Act.

55. The Revenue has averred in its counter affidavit that cash and silver bars in question were seized because "the petitioner could not produce any lawful evidence of its purchase / possession and they appeared to be sale proceeds from the goodless / fake invoices being transacted by the petitioner". The search and seizure operations under Section 67 of the Act are not for the purpose of seizing unaccounted income or assets or ensuring that the same are taxed. The said field is covered by the Income Tax Act, 1961. Thus, even if it is assumed that the petitioner could not produce any evidence of purchase of the silver bars or account for the cash found in his possession, the same were not liable to be seized under Sub-section (2) of Section 67 of the Act. The power of the proper officer to seize books or documents

or things does not extend to seizing valuable assets for the reasons that they are unaccounted for or may be liable to confiscation under any other statute. Concededly, there is no material to indicate that the particular silver bars or cash were received by the petitioner in specie against any particular fake invoice.

56. There may be cases where the Revenue finds that a particular currency note or any particular asset has evidentiary value to establish the Revenue's case. Illustratively, a delinquent dealer supplies goods without invoices only on presentation of a currency note that bears a particular number. The presentation of the currency note is used as a means of authenticating the identity of the purchaser. The number of the particular currency note is recorded in diary maintained by the purchaser. The Revenue Officer ascertains this *modus operandi* of evasion of taxes. The currency note, corelated with the diary, would be relevant in establishing evasion of tax in respect of certain goods. Undoubtedly, in such cases, the currency note is material that yields information as to the *modus* adopted for evading tax; the proper officer may seize the currency note for its evidentiary value and relevance in establishing evasion of tax in proceedings under the Act. The same may be relied upon in the proceedings that may ensue. The particular currency note in such a case would yield certain information when read in conjunction with the diary. It is material to note that such currency note can be retained for so long as may be necessary for its "*examination and for any enquiry or proceedings under the Act*". Cash or other assets, which are not required in species in aid of any proceedings, but represent unaccounted wealth, cannot be seized under Section 67 of the Act. This Court had pointedly asked Mr. Harpreet Singh whether there was any material showing information that the currency or the silver bars that were seized could be traced in species to any transaction which the Revenue required to establish in any proceedings. However, the answer to the same was in the negative. It is, thus, clear that the silver bars and the cash were seized only on the ground that it was 'unaccounted wealth' and not as any material which was to be relied upon in any proceedings under the Act.

57. Mr. Harpreet Singh has placed reliance on the decision of the Madhya Pradesh High Court in ***Kanishka Matta v. Union of India & Ors.*** (*supra*). In that case, the Division Bench at Indore had rejected the prayer for release of ₹ 66,43,130/- that were seized from the premises of the petitioner. The Court held that the word

'things' as appearing in Sub-section (2) of Section 67 of the Act is required to be given wide meaning as per Black's Law Dictionary. The Court also referred to Wharton's Law and had noted that the word 'thing' is defined to include 'money'. In addition, the Court had also referred to a decision of the Supreme Court referring to the Heydon's Rule, and concluded that money was included in the word 'things'. With much respect to the Hon'ble Court and its opinion, we are unable to persuade ourselves to adopt the said view. As noted above, the power of search and seizure are drastic powers and are not required to be construed liberally. Further, we find that the legislative intent of permitting seizure of books or documents or things in terms of Sub- section (2) of Section 67 of the Act is crystal clear and it does not permit seizure of currency or valuable assets, simply, on the ground that the same represent unaccounted wealth. The mischief rule or the Heydon's rule (propounded in the year 1584 in Heydon's case: 76 ER 637) requires a statute to be interpreted in the light of its purpose. The purpose of the Act is not to proceed against unaccounted wealth. The provision of Section 67 of the Act is also not to seize assets for recovering tax. Thus, applying the principle of purposive interpretation, the power under Section 67 of the Act cannot be read to extend to enable seizure of assets on the ground that the same are not accounted for.

58. It is also material to note that the show cause notice dated 10.11.2020 does not refer to any documents or material relied upon by the Revenue for proposing any such demand. According to Mr. Harpreet Singh, the said notice is not relevant as it is issued by State Authorities. He states that Central Tax Authorities have not issued any notice.

