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Membership of All India Federation of Tax Practitioners as on 30 October, 2023					
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Zone Name	**Associate**	**Individual**	**Association**	**Corporate**	**Total**
Central	0	1483	25	0	1508
Eastern	6	2190	37	0	2233
Northern	0	1561	21	2	1584
Southern	1	2399	24	4	2428
Western	5	2656	38	3	3002
Total	**12**	**10289**	**145**	**9**	**10755**

FORTH COMING PROGRAMMES		
Date & Month	**Programme**	**Place**
1st to 30th Nov., 2023	Foundation Month Celebration	All Zones
3rd November, 2023	Ordinary General Meeting & Election (Eastern Zone)	Cuttuck
4th & 5th Nov., 2023	Foundation Day Celebration & Conference (Northern Zone)	Varanasi
4th November, 2023	National Executive Committee Meeting	Varanasi
6th November, 2023	Ordinary General Meeting & Election (Northern Zone)	Varanasi
25th November, 2023	Ordinary General Meeting & Election (Western Zone)	Mumbai
2nd and 3rd Dec., 2023	Two Day Tax Conference (Southern Zone)	Kochi

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President's Message

Friends,

The programmes being organized by all the Zones are wonderful and are helping in spreading the awareness about AIFTP and is also attracting Professional to become Members of AIFTP. It's really an achievement for all of us that the educational and other activities are being organized regularly and all Zones are working to organized programmes continuously.

After the wonderful Conference at Vrindavan, we had another fantastic One Day Tax Conference at Kolkata. It was organized at The Grand Oberoi, Kolkata. Dr. Ashok Saraf, Past President, AIFTP was the Chief Guest. It was attended by over 200 participants from all over India and was a tech marvel. Congratulation to Mr. Vivek Agarwal, NVP, Eastern Zone and Mr. Basudeb Chatterjee, Chairman, AIFTP, Eastern Zone for it. Special appreciation for Mr. GiridharDhelia, Conference Chairman for the wonderful arrangements and hospitality.

On 1st October, 2023, we have published our Nine Monthly Report i.e. from 1st January to 30th September, 2023 and the same is available on our website.

The second half of September was a busy month for professionals and all were busy in filing Income Tax Audit reports / returns. Accordingly, no programme was kept during this period. The next programme was a dream programme of AIFTP i.e. a Sport Extravaganza.

For the first time we conceptualized "AIFTP Premier League" which included sports like Cricket, Badminton, Carom, Chess & Table Tennis. The responsibility to organized AIFTP Premier League (APL) was taken by Mr. Sandeep Goyal from Chandigarh. He made herculean efforts in making the AIFTP Premier League a grand success and almost devoted one month in planning and organizing the event. Initially, we were wondering how the event would be organized. However, after many discussions the final shape was freeze and it was decided that Cricket would be organized and it would be having 8 Teams. All the Zones would be having their team and President XI would be separate team and there will be two city team of Chandigarh and Ludhiana. It was also decided that team uniform will be finalized and all Zones Chairman readily agreed to contribute Rs. 21,000.00 each for the Team uniforms. Other sport event like Carom, Chess, Table Tennis and Badminton was also finalized as individual sports. Cash prizes was announced. It was really wonderful to see that all Zone and other teams participated with vigour and there was healthy competition.

The APL for the first time in AIFTP History was organized in New Stadium, Mullanpur by Punjab Cricket Association which is a world level cricket stadium. It was inaugurated by Hon'ble Mr. Justice Rajesh Bindal, Judge, Supreme Court of India. The matches started early on 7th October, 2023 from 7.00 AM. Initial draw of lots was done in the dinner hosted on 6th October, 2023 with the unveiling of the team uniforms and trophies.

In the AIFTP Premier League Central Zone won the first APL and Southern Zone was the runners up. The Mayor of Chandigarh – Sh. Anup Gupta distributed the prizes. Special congratulations to Mr. Sandeep Goyal for the wonderful hosting of APL and also sponsoring for this year the Cricket Trophy in his father's name. Congratulation also to Mr. Nitish Bansal & Mr. Rohin Arora for co-ordinating all the events and man behind the success of APL. Special efforts by Shri O. P. Shukla, Chairman, Northern Zone and Dr. Naveen Ratan, NVP- NZ are also to be appreciated.

The individual tournaments were won by the following:-

Sports	Winner	Runner-up
Carom	Manoj Bajaj	Chander Mohan
Badminton – Men's Single	Amrit	Abhishek Singh
Badminton – Men's Doubles	CA Paras Gupta & Abhishek	Anmol & Amrit
Badminton – Women's Single	Nalini Malik	Jaspreet Kaur
Badminton - Women's Doubles	Nalini Malik & Klee Fredrick	Jaspreet Kaur & Aakriti Gupta
Badminton – Mix Doubles	CA Paras Gupta & Nalini Malik	Ishaan Loomba & Aakriti Gupta
Table Tennis – Men's Single	Puneet Rai	Sanjay Kumar
Table Tennis – Men's Doubles	Adarsh Vir Singh & Ishan Malhotra	Puneet Rai & Kapil Sharma
Chess	Harpreet Singh	MohitBasral

The next event of the month of October was organized at Khajuraho by the AIFTP (Central Zone) and (Northern Zone) along with MPLTBA. It was organized at

Hotel Chandela at Khajuraho. It was attended by over 300 persons. It was inaugurated by Sh. LokeshJatav, Commissioner, State Tax, Madhya Pradesh. Special appreciation for organizing this Mega Event is to be given to Mr. Santosh Gupta from Chhatarpur. The efforts of Central Zone Chairman Mr. Sandeep Agarwal are to be appreciated. The overall co-ordination was done by the MPLTBA President Mr. Ashvin Lakhotia.

The next programme is at Alwar being the RRC organized by AIFTP (Central Zone). The Zonal Election has been announced and published in the Times and all Members are requested to participate in the Zone Elections.

We request all Zones to planned the programmes Foundation month and ask all Members to celebrate the Foundation Day and Month of AIFTP in Grand manner and to fly the flag of AIFTP on their houses and send the photo so that we can have a collection of it. The foundation day programme can also be clubbed with the local Diwali Sneh Milan.

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

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

Regards,

PANKAJ GHIYA
National President, 2023
9829013626
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CHIEF-EDITOR'S COMMUNIQUE

Our Esteemed Members,

Welcome to the September edition of our Indirect Taxes and Corporate Law Journal !!

As we transition into a new month, we find ourselves not just turning the pages of a calendar but navigating the ever-evolving landscapes of taxation and corporate governance. In this edition, we bring you a curated collection of articles, analyses, and expert opinions that illuminate the latest developments in these dynamic fields.

September, a month often associated with change and transition, mirrors the constant evolution in the legal and financial realms. Our journal is a testament to the adaptability and resilience of professionals like you, who navigate through intricate regulations and jurisprudential shifts with acumen and expertise.

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. I extend my sincere gratitude to our dedicated team of authors and editors who have worked tirelessly to bring you a journal that not only informs but inspires. Their commitment to excellence is the driving force behind the quality content you find within these pages.

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. Readers, your engagement is the heartbeat of our journal. As you immerse yourselves in the articles, I encourage you to not just read but reflect, question, and explore. The knowledge you gain here is a tool, and how you wield it shapes the path forward in your professional journey.

Thank you for your continuous trust and confidence.

Regards,

Deepak Khandelwal
Chief Editor
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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		October, 2023	20th Nov. 2023
			November, 2023	20th Dec. 2023
(ii)	Detail of Outward Supplies: -	GSTR-1 (QUARTERLY)	October, 2023 (IFF)	13th Nov. 2023
	(a) QRMP		Nov., 2023 (IFF)	13th Dec. 2023
	(b) Monthly Filing	GSTR-1	October, 2023	11th Nov. 2023
			November, 2023	11th Dec. 2023
(iii)	Payment of Tax under QRMP	PMT-06	By 25th of next month	
(iv)	Quarterly return for Composite taxable persons	CMP-08	Oct.-Dec., 2023	18th Jan. 2024
(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	October, 2023	10th Nov. 2023
			November, 2023	10th Dec. 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	October, 2023	10th Nov. 2023
			November, 2023	10th Dec. 2023

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RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Abhay Singla

NOTIFICATIONS–CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
29.09.2023	51/2023-Central Tax	Seeks to make amendments (Third Amendment, 2023) to the CGST Rules, 2017 in supersession of Notification No. 45/2023 dated 06.09.2023
29.09.2023	50/2023-Central Tax	Seeks to amend Notification No. 66/2017-Central Tax dated 15.11.2017 to exclude specified actionable claims
29.09.2023	49/2023-Central Tax	Seeks to notify supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under section 15(5) of CGST Act
29.09.2023	48/2023-Central Tax	Seeks to notify the provisions of the Central Goods and Services Tax (Amendment) Act, 2023
25.09.2023	47/2023-Central Tax	Seeks to amend Notification No. 30/2023-CT dated 31st July, 2023
18.09.2023	46/2023-Central Tax	Seeks to appoint common adjudicating authority in respect of show cause notice issued in favour of M/s InkuatInfrasol Pvt. Ltd.
06.09.2023	45/2023-Central Tax	Seeks to make amendments (Third Amendment, 2023) to the CGST Rules, 2017.
25.08.2023	44/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-7 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur
25.08.2023	43/2023-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
25.08.2023	42/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-3B for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur
25.08.2023	41/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-1 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur

NOTIFICATIONS–CENTRAL TAX (RATE)

DATE	NOTIFICATION NO.	REMARKS
19.10.2023	20/2023-Central Tax (Rate)	Seeks to amend Notification No 05/2017-Central Tax (Rate) dated 28.06.2017.
19.10.2023	19/2023-Central Tax (Rate)	Seeks to amend Notification No 04/2017-Central Tax (Rate) dated 28.06.2017.
19.10.2023	18/2023-Central Tax (Rate)	Seeks to amend Notification No 02/2017-Central Tax (Rate) dated 28.06.2017.
19.10.2023	17/2023-Central Tax (Rate)	Seeks to amend Notification No 01/2017-Central Tax (Rate) dated 28.06.2017.
19.10.2023	16/2023-Central Tax (Rate)	Seeks to amend Notification No 17/2017-Central Tax (Rate) dated 28.06.2017.
19.10.2023	15/2023-Central Tax (Rate)	Seeks to amend Notification No 15/2017-Central Tax (Rate) dated 28.06.2017.
19.10.2023	14/2023-Central Tax (Rate)	Seeks to amend Notification No 13/2017-Central Tax (Rate) dated 28.06.2017
19.10.2023	13/2023-Central Tax (Rate)	Seeks to amend Notification No 12/2017-Central Tax (Rate) dated 28.06.2017.
19.10.2023	12/2023-Central Tax (Rate)	Seeks to amend Notification No 11/2017-Central Tax (Rate) dated 28.06.2017.
29.09.2023	11/2023-Central Tax (Rate)	Seeks to amend Notification No 01/2017-Central Tax (Rate) dated 28.06.2017.

*****

52ND GST COUNCIL MEETING: ANALYSIS OF RECOMMENDATIONS

The 52nd GST Council meeting, which took place on 7th October 2023, provided recommendations to address key contentious issues and announcements in respect of trade facilitation measures. Some of the key developments are the implementation of the amnesty scheme for filing of appeal in respect of orders passed till 31st March 2023 with enhanced pre-deposit of 2.5%, providing clarity on taxability of corporate guarantee provided by directors and group companies which is expected to put an end to ongoing litigation on the matter, giving heads-up to the India Inc. to prepare themselves to comply for ISD mechanism. This will allow sufficient time to companies to undertake necessary IT and compliance changes for a smooth transition. Also, circulars clarifying the determination of place of supply for transportation of goods services, advertisement services, and co-location services will avoid any possible litigation in future.

In this article, a comprehensive analysis of the recommendations and decisions has provided.

1. Providing mechanism of valuation of corporate guarantee

- It is recommended to clarify that where a personal guarantee is offered by a director of a company to the bank/financial institutions for sanctioning the loan, the same would not be taxable, if no consideration is payable to the director. However, where a consideration is payable to the director, the same will be taxed at the transaction value
- It is further recommended to clarify that where a guarantee is offered by a related party, the same will be taxable at, 1% of the value of the loan/limit or the actual consideration, whichever is higher

Analysis:

In the case of extending corporate and personal guarantees for extending loans or limits, there exist a conflict as to whether it constitutes a supply or not.