59. The aforesaid contention is unpersuasive as the demand under the said notice issued under Section 74 of the Act includes a demand of ₹ 6,05,225/- on account of Central Goods and Service Tax.

60. In terms of Sub-section (3) of Section 67 of the Act, the documents, books and things seized under Sub-section (2) which have not been relied upon for issuance of a notice, under the Act or Rules made thereunder, are required to be returned to the person from whom the such items were seized within a period not exceeding thirty days from the issuance of notice.

61. The notice dated 10.11.2020 proposes to raise a demand for the month of

April, 2019 (which is prior to the date of the search). Although, Mr. Singh contended that the said notice is not a notice issued by the Central Authorities but he does not dispute that the said notice does not rely on any of the items seized during the search operations conducted on 28.01.2020. Moreover, in the counter affidavit, it is alleged that "the petitioner had filed ineligible / bogus GST Input Tax Credit on the strength of fake / goodless invoices issued by various bogus / non-existent firms". Thus, it follows that the demand of CGST/SGST raised in the notice dated 10.11.2020 issued under Section 74 of the Act would take into account the said allegation. The notice under Section 74 of the Act does not specify any particular reasons to show that "Input Tax Credit has been wrongly availed or utilized". In the circumstances, we are unable to accept that the notice dated 10.11.2020 is not the "notice" as referred to under Sub-section (3) of Section 67 of the Act.

62. Thus, even if, it is accepted, which we do not, that the proper officer could seize the currency and other valuable assets in exercise of powers under Sub-section (2) of Section 67 of the Act, the same were required to be returned by virtue of Sub-section (3) of Section 67 of the Act because the silver bars and currency have not been relied upon in the notice issued subsequently.

63. In view of the above, the petition is allowed. The respondents are directed to forthwith release the currency and other valuable assets seized from the petitioner during the search proceedings conducted on 28.01.2020. It is, however, clarified that the respondents are not precluded from instituting or continuing any other proceedings under the Act in accordance with law. Nothing stated in this order shall be construed as an expression of opinion on the petitioner's liability to pay any tax, penalty or interest under the Act.

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HIGH COURT OF ALLAHABAD

Neutral Citation No. - 2023:AHC:163876

Reserved

Case :- WRIT TAX No. - 599 of 2023

M/S Rateria Laminators Pvt. Ltd. .....Petitioner

Additional Commissioner Grade 2 and Another .....Respondent

Counsel for Petitioner : Suyash Agarwal,Nitin Kumar Kesarwani

Counsel for Respondent : C.S.C.

Seizure memo in GST MOV-06 not sustained as authority failed to record finding on submission by petitioner

Hon'ble Piyush Agrawal J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner and Sri Rishi Kumar, learned Additional Chief Standing Counsel.

Present writ petition has been filed with the following prayers:

"A. Issue a writ order or direction in the nature of scertiorari quashing order dated 18.4.2023 passed by Additional Commissioner Grade-2 (Appeal)-II, Commercial Tax/State Tax, Kanpur, respondent no.2 u/s 107 of the UPGST Act 2017 (Annexure No. 14).

B. Issue a writ order or direction in the nature of scertiorari quashing order dated 27.3.2023 passed by Assistant Commissioner , Mobile Squad, Bhognipur, Ramabai Nagar, Kanpur Dehat, U.P. Respondent no.2 u/s 129(3) of the UPGST Act 2017 (Annexure No.11).

C. Issue a writ order or direction in the nature of mandamus directing, respondent no.2,Assistant Commissioner , Mobile Squad, Bhognipur, Ramabai Nagar, Kanpur Dehat U.P. To release goods and vehicle seized vide seizure memo dated 23.3.2023 passed in GST MOV-06 forth with.

D. Issue a writ order or direction in the nature of prohibition restraining the respondent no.2 from emplying coercive measures to

recovery penalty pursuant to order dated 27.3.2023 passed From GST MOV-09."

2. Since the GST Tribunal has not yet been formed the present writ petition is being entertained against the aforementioned impugned orders.