Recently, the Hon'ble Supreme Court held that consideration can be in monetary and/or non-monetary form. Where the assessee has not received any consideration from its group company for providing the corporate guarantee, the same would not be liable to Service Tax as there is no consideration involved.

However, the GST Law provides that where a supply is made to the related parties, the same would be treated as a supply even if made without consideration. Given this, the settled position on the taxability of corporate guarantee by the Hon'ble SC may not apply under the GST regime in case of related party transactions.

In view of the above, the GST Council has recommended to undertake necessary amendments in CGST Rules, 201 7 (CGST Rules) to provide for the taxability and valuation of corporate guarantee in the below manner:

(a) Where a personal guarantee is provided by the director of the company without consideration, the market value of such services is to be considered as zero. Hence, no GST is payable on such guarantee.

(b) Where guarantees are provided by related parties, including corporate guarantee provided by the holding company for a subsidiary company, the valuation of such supply shall be higher of:

- Actual consideration
- 1% of the amount of such guarantee offered

This would be done by inserting sub-rule 2 in Rule 28 of the CGST Rules, 2017.

It is further recommended that the valuation of corporate guarantees would be done in the above manner irrespective of the ITC eligibility to the recipient.

In view of the above, the recommended position of taxability of guarantees offered by the related parties is summarized below:

S. No	***Nature of guarantee***	***Element of consideration***	***Valuation under GST***	***Levy under GST***
1.	Personal guarantee by the director	No consideration	Nil	Not liable
2.		Consideration involved	Actual consideration	Liable under RCM
3.	Corporate guarantee of related person	No consideration	1% of the guarantee offered	Liable under forward charge mechanism
4.		Consideration involved	Higher of: • 1% of the guarantee offered • Consideration involved	

2. Providing amnesty scheme for filing appeal against demand orders issued upto 31.03.2023

- It is recommended to provide an amnesty scheme for filing of appeal against the demand orders issued upto March 31, 2023. The appeals would be allowed to be filed by January 31, 2024
- It is recommended that such appeals would be allowed to be filed upon payment of pre-deposit of 12.5% of the disputed amount and out of this, 2.5% would be required to be deposited through electronic cash ledger

Analysis:

The GST law provides that the taxpayer is required to file an appeal against the demand orders under section 73 and section 74 of the CGST Act, 2017 within 3 months of the date of communication of the order. Further, the Appellate Authority can extend such time for a further period of 1 month. The appeal is required to be filed upon making a pre-deposit of 10% of the disputed amount. Further, such pre-deposit can be made from both, Electronic Cash Ledger (ECL) as well Electronic Credit Ledger (ECRL).

However, the Council has recommended to provide an amnesty scheme to allow the filing of appeal against all the demand orders passed till March 31, 2023 by January 31, 2024. This would be allowed upon making an additional pre-deposit of 2.5% from ECL. Hence, the appeal would be filed upon making a pre-deposit of 12.5% out of which 2.5% would be required to be paid from ECL.

In respect of the orders passed after March 31, 2023, the aggrieved person may seek relief to file an appeal at the High Court level upon complying with the conditions prescribed for the orders passed before March 31, 2023. A similar view was taken by Madras HC in the case of amnesty schemes for the application of revocation of GST registrations cancelled or suspended.

3. Automatic restoration of provisionally attached property after completion of one year

- It is recommended to amend Rule 1 59(2) of CGST Rules, 2017 and Form GST DRC-22 to provide that the order for provisional attachment in Form GST DRC-22 shall not be valid after expiry of one year from the date of the said order

Analysis:

The GST law provides that upon initiation of specified proceedings under the GST law, where the Commissioner is of the opinion that it is necessary to protect the interest of the revenue, he can provisionally attach the property of the person. It provides that the provisional attachment is valid for a period of 1 year from the date of the order. The order of provisional attachment is issued in Form GST DRC-22. The Form specifies that the debit from a bank account should not be allowed without the prior permission of this department.

Hence, even after the expiry of 1 year, attachment remains intact till the time a formal release intimation is sent by the jurisdictional Commissioner.

This has also been clarified as an advisory GST/INV/Provisional Attachment/ Advisory/2023-24, dated 02-09-2023, which provides that the Commissioner shall issue communication or an intimation to the concerned authority/bank indicating the release/restoration of the relevant property/account.

To remove the requirement of such communication or intimation, it is recommended to amend Rule 159(2) of CGST Rules, 2017 and Form GST DRC-22 to provide that the order for provisional attachment would not be valid after the expiry of one year from the date of provisional attachment order. The said amendment is intended to remove hardship faced by the taxpayer whose property is provisionally attached and removal of provisional attachment order is not passed by the Commissioner on expiry of one year.

4. Allowing receipt in INR in special Vostro account for export of services

- It is recommended to clarify that export remittances received in the special INR Vostro account would be an eligible mode of receipt of payment to qualify a service as export.

Analysis:

The GST law provides that receipt of payment in convertible foreign currency is one of the mandatory conditions to qualify the service as an export. However, the receipt of payment in INR is allowed wherever permitted by the Reserve Bank of India.

RBI issued a circular on July 1 1, 2022 on international trade settlement in INR wherein it allowed the receipt of payment for export in special Vostro accounts of the correspondent bank of the partner country

In line with the above, the GST Council has recommended that payment in INR in special Vostro account would also qualify as an admissible mode of payment, and consequently, the receipt of export proceeds in such account would qualify as export in terms of the payment condition

5. To provide that ECOs would not be liable to pay tax u/s 9(5) for the busoperators organized as companies

- It is recommended that the bus operators who are supplying services through E-Commerce Operator (ECO) and who are organized as a company would not be covered under the scope of Section 9(5), and hence, such companies will be liable to pay tax on their supplies. This would allow such bus operators to utilize the ITC.

Analysis:

The GST law provides that where bus transportation services are provided through ECOs, GST on the same is liable to be paid by the ECO. This was done to prevent the small bus operators from the requirement of obtaining GST registration and consequent compliances. However, this provision is causing loss of ITC to larger bus operators operating through ECOs.

Now, it has been recommended that the bus operators organized as companies would be excluded from the preview of Section 9(5) of the CGST Act, 201 7 ('CGST Act'). Hence, ECO would not be liable to pay tax in relation to such bus operators but the bus operators would themselves be doing so.

This would strike a balance, as, on one hand, the small operators would be saved from the compliance burden, on the other hand, the bus operator companies would be able to avail the benefit of ITC.

Notably, 'Omni-bus' was included under the scope of Section 9(5) of the CGST Act w.e.f. November 18, 2021 and its meaning has been borrowed from Section 2(29) of the Motor Vehicles Act, 1988 which defines it as any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

6. No GST on ENA used for manufacture of alcoholic liquor for human consumption

- It is recommended to keep Extra Neutral Alcohol (ENA) used for the manufacture of alcoholic liquor for human consumption outside the GST net

- It is also mentioned that ENA for industrial use will continue to attract GST at 18%.

Analysis

Levy of GST on Extra Neutral Alcohol (ENA)/Rectified Spirit supplied for manufacture of alcoholic liquor for human consumption is a subject matter of dispute as there was a difference of opinion regarding the Constitutional power to tax such goods between the Centre and the States. Some states were of the view that sale of ENA for manufacture of alcoholic liquor for human consumption will continue to be liable to State VAT. Whereas, the Centre is of the view that it should be subject to GST.

The GST Council in 20th Council meeting held on 05-07-2017, agreed to seek a legal opinion of the Learned Attorney General of India. The Attorney General of India gave an opinion that ENA contains 95% alcohol by volume and is therefore not fit for human consumption, hence, GST is applicable to the same.

Given the above, various states (including the State of Uttar Pradesh) included a specific entry under their respective VAT schedule to levy VAT on sale of ENA.

Subsequently, the Allahabad HC held the relevant entry for ENA under UP VAT laws as ultra vires stating that states do not have the power to levy VAT on sale of ENA.

In order to put to rest this long standing litigation, the GST council has recommended that ENA for manufacture of alcoholic liquor for human consumption be kept outside the GST net and ENA supplied for industrial use should continue to attract GST at 18%.

It is also recommended that a separate tariff HSN code has been created at 8 digit level in the Customs Tariff Act to cover rectified spirit for industrial use.

7. Providing clarification on PoS in respect of specified categories of services

It is recommended to clarify the PoS in respect of the following services:

- Supply of goods transportation services, including by mail or courier in case supplier or recipient is outside India
- Supply of advertising services
- Supply of co-location services

Currently, Section 12 and 13 of the IGST Act, does not provide any specific provision to determine the Place of Supply ('PoS') in respect of aforesaid services. Therefore, it is recommended to provide clarification on PoS provisions for these services. One would need to wait for the clarifications to understand its implications.

Analysis:

As a background, the Hon'ble SC in the case of Mohit Minerals has held that in case of CIF contracts, the buyer of the goods would be considered as the recipient of the transportation services. This conclusion was reached upon by a combined reading of Section 13(9) of the IGST Act and the definition of the recipient under the GST law.

Pursuant to the said decision, the provision of Section 13(9) of the IGST Act has been deleted w.e.f. 01-10-2023 leading to the ambiguity regarding

determination of PoS in case of transportation of goods.

The Council, in its 49th Council meeting, clarified that the intention behind the amendment to section 1 3(9) of the CGST Act was to deem the place of supply of such services to be the location of the recipient. In order to avoid any ambiguity, the council has not proposed to issue a suitable clarification in this regard.

Likewise, for advertisement and co-location services, there remains an ambiguity whether the PoS be determined on the basis of location of immovable property or under the default rule under Section 12 or Section 13 as the case may be. The council has recommended to issue a suitable clarification to avoid any possible litigation.

8. Allowing refund route on supplies made to SEZ with payment of tax

- It is recommended to provide that supplies can be made to SEZ units or developers for authorised operations (except the specified products such as pan masala, tobacco etc.) with payment of tax and supplier can claim refund of the tax so paid.

Analysis:

Zero-rated supplies under the GST law can be made either with payment of tax or without payment of tax under the cover of Letter of Undertaking ('LuT').

However, based on the recommendations of 50th GST Council meeting, the refund route for specified tobacco and related products was intended to be restricted and it will be granted only if such supplies are made under bond/ LuT.

To bring this into effect, w.e.f. October 01, 2023, refund for all goods and services has been allowed only in the cases where the zero-rated supplies are made under LuT.

Further, the government notified that refund would be allowed on export with payment of tax on all goods and services except a few specified tobacco and related products. However, there was no clarity on zero rated supplies made to SEZ unit or developer.

Now, the council has recommended that refund would be allowed to the persons effecting supplies to SEZ unit or SEZ developers for authorised operations with payment of tax except on the specified tobacco products. However, it is relevant to note that such amendment should be made effective retrospectively from October 01, 2023, to avoid any litigation in claim of refund for the taxes paid from October, 01 2023 till the date such notification comes into effect.

9. Conditional exemption to foreign flag foreign going vessels converted to coastal run

- It is recommended that the foreign flag foreign going vessels if converted to coastal run would be eligible for conditional exemption from payment of IGST subject to the condition that they re-convert into foreign going vessels within 6 months

Analysis:

Currently, foreign flag foreign going vessels shifting from international voyages to domestic coastal operations are subject to a 5% IGST on the value of the vessel. The meaning of foreign going vessels has been defined in Section 2(21) of the Customs Act, 1962 as follows:

> *'Foreign-going vessel or aircraft' means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India*

or not, and includes—

- *any naval vessel of a foreign Government taking part in any naval exercises*
- *any vessel engaged in fishing or any other operations outside the territorial waters of India*
- *any vessel or aircraft proceeding to a place outside India for any purpose whatsoever*

The GST Council has recommended an exemption to such foreign flag foreign-going vessels from IGST. However, the exemption is conditional in nature and is allowed if the vessel is reconverted into a foreign going vessel within a time frame of 6 months.

10. Exemption provided to certain specified services supplied to Government Authorities

- It is recommended to exempt the services of water supply, public health, sanitation conservancy, solid waste management, and slum improvement and upgradation supplied to Governmental Authorities

Analysis:

The GST law provides an exemption to pure and composite services where they are provided to 'Central/State/UT government' and 'local authorities' in relation to any function entrusted to Panchayat/ Municipality under Article 243G and 243W of the Constitution of India. The GST Council has recommended to retain the existing exemption entries with no change.