3. Brief facts of the case are that petitioner is a Company registered under the Companies Act, 1956 having its business at 1,132, Cotton Street, Burrabazar, Kolkatta West Bengal. The petitioner in its normal course of business made inward supply of B55HM0003NA G-LEX HDPE-2 HSN 3901.20.00 15 from GAIL, Auraiya U.P. The petitioner also made inward supply of similar item from GAIL Auraiya U.P. for which two invoices dated 6.3.2023 were prepared, copies of which have been annexed as Annexure 2 to the writ petition. For movement of goods from Auraiya Uttar Pradesh to Jalpaiguri, West Bengal two Eway Bills were generated having validity upto 12.3.2023, copies of which are annexed as Annexure 3 to the writ petition. A GR was also prepared on the same day i.e. 6.3.2023 in which invoice numbers and Eway bills have specifically been mentioned. It is stated that after completing the formalities goods were in transit from Auraiya U.P. to Jalpaiguri, W.B. and on way the Driver of the Vehicle No. UP-77-AN-6825 fell ill and there was also some break down of the vehicle, therefore onwards journey could not be continued to reach the destignation before 12.3.2023.

4. The Vehicle was inercepted by respondent no.2 on 13.3.2023 and Form GST MOV04 was prepared on 14.3.2023. Thereafter Form GST MOV01 was prepared on 23.3.2023 and consequently an order was passed on the same day that the goods in question are being carried without proper ducuments as Eway bills have expired. Thereafter on the same day From GST MOV 06 was prepared and subsequently respondent no.2 issued notice in From GST MOV 07 under section 129(3) of the UPGST Act (hereinafter referred to as the Act) proposing to impose penalty of Rs. 11,18,624/- under section 129(1)(a) of the Act and Rs. 36,66,606/- under section 129(1)(b) of the Act which has been annexed as Annexure 9 to the writ petition. An order under section 129 (3) of the Act was passed directing the petitioner to deposit Rs. 11,18,624/- for release of goods.

5. Being aggrieved with the said order the petioner preferred appeal before under section 20 of the Act before respondent no.1 which has been rejected vide order dated 18.4.2023. Hence the present writ petition.

6. Learned counsel for the petitioner submits that the petitioner is a registered

dealer having GSTIN No. 19AABCR2147R1ZU and in its normal course of business made purchases from the said registered dealer (GAIL) which is Central Government undertaking for which two invoices were raised on 6.3.2023. Consequently for sending goods to its onward journey to West Bengal two Eway bills were generated on the same day but the goods could not reach its destination before expiry of the Eway bills which was valid upto 12.3.2023. The goods were intercepted by the respondent no.2 on 13.3.2023 and detained on the ground that Eway bills have expired. He further submits that on physical verification as well as from the perusal of the documents there was neither any discripency in the items so transited nor in the quality and quantity of the goods. He further submits that there was no intention of the petitioner to avoid payment of tax. He further submits that the goods have been detained on the technical fault as the Eway bills have expired.

7. He further submits that pursuant to the notice as to under what circumstances the vehicle could not reach its destination before expiry of Eway bills which was valid upto 12.3.2023, the petitionere submitted its reply explaining the reason that due to medical exigency the driver fell ill and due to some breack down in the vehicle the goods could not reach its destination before 12.3.2023. He further submits that since the driver of the vehicle was not aware of GST law, he could not apply for extension of the Eway bills before its expiry.

8. He further submits that while passing the impugned order under section 129(3) of the Act only one line has been mentioned that the explanation submitted by the petitioner is not acceptable.