Notably, till 31-12-2021, the above exemption also included the supply of such pure/composite services provided to a 'Governmental authority' or a 'Government Entity'. With effect from 01-01-2022, the exemption to the services supplied to the 'Governmental authority' or a 'Government Entity' was withdrawn.

Now, the GST Council has recommended to extend the above exemption to the services supplied to the Governmental Authority in relation to:

- Water supply
- Public health
- Sanitation conservancy

- Solid waste management
- Slum improvement and upgradation

It may be noted that the term 'Governmental Authority' is defined[17] as an authority or a board or any other body,—

(a) Set up by an Act of Parliament or a State Legislature; or

(b) Established by any Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

11. To clarify that DMFT is to be treated as a Governmental Authority for the purpose of GST exemption

- It is recommended that the District Mineral Foundation Trust (DMFT) set up by State Government in mineral mining areas are Governmental Authorities and thus eligible for same exemptions under GST as available to any other Governmental Authority

Analysis:

For obtaining license of mining, the recipient is required to obtain permission from the State Government and is required to pay consideration to the State Government, NMET, and DMFT. Notably, the payments towards DMFT are paid to GoAP (Mining & Geology Department) through online payment on their website.

In respect of the same, there existed confusion as to whether the amount paid to the DMFT would constitute consideration or not and whether DMFT constitute Governmental authority or not. If DMFT is considered as Governmental Authority, the tax would be required to be paid on RCM.

Andhra Pradesh AAR held that contributions to NMET and DMFT by the applicant qualify as consideration towards the supply of mining service by the Government of Andhra Pradesh and they being includible in the value of supply are chargeable to GST under RCM in the hands of the applicant.

The Council has recommended to clarify that the DMFT would be treated as a Governmental Authority, consequently, it would be eligible for the exemptions under GST as available to the Governmental Authorities. This would bring to an end, litigation on the issue.

12. Rate changes in goods

12.1. 5% GST on millet flour in powder form

- It is recommended to provide a NIL rate of GST on food preparation of millet flour in powder form falling under HSN 1901 when sold in loose form or pre-packed but non-labelled form
- It is recommended that 5% GST rate to apply when sold in pre-packaged and labelled form

Analysis:

The GST Council has recommended a 'Nil' rate of GST on 'Food preparation of millet flour in powder form containing at least 70% millet by weight' and falling under HSN 1901 where sold in other than pre-packaged and labelled form. This would apply with effect from the date of notification.

Further, it is recommended that 5% GST rate to be applicable when sold in pre-packaged and labelled form. This recommendation would lead to a significant reduction in tax from the existing GST rate of 18% on millet-based food preparations.

This recommendation aligns with India's dedicated efforts to promote millets, especially in the year 2023, which has been declared as the 'International Year of Millets' and India is actively engaged in initiatives to popularize millets as a healthy dietary choice.

12.2. GST rate on molasses reduced from 28% to 5%

- It is recommended to reduce the GST rate on molasses from 28% to 5%

Analysis:

The GST rate on molasses is recommended to be reduced to 5% from the current rate of 28%. The rate reduction will increase liquidity with sugar mills as the reduced tax burden will leave more financial resources at their disposal and would enable faster clearance of cane dues to the sugarcane farmers.

Additionally, molasses is a crucial ingredient in the production of cattle feed and its GST rate reduction will also lead to a reduction in the cost of manufacturing of the cattle feed.

12.3. 5% GST on imitation zari thread/ yarn made of metallised polyester film/ plastic film

- It is recommended to clarify that imitation zari thread or yarn made out of metallised polyester film/ plastic film would fall under the HSN 5605 and taxable at 5% GST
- Also, no refund to be allowed on polyester film (metallised)/ plastic film on account of inversion

Analysis:

Based on the recommendation of 50th GST Council meeting, the GST rate on zari thread or yarn, known by various trade names, was reduced[19] from 12% to 5% by inserting a new serial number under HSN 56050020.

In this context, it is recommended to clarify that zari thread made from metallised film or plastic film will also fall under the same HSN classification and will be taxed at a reduced rate of 5%.

It has also been recommended to grant no refund for polyester film (metallised) or plastic film on account of inversion.

13. 5% GST on job work in relation to converting barley to malt

- It is recommended to clarify that 5% GST to apply on job work arrangements for processing of barely into malt

Analysis:

The GST council has proposed to clarify that 5% GST to apply in case of job work arrangements for processing of barley into malt. This clarification will help to resolve the ongoing litigation for the industry relating to applicable GST rate of 5% or 18%.

14. Taxing all supplies by Indian Railways under Forward Charge Mechanism ('FCM')

- It is recommended that all goods and services supplied by the Indian railways are to be taxed at FCM. This would result in utilisation of ITC by railways leading to cost reduction

Analysis:

The GST Council has recommended that all goods and services supplied by the Indian Railways are to be taxed at a Forward Charge Mechanism so as to enable them to avail the ITC. This would lead to cost reduction for the

[19] Notification No. 09/2023- Central Tax (Rate) dated 26-07-2023

Indian railways

15. ISD mechanism for distribution of common ITC on third-party invoices is to be made mandatory prospectively

- It is recommended to make necessary changes in the GST law to make the ISD mechanism mandatory for third-party invoices in respect of input services procured by Head Office (HO) but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. This would apply prospectively

Analysis:

There existed an uncertainty in the industry as to whether ISD mechanism is mandatory for the transfer of common credit on third-party invoices or the same can be done by raising a tax invoice to location/locations where the services are consumed (popularly known as cross charge mechanism).

Based on the recommendation of 50th GST Council meeting, it was clarified by CBIC that transfer of ITC on third-party invoices through ISD mechanism is optional in nature as of now. It further recommended that it is to be made mandatory with a prospective effect.

Now, to give effect to the same, it is proposed in this council meeting to make necessary amendments in Section 2(61) and Section 20 of CGST Act, 2017 as well as Rule 39 of CGST Rules, 2017.

The industry would now need to prepare itself for the ISD mechanism as the GST council has recommended to make this procedure mandatory by making necessary changes in GST Law. This amendment, once made, would require system changes and involve additional compliance for the taxpayers.

16. Changes in age limit of appointment of President & Member of the GSTAT

- Recommended that an advocate with 10 years of substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, High Court or Supreme Court to be eligible for the appointment as judicial member
- It is recommended that the minimum age for eligibility for appointment as President and Member to be prescribed 50 years
- It is recommended that the tenure of the President and Members to be

increased to a maximum age of 70 years and 67 years respectively

Analysis:

The GST Law is proposed to be amended to provide that an Advocate can be appointed as a Judicial Member of the GST Appellate Tribunal if he/she is an advocate for atleast 10 years and possesses substantial experience in litigation under Indirect Tax Laws in either of the forums mentioned below:

- Appellate Tribunal
- Central Excise and Service Tax Tribunal
- State VAT Tribunals, by whatever name called
- High Court or Supreme Court

Further, it is also proposed to provide that for eligibility for appointment as President and Member of the GST Appellate Tribunal, there will be a minimum age requirement of 50 years.

Furthermore, it is proposed to raise the maximum age limit for the President of the GST Appellate Tribunal from 67 years to 70 years. After the proposed amendment, the President may hold office until earlier of the date when he attains the age of 70 years or until his term of four years comes to an end.

Similarly, the maximum age limit for the Member of the GST Appellate Tribunal is also proposed to be increased from 65 years to 67 years. After the proposed amendment, the Member may hold office until the earlier of the date when he attains the age of 67 years or until his term of four years comes to an end.

This has been recommended to align the provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021.

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THE 51ST GST COUNCIL MEETING RECOMMENDATIONS

- Impact on 'Lottery, Betting, Gambling, Racing, Online Gaming, and Casinos'

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Introduction

The implementation of the Goods and Services Tax (GST) in India marked a significant shift in the country's taxation framework, aiming to simplify and consolidate various taxes into a unified system. Among the many aspects of GST, one crucial element is the treatment of "Actionable Claims." Under GST law, actionable claims are classified as goods, and except for specific supplies such as '*lottery, betting, and gambling*', the remaining 'actionable claims' are treated as neither supply of goods nor supply of services.However, controversies have arisen around the taxation of activities such as racing, online gaming, online money gaming, and casinos, which have added complexity to the tax landscape. The classification of these activities as games of skill or games of chance has been a contentious issue.

To bring about clarity on the taxation of actionable claims, building upon the report by the GoM, the GST Council, during its 50th and 51st meetings made several important recommendations. In the following article, a detailed analysis of therecommendations, their Implementation, and implications on the taxation of **lottery, betting, gambling, racing, online gaming, and casinos**are made.

Recommendations of the Council

The GST Council in the statedmeetings reached a consensus on the taxation of online gaming, horse racing, and casinos, designating them for a 28% GST rate based on their face value. Specific criteria were established for determining their transaction value namely (i) for Online Gaming: The entire value of bets placed; (ii) for Horse Racing: The complete value of bets placed with bookmakers or totalizators and (iii) for the Casinos: The face value of purchased chips.The Council put forth several recommendations, including amendments to Schedule III of the CGST Act to treat these supplies as taxable actionable claims without differentiation between games of skill and games of chance. The Council also proposed specific

valuation methods for online gaming and casino actionable claims based on the amount paid or payable to the supplier by the player, excluding prior winnings used for subsequent games or bets. Furthermore, the Council clarified the tax treatment of transactions involving Virtual Digital Currency (VDC) or Virtual Digital Assets (VDA) and proposed definitions for key terms such as online money gaming and online gaming.Additionally, provisions were suggested to address the tax liability on online money gaming services supplied by offshore entities to recipients in India. The Council recommended amendments in the Central Goods and Services Tax Act, 2017 (CGST), Integrated Goods and Services Tax Act, 2017 (IGST), and State/UT GST (SGST/UTGST) Acts, **effective from October 1, 2023.** It was emphasized that GST imposition does not change the legal status of banned activities in the states.

Actionable Claims from July 2017

The GST regime redefined the scope of "goods" under Section 2(52) of the CGST Act to encompass various forms of movable property, notably included "*actionable claims*". Actionable claims (goods) are defined with reference to Section 3 of the Transfer of Property Act, 1882. (refer section 2(1) of CGST Act). In the context of entry 6 of Schedule III, along with Section 7 of the CGST Act outlines actionable claims, apart from those related to lottery, betting, and gambling, exempt from GST taxation. In simpler terms, all transactions involving actionable claims fall outside the scope of GST, except for '*lottery, betting, and gambling'*.The valuation of actionable claims is determined by Rule 31A of the CGST Rules 2017 as follows:

1. For lotteries, the value of supply is determined as either 100/128 (approximately 78.13%) of the face value of the lottery ticket or the price as notified in the Official Gazette by the Organizing State, whichever is higher. This method ensures that a substantial portion of the economic value of lottery transactions is subject to GST. (Rule 31A (2))
2. In the context of racing, which includes betting, gambling, or horse racing, the value of supply is equal to 100% of the face value of the bet or the amount paid into the totalisator. This rule ensures that the entire consideration paid for participating in these activities is subject to GST, reflecting the full economic value of these transactions (Rule 31A (3)).

The primary aim of 's valuation Rule 31A is to ensure that GST is levied on a significant portion of the consideration in lottery, betting, gambling, and horse racing

transactions. The applicable Rate of tax on actionable claims under GST are as follows:

Any Chapter	Lottery	14%
Any Chapter	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club	14%
Sl. No / tariff	***Description of Service -***	***CGST Rate %***
34. Heading 9996 (Re-creational, cultural and sporting services)	(iii) admission *Services - to entertainment events, to amusements, films, theme parks, water parks, joy rides, merry-go founds, go- carting,* ***casinos, racecourse****, ballet, any sporting event such as IPL & the like*	*14%*
	(iv) *Services provided by a race club by way of totalisator or a license to bookmaker in such club.*	*14%*
	(v) *Gambling*	*14%*

Major Cases on Actionable Claims

The evolution of the taxation of actionable claims under the GSTregime in India has been marked by several legal litigations in which the courts have clarified the taxation landscapeof actionable claims. Brief overview of the key cases is captured in the following part.