9. He further submits that against the said order an appeal was preferred before respondent no.1 which has been rejected without considering the material on record. He further submits that transit of goods could not reach its destination which was beyound the control of the petitioner as driver fell ill and break down in the vehicle. In support of his submission he has relied upon a Division Bench judgment of this Court in **Gobind Tobacco Manufacturing Co. vs. State of U.P.** (2022 (61) GSTL 385 (All.) He has also relied upon a judgment of the Supreme Court in **Assistant Commissioner (ST) vs. Satyam Shivam Papers Pvt. Ltd.** (2022 (57) GSTL 97 (SC) in which while rejecting the claim of the revenue cost has also been enhanced by the Apex Court. He further submits that proceedings under section 129(1) of the Act could be initiated if the parties come forward and

deposit the penalty of tax but once the party is not ready to deposit the tax under section 129(3) of the Act the respondents are duty bound to initiate proceedings by taking recourse to Sections 73,74 and 75 read with Section 122 of the Act. In support of his submission he has relied upon the judgment of this Court in **Bharti Airtel Ltd. vs. State of U.P.** (2022) 1 Centax 79 (All.). He further submits that the impugned order passed under section 129(3) of the Act could not be sustained for determining the tax and penalty in pursuance of the proceedings under section 129(3) of the Act. He further submits that in view of the submissions mentioned above the impugned orders deserve to be set aside and the detained goods deserve to be released without penalty.

10. Per contra, Sri Rishi Kumar, learned ACSC supports the impugned orders passed by the respondents authorities and submits that goods were in transit after expiry of the Eway bills which was a clear contravention of the provisions of the Act. He further submits that the goods were transited after expiry of the Eway bills which shows that there was intention to evade payment of tax. He further submits that the explanation submitted by the petitioner is without any basis and the materials in support thereof that the driver fell illl and there was break down in the truck carrying the goods were exceptional in nature. He further submits that neither any material was brought on record to show that the driver was ill and was under medical care nor any material was brought on record about the break down of the truck and the same got repared before the authorities below, therefore, the authorities were justified in passing the imugned orders. He prays for dismissal of the writ petition.

11. After hearing the learned counsel for the parties and perusing the records, it is admitted that goods of the petitioner transited from the State of Uttar Pradesh to the State of West Bengal and the goods were accompanied by requisite documents such as invoices, Eway bills, GR etc. as mentioned above. The Eway bills were valid upto 12.3.2023 whereas the goods have been intercepted on 14.3.2023. Thereafter proceedings were initiated only the ground that the goods were transited after expiry of the Eway bills. No other discripancy has been found either in quality, quntity or goods as disclosed in the invoices, Eway bills or GR. While rejecting the claim of the dealer the assessing authority has observed as under:

> उक्त जवाब का अवलोकन किया जवाब स्वीकार योग्य नहीं पाया गया क्योकि जाँच के समय प्रपत्तों की जाँच करने पर विक्रेता फर्म सर्वश्री GAIL (INDIA) LIMITED- GSTIN No-

19AAACG1209J3ZS द्वारा जारी ई–वेबिल संख्या 471319336625 एवं ई–वेबिल संख्या 471319336095 दिनांक 06–03–2023 की जॉच विभागीय पोर्टल पर करने पर उक्त दोनो ई–वेबिल EXPIRED पाया गया अतः उक्त के सम्बन्ध अर्थदण्ड की पुष्टि करते हुए उक्त अर्थदण्ड जमा करने का आदेश पारित किया जाता है।

12. From a perusal of the aforesaid order the reply submitted by the petitioner has been rejected by only saying that the reply is not found to be acceptable. No other reason has been assigned for rejecting the claim of the petitioner.

13. Further in appeal the appellate authority while rejecting the appeal has observed as under:

प्रश्नगत संव्यवहार हेतु जाँच के समय प्रस्तुत ई–वेबिल की वैधता अवधि 14 घंटे 26 मिनट पहले समाप्त हो गयी थीं। वाहन चालक की बीमारी या वाहन खराब होने का कारण का Exeptional nature नहीं है।

14. On perusal of the aforesaid order it has been observed that the claim of the petitioner was not found on justifiable ground.

15. On the pointed querry to the learned ACSC as to whether any finding has been recorded by any of the authorities with regard to evasion of payment of tax in any of the orders he failed to point out from the impugned orders. He only submits that the intention of the petitoner was not clear as he transited the goods after expiry of the Eway bills.