(1) Skill Lotto Solutions Pvt. Ltd. v. Union of India and Ors.: ([2021] 84 G.S.T.R. 1 (Supreme Court))

In this landmark case, Skill Lotto Solutions Pvt. Ltd. challenged the imposition of GST on lotteries, betting, and gambling, categorizing them as "goods" under the CGST Act. The main issues considered in this case are:

- The petitioner argued that the inclusion of actionable claims within the definition of "goods" was unconstitutional.
- The petitioner alleged discrimination in taxing these activities while excluding other actionable claims.
- The case questioned whether prize money should be excluded from the taxable value.
- The validity of Rule 31A, which determines the value for GST purposes, was also challenged.

After due process the Supreme Court held that the inclusion of actionable claims

within the definition of "goods" is constitutional.It cited precedents to justify that the taxation on lotteries, betting, and gambling, noting they were distinct from other actionable claims.The Court ruled that prize money should not be excluded from the taxable value.The validity of Rule 31A was also upheld. This case affirmed the legality of treatment and taxing of lotteries, betting, and gambling under GST.

(2) Bangalore Turf Club Limited &Ors. v. Union of India: [WP No.11168/2018 & WP No.11167/2018 decided on 02/06/2021- the Hon'ble Karnataka High Court] This case centered on the GST applicability to horse race clubs and the taxation of bets placed in totalisators. The Issues considered are:

- The case questioned the validity of Rule 31A (3) of the CGST Rules, 2017.
- It debated whether GST should apply to the entire bet amount collected or only on the club's commission.

The high court found Rule 31A (3) to be ultra vires as it is not in line with the CGST Act.It held that the entire amount in the totalisator was not taxable, but only the commission earned by the club to be subjected to GST.This judgment clarified the GST treatment of totalisator bets in horse racing, restricting taxation to the commission earned.

Following the judgment, the Union of India filed a writ appeal (Writ Appeal No. 727/2021) challenging the decision. A division bench of the Karnataka High Court issued a stay order on 12th August 2021, suspending the operation of the single bench order that declared Rule 31A (3) of the CGST Rules, 2017 as amended, as ultra vires. The appeal also referred to the judgment in *Skill Lotto Solutions Pvt. Ltd. v. Union of India*, which upheld the validity of Rule 31A (3).

(3) Gameskraft Technologies Private Limited vs. DGSTI [2023] 150 taxmann.com 252 (Karnataka):This complex legal battle revolved around the GST taxation of online gaming, specifically games of skill like Rummy. The Key Issues are:

- The primary issue was whether online games involving stakes should be classified as betting and gambling or skill-based activities.
- It questioned whether Rummy was a game of skill or involved an element of chance.
- The case debated the taxation of the entire revenue from online gaming,

including platform fees and payouts to winners.

The Karnataka High Court ruled in favour of the online gaming company, stating that Rummy was a game of skill and not subject to GST.It affirmed that only skill-based online games were exempt from GST.This case provided clarity on the taxation of skill-based online games and their exemption from GST.

Significantly, in this case, the Karnataka High Court invalidated the show cause notice amounting to Rs. 21,000 crores. Essentially, the High Court ruled that GST is applicable solely to the platform fee or Gross Gaming Revenue (GGR) earned by online gaming companies at a rate of 18%, rather than being levied on the entire sum of bets placed on online gaming platforms. The department has subsequently filed a Special Leave Petition challenging this Karnataka High Court order, and the Supreme Court of India has issued a stay order in response.

Legislative Framework after 1st October 2023

Based on the 50th and 51st GST Council recommendations the following legislations are made so that the actionable claims are termed as *'specified actionable claims*' ['*betting, casinos, horse racing, lottery, gambling, and online money gaming*'] and these activities to attract GST at 28% on their face value. A detailed analysis of the legislations made are deliberated in the further part.

(A)The CGST (Amendment) Act, 2023 dated 18th August 2023:The introduction of the CGST (Amendment) Bill, 2023 represents a significant shift in the taxation landscape, particularly concerning actionable claims. A brief comparative analysis is made in the following part.

(i) CGST on Specified Actionable Claims

1. Current Provision: Under CGST Act, actionable claims, except those related to lottery, betting, and gambling, are not considered supplies of goods or services and are thus exempt from taxation. (as explained in the earlier part)
2. Amendment Introduced: The CGST (Amendment) Act, 2023, introduces a fundamental change by making suppliers of *'specified actionable claims*' liable to pay GST. Specified actionable claims encompass claims associated with activities such as '*betting, casinos, horse racing, lottery, gambling, and online money gaming*'.
3. Definition of Online Money Gaming: The Amendment provides a

comprehensive definition of online money gaming, encompassing games where players pay or deposit money, including virtual digital assets, with the expectation of winning money or money's worth. This definition applies to games irrespective of whether they involve skill, chance, or a combination of both. It includes online money games offered on the internet or through electronic networks and accounts for their legal status.

(ii) Suppliers of Specified Actionable Claims

1. New Provisions: The Amendment Act introduces provisions that deem a person who organizes or facilitates the supply of 'specified actionable claims' as their supplier. This extends to individuals or entities that own, operate, or manage digital or electronic platforms facilitating such claims' supply.
2. Consideration for Supply: The bill underscores that the consideration for the supply of specified actionable claims can include monetary payment or money's worth, which may also encompass virtual digital assets. This broadens the scope of what constitutes consideration for these claims.

(iii) Mandatory Registration for Certain Suppliers of Online Money Gaming

1. Current Provision: The existing CGST Act mandates the registration of specific suppliers of goods and services in India. (section 24 of CGST Act)
2. Amendment Introduced: The Amendment Act extends the requirement for mandatory registration to entities supplying online money gaming services from outside India to individuals within India. This means that foreign entities providing online money gaming services (treated as goods) to Indian customers must also register under the CGST Act.

The expansion of taxable transactions and the inclusion of foreign entities within the scope of mandatory registration aim to bolster tax compliance and revenue collection in the rapidly evolving landscape of digital and online gaming.As per Notification No. 48/2023 dated 29th September 2023 the effective date for is October 1, 2023.

(B) The IGST (Amendment) Act, 2023 dated18th Aug 2023**:** This amendment made the following the key changes for taxation, particularly in the realm of online money gaming and online money gaming as imported goods (Not named as services).