16. Learned counsel for the petitioner submits that since the Driver fell ill and there was break down of the vehicle it was beyond the control of the petitioner and goods could not be transported within the time mentioned in the Eway bills but has not brought any material or evidence before the respondent authorities or before this Court, therefore, the judgments of the Supreme Court in **Satyam Shivam Papers Pvt.Ltd**.(supra) and of this Court in **Govind Tabacco Manufacturing Co.** (supra) placed by the learned counsel for the petitioner are of no avail.

17. In **Satyam Shivam Papers Pvt.Ltd.** (supra) the Apex Court in paragraph no.3 has recorded the finding of the High Court that there was traffic blockage at Basher Bagh due to the anti CAA and NRC agitation which prevented the movement of vehicle, due to which, the goods could not be delivered within the time. Considering those facts, the Apex Court not only dismissed the appeal of the Revenue but also enhanced the costs. Such facts are not in the present case. The stand taken by the petitioner is only that the driver of the vehicle fell ill and there

was break down of the vehicle, without there being any supporting materials at any stage.

18. Similarly the Division Bench of this Court in **Govind Tabacco Manufacturing Co.** (supra) has quashed the proceedings on the facts of that case as at the time of movement of the goods Covid-19 was at peak and there was restrictions in the movement, therefore, the Division Bench of this Court had quashed the detention and directed for release of the goods and also imposed costs. The facts of the present case is entirely different as stated above. Therefore the arguments of the petitioner before this court that if the dealer does not come forward for depositing the penalty amount as determined under section 129(3) of the Act the proceedings ought to have been initiated under sections 73, 74 and 75 of the Act read with section 122 of the Act cannot be permitted to be raised at this stage as neither in the reply to the show cause notice nor before the appellate authority any submission was made. In view of the above, the judgment replied upon in the case of **Bharti Airtel Ltd.** (supra) has no aid to the petitioner.

19. Further since the petitioner has submitted its reply taking the stand that there was break down of the vehicle and the driver fell ill but no reason has been assigned by any of the authorities in the impugned orders for disbelieving the same.

20. In view of the facts and circumstances of the case and since the authorities below have not recorded any findings with regard to the submissions made by the petitioner the impugned orders dated 27.3.2023 and 18.4.2023 as well as seizure memo dated 23.7.2023 could not be sustained in the eye of law and are hereby quashed.

21. The writ petition succeeds and is allowed.

22. The matter is remitted back to the respondent no.2. The parties are at liberty to adduce evidence in support of their claim within a periof of 15 days from the date of production of a certified copy of this order before the respondent no.2. The respondent is further directed to decide the case by passing a reasoned and speakidng order after hearing all stake holders and considering the materials on record within a period of 30 days thereafter.

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COMMERCIAL NEWS

CA. Deepak Khandelwal

Fostering scientific temper and Lunar success: A case for rationalizing GST on education & training services

In the global quest for excellence, India's strides in scientific and technological advancements have drawn international attention. As the nation strives to ascend to new heights, fostering scientific temper and knowledge acumen becomes paramount. A significant leap towards this goal lies in the rationalization of the Goods and Services Tax (GST) rate on education and training services, with a special focus on scientific and technological education. The current rate of 18% should be revisited and reduced to 5%, facilitating broader knowledge dissemination and innovation across the country. Education, the cornerstone of progress, plays an indispensable role in shaping nations. Cultivating a scientific mindset among citizens is pivotal for national development. By lowering the GST rate from 18% to 5% for education and training services that impart scientific knowledge, India can encourage individuals to invest in their intellectual growth without the burden of excessive taxation. This move would not only make education more accessible but would also reaffirm the country's commitment to nurturing a scientifically inclined populace. The prevailing GST slabs reveal an inconsistency: while certain sectors enjoy lower tax rates, education has yet to receive such preferential treatment. Essential items like food grains, books, and specific healthcare services are taxed at lower rates than educational services. This discrepancy raises questions about national priorities, prompting speculation about the extent to which education and scientific temper are genuinely promoted. Reducing the GST rate on education and training services would not only address this anomaly but would also underscore the government's dedication to fostering a knowledge-driven society. Critics may raise concerns about potential revenue deficits resulting from a reduced GST rate. However, history demonstrates that investments in education and research yield substantial returns for the economy. The contributions of educated individuals to society—through innovative research, technological advancements, and heightened productivity—far outweigh any immediate loss in tax revenue. Moreover, a skilled workforce can attract foreign investments and stimulate long-term economic growth.

Global trends indicate that countries are increasingly incentivizing education to drive innovation and progress. Many nations recognize that easing the financial burden on students and research institutions can propel scientific capabilities forward. Some countries even apply a zero GST rate to education services to underscore their commitment to knowledge dissemination and societal advancement. Drawing inspiration from these examples, India could not only lower the GST rate but also explore the possibility of a zero GST rate for education services focused on scientific and technical learning. A notable aspect of the modern education landscape is the prominence of online education programs. The digital era has revolutionized how knowledge is disseminated and acquired. Online platforms have democratized education, making it accessible to individuals regardless of geographical constraints. Lowering the GST rate for online education services would further amplify this democratization, allowing more learners to access scientific and technical education from the comfort of their homes. In this context, initiatives like the IMPRI (Impact and Policy Research Institute) programs stand out. IMPRI's online education efforts are geared toward promoting research and evidence-based policy discussions in India. These programs bridge the gap between academia and policy making, creating a dynamic environment where knowledge is translated into actionable policies. Lowering the GST rate for such online education initiatives, especially those focused on scientific and technological research, would bolster the nation's research capacity and drive informed decision-making. The recent success of the Chandrayaan 3 moon mission landing serves as a testament to India's scientific prowess. This achievement underscores the importance of nurturing scientific temper from the ground up. By reducing the GST rate on education and training services, India can create an ecosystem that fosters such remarkable accomplishments on a consistent basis. The Chandrayaan 3 triumph demonstrates what a scientifically empowered society can achieve and reinforces the need for accessible education and training programs that fuel such endeavors. Recently certain edtechstartups have started to argue in favor of reducing GST as they advocate the democratization of education. As per the New Education Policy, 2020 which suggests multimodal learning, there needs to be a reduction in the GST slabs. If we want holistic, multimodal education, then we have to look at all components and remove the tax burden so that we can truly

make education affordable. According to an edtech CEO, "Looking at the increasing cost of education in the country, long-term tax exemption, lowering GST on educational services and continued funding support will help edtech firms in exploring and investing in phygital learning formats and allow them time to rebound and attain profitability." Edtech players also expect support for creating the infrastructure needed to implement the NEP and funds to flow into areas such as digital learning, teacher training, and the development of research infrastructure. Apart from edtechs various think tanks and policy institutes are also striving to take education onto the next level by giving free access to excellent minds and providing them with a platform to grow and learn. IMPRI is doing a great job in this regard. It is working efficiently in the digital space and it has made learning easier, accessible and affordable. Lowering the GST rates would encourage organizations such as IMPRI to take education on a whole new level. In the UK most universities do not pay VAT or any Corporation tax. Same is the case with the USA. Even the edtech firms and other organizations in the USA are tax exempted. In the USA, a system of American Opportunity Tax Credit (AOTC) is followed, there are certain students who receive aid for their higher education. No such system is followed in India. In conclusion, recalibrating the GST rate on education and training services from 18% to 5% represents a monumental stride toward reshaping India's scientific and technological landscape. By fostering accessible and affordable education, the nation can nurture a generation of informed and innovative thinkers capable of propelling global advancements. This reform would elevate India's standing in the scientific community and align its tax policies with its educational aspirations. As the world attests to the transformative power of education, India has a unique opportunity to demonstrate its dedication to fostering scientific temper and knowledge acumen through comprehensive reform that places education at the core of its progress. Special emphasis on online education, including initiatives like IMPRI programs, would further solidify India's commitment to shaping a brighter future through knowledge and innovation. The triumph of Chandrayaan 3 reminds us of the possibilities that arise when scientific temper is nurtured, driving us to craft an education landscape that amplifies such successes.

Times Of India

No GST registration required for small dealers to supply goods through ECOs: Notification

SECTION 23, READ WITH SECTION 22 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PERSONS NOT LIABLE FOR REGISTRATION - PERSON SUPPLYING GOODS THROUGH AN ELECTRONIC COMMERCE OPERATOR, WITH AN AGGREGATE TURNOVER BELOW THE THRESHOLD LIMIT SPECIFIED UNDER SECTION 22(1), IS EXEMPTED FROM REGISTRATION

NOTIFICATION NO. 34/2023- CENTRAL TAX [G.S.R. 577(E)/F. NO. CBIC-20006/20/2023-GST], DATED 31-7-2023

In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby specifies the persons making supplies of goods through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with the provisions of sub-section (1) of section 22 of the said Act, as the category of persons exempted from obtaining registration under the said Act, subject to the following conditions, namely: —

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

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

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

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

to validation on the common portal;

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

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

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

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

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

ALOK KUMAR, Director

GST reward scheme: Mera Bill MeraAdhikar scheme to allow customers to upload invoice, participate in lucky draw

Individuals may soon get rewarded for uploading GST invoice on a mobile app as the government is likely to launch the long awaited 'Mera Bill MeraAdhikar' scheme soon. Under the invoice incentivisation scheme, cash prize of Rs 10 lakh to Rs 1 crore monthly/quarterly could be given to individuals who upload invoice received from retailer or wholesaler on the app, two officials told PTI. The 'Mera Bill MeraAdhikar' mobile app will be available on both IOS and android platforms. The invoice uploaded on the app should have the GSTIN of the seller, invoice number, amount paid and tax amount. An individual would be able to upload a maximum of 25 genuine invoices in a month on the app and the invoice should have a minimum purchase value of Rs 200, an official said. Over 500 computerised lucky draws would be conducted every months where prize money could run into

lakhs of rupees. Two lucky draws will be done in a quarter where the prize amount could be Rs 1 crore, officials said. The scheme is in the process of being finalised, they said, adding it could be launched as early as this month. To curb the menace of GST evasion, the government has already made electronic invoice mandatory for B2B transactions where the annual turnover exceeds Rs 5 crore. The 'Mera Bill MeraAdhikar' scheme would ensure electronic invoice generation even in case of B2C customers so as to enable the buyer to be eligible to participate in the lucky draw. The scheme is conceptualised in a way so as to incentivise citizens and consumers to ask for genuine invoices from the seller when making business to consumer (B2C) purchase of goods or services, which are under the purview of Goods and Services Tax. The scheme is conceived so as to encourage tax compliant behaviour, in the B2C stage of the transactions, by the consumers and business across India. GST Network (GSTN) has developed the technology platform which will enable citizens to register themselves and upload invoices on a user-friendly mobile application and portal. This scheme is expected to serve multiple objectives of incentivising and rewarding compliant behaviour by the consumers, encouraging tax compliant businesses, boosting consumer spending, and, checking tax evasion.

Small GST taxpayers need to keep tabs on demand notices

MUMBAI: The Supreme Court recently upheld the action of the Patna high court in dismissing a writ petition filed by a taxpayer against a GST assessment order. The order in the case of Vishwanath Traders has wide ramifications for SMEs, MSMEs, 'small business persons' and professionals, as many of them - owing to a time lapse in filing an appeal - approach the high courts directly for remedy against a demand notice. Sunil Gabhawalla, founding partner of a CA firm, said that a response (appeal) to a demand notice must be made within three months. In case of a delay, the jurisdictional appellate commissioner can be approached for seeking a one-month extension. In case more than four months have passed, the only recourse available is to file a writ with high courts. As the assessment orders, which could contain significant demands, are served online through the GST portal, many small taxpayers do not keep track. Very often, the four-month period passes

before they are aware of the demand raised. Manish Gadia, partner at GMJ & Co, a firm of chartered accountants, said, "The process of serving notices online through the common portal first began in financial year 2020-21. Unfortunately, small taxpayers do not have the bandwidth to check the portal on a day-to-day basis. In the case of many such taxpayers, notices and demands have piled up. To make matters worse, since the past few months, bank accounts are being attached for non-payment. Typically, at this stage, the small taxpayer becomes aware of the notice." According to tax experts, emails and text messages informing the taxpayer of a demand notice (that is uploaded on the portal) are not always sent. Further, the contacts provided by an SME/MSME are typically those of an employee - and high attrition means such messages do not serve their purpose. With the apex court agreeing with the action of a high court in not entertaining a writ petition, this path becomes challenging. "Though a correct legal interpretation, the Supreme Court's order literally closes all doors available to such taxpayers," stated Gabhawalla. "If the avenue of filing a writ petition is shut, the entire sum will have to be paid. More often than not, the tax demand is high-pitched and substantial penalties are imposed... plus there is an element of mandatory interest," added Gabhawalla. Both tax experts hold the view that it is important for SMEs to be more vigilant in checking up on demand notices. The government may also consider amending the act to permit delayed appeals in genuine cases of SMEs and small taxpayers.

Times Of India

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ALL INDIA FEDERATION OF TAX PRACTITIONERS

(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)
(Registered with Registrar of Society, Charity Commissioner & Income Tax Authorities)
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Photo

To
The Secretary General, AIFTP

Dear Sir,

I hereby apply to enrol me as **Life Member** of **"ALL INDIA FEDERATION OF TAX PRACTITIONERS."**

I declare that I am practising as a Sr. Advocate/Advocate/Chartered Accountant/Tax Practitioner since _____.

I enclose herewith Cash/Cheque/Draft/have remitted online vide transaction No. _____ dated_____ for

(i) ₹ 4,248/- [₹ 3,500 for Life Membership, ₹ 100/- for ID Card and ₹ 648/- for GST @ 18%]
(ii) ₹ 5,248/- [₹ 3,500 for Life Membership, ₹ 100/- for ID Card, ₹ 648/- for GST @ 18% and ₹ 1,000/- for one year subscription of AIFTP Journal (April to March)]/ ₹ 5,748/- [for one year subscription of AIFTP Indirect Tax Journal (January to December)]
(iii) ₹ 6,848/- [₹ 3,500 for Life Membership, ₹ 100/- for ID Card, ₹ 648/- for GST @ 18% and ₹ 2,600/- for Three years subscription (April to March)]/ ₹ 8,248/- [for Three years subscription for AIFTP Indirect Tax Journal (January to December)]

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(b) Name
(c) Father's/Husband's Name

2. Personal Data

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(b) Qualifications
(c) Enrolment/Membership Number of* Bar Council _____ ICAI/ICWA/ICSI _____ ITP/STP/VATP _____ Other (specify) _____
(d) Specialisation Audit/VAT/GST/Service Tax/Direct Tax/Excise/Custom/International Taxation/ FEMA/Any other (specify) _____
(e) Blood Group _____ (f) GSTIN, if any _____

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E-Mail ID
Website

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5. Communication to be sent at Office ☐ Residence ☐

6. Member of other Professional Associations

Name of the Association — Membership No.
a)
b)
c)

7. Proposed by member of AIFTP: Name _____
Address _____

*** Please enclose self attested copy of enrolment/registration being proof of qualification.**

I hereby declare that the above information is true and correct. I undertake to abide by the Constitution, Code of Ethics and Rules and Regulations of the Federation and its amendments from time to time.
Note: Cheque/DD to be drawn in the name of ***"All India Federation of Tax Practitioners". .***

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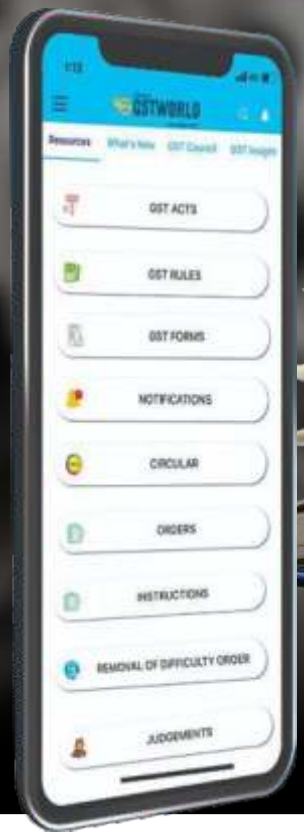

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