(1) IGST on Online Money Gaming:The most notable amendment pertains to the taxation of online money gaming services supplied to individuals in India, irrespective of the supplier's location. This includes:

- The act provides a comprehensive definition, encompassing online games where players pay or deposit money, including virtual digital assets, with the anticipation of winning money or money's worth. This definition applies to games regardless of whether they involve skill, chance, or both, and whether they are allowed or banned under any law. It covers games offered on the internet or through electronic networks.
- The amendment imposes IGST liability on suppliers of online money gaming services (treated as supply of goods i.e. as actionable claim), even if they are situated outside India, when they supply these services to individuals in India. This extends the tax net to include such services, ensuring that they contribute to the nation's tax revenue.

(2) Mandatory Registration for Suppliers of Online Money Gaming:The act introduces a mandatory registration requirement for suppliers of online money gaming services. Key provisions include:

- Suppliers of these services must register under the Simplified Registration Scheme notified under the 2017 Act. This step aims to bring all relevant service providers within the tax framework.
- If a foreign supplier of online money gaming services has a representative in India, that representative is obligated to register and pay IGST on behalf of the foreign supplier. In cases where a foreign supplier lacks a physical presence or representative in India, they must appoint a representative to fulfil their IGST obligations. Non-compliance may result in the blocking of information transmitted or hosted on computer resources for the supply of online money gaming.

(3) Manner of Levy of IGST on Imported Goods:The IGST on imported goods currently follows the provisions of the Customs Tariff Act, 1975. However, the amendment introduces flexibility. These Goods specifically notified by the central government based on recommendations from the GST Council will no longer adhere to the Customs Tariff Act. Instead, IGST on these goods will be levied in the same manner as inter-state supply of goods.

(4) Place of Supply of Goods:The act also addresses the determination of the

place of supply for goods not imported or exported, particularly when supplied to unregistered persons. In such cases, the place of supply will be the address of the person recorded in the invoice. If the invoice lacks an address, the place of supply will be considered as the location of the supplier. This provision offers clarity in determining the place of supply, facilitating compliance.

The IGST (Amendment) Act, 2023, by extending the tax net to online money gaming services (as a specified actionable claim- as goods), revising the manner of levying IGST on imported goods, and clarifying the place of supply for unregistered persons, align taxation with the dynamics of the digital age and cross-border transactions. These amendments are made effective from 1st day of October 2023. (Notification No. 02/2023 – Integrated Tax dated 29/09/2023)

(C)Amendments to CGST Rules: The Central Board of Indirect Taxes and Customs (CBIC) vide Notification **No. 45/2023 – Central Tax**, dated September 06, 2023, introduced the CGST (Third Amendment) Rules, 2023, poised to take effect on a date specified by the Central Government (with effect from 1st October 2023). These amendments added two new rules, namely, Rule 31B and Rule 31C, to specifically address the valuation of supplies concerning online gaming, which encompasses online money gaming, and activities related to casinos.

Rule 31B - Value of Supply in Case of Online Gaming (Including Online Money Gaming):This rule offers a structured methodology for determining the value of supply associated with online gaming, including actionable claims linked to online money gaming. The provisions include:

1. The value of supply for online gaming, inclusive of actionable claims related to online money gaming, is computed as the total amount paid or payable to the supplier by the player. This encompasses payments made in the form of money or money's worth, including virtual digital assets.
2. Crucially, any amount refunded or returned by the supplier to the player for any reason, such as the player not utilizing the deposited amount for event participation, cannot be deducted from the value of supply for online money gaming.

Rule 31C - Value of Supply of Actionable Claims in Case of Casino:This rule governs the valuation of supplies pertaining to actionable claims within a casino setting. The key provisions are as follows:

1. The value of supply for actionable claims in a casino is ascertained based

on the total amount paid or payable by or on behalf of the player. This payment may cover the acquisition of tokens, chips, coins, or tickets employed within the casino, or it may relate to participation in various casino events, including games, schemes, competitions, or other activities.

2. In cases where tokens, chips, coins, or tickets are not required for participation in casino events, the total amount paid or payable by the player is considered for valuation.
3. Similar to Rule 31B, any amount refunded or returned by the casino to the player concerning tokens, coins, chips, or tickets is not subtracted from the value of the supply of actionable claims in the casino.

An important clarification in the form of an explanation stipulates that any amount received by a player as winnings in an event, game, scheme, competition, or other activities, which is subsequently reinvested by the player for playing in another event without withdrawal, is not considered an amount paid to or deposited with the supplier. This ensures that winnings reinvested in further gaming activities are not factored into the valuation.As the digital gaming industry continues to evolve, these amendments align the taxation system with this dynamic landscape, ensuring that it remains fair, efficient, and robust.

(D) **Notification No. 49/2023 – Central Tax dated 29/09/2023** relates to the supply of online money gaming, online gaming (excluding money gaming), and actionable claims in casinos under section 15(5) of the CGST Act, 2017. Supply of Online Money Gaming includes online platforms engaged in games of chance or skill involving real money transactions, providing regulatory clarity for this sector. Beyond online money gaming, this notification extends its scope to encompass a broader range of online gaming, including various types of games that do not involve monetary transactions. [Supply of Online Gaming (Excluding Money Gaming)]. The notification also addresses the supply of actionable claims in casinos, introducing regulations and guidelines to ensure tax compliance.

(E)The CBIC vide **Notification No. 50/2023 – Central Tax, dated 29th September 2023** amended the earlier Notification No. 66/2017-Central Tax issued on 15th November 2017, excluding a specific category of items known as "actionable claims" under the CGST Act of 2017. This Notification specifies that Notification No. 66/2017 will now have an exclusion, specifically for registered persons involved in the supply of specified actionable claims, as per the definition

provided in clause (102A) of section 2 of the CGST Act, 2017. This exclusion signifies those registered individuals and businesses dealing with 'specified actionable claims' will **no longer be eligible for the composition levy benefits under section 10** of the CGST Act. In other words, this amendment narrows down the pool of those who can benefit from the composition levy, specifically excluding those engaged in the specified actionable claims category.

(F) The CBIC have introduced the Central Goods and Services Tax (Third Amendment) Rules, 2023, through **Notification No. 51/2023-Central Tax, dated 29th September 2023** encompass several significant changes affecting various aspects of taxation, in the context of online money gaming. These changes include:

(a) Rule 8(1) has been modified to revise the list of suppliers exempted from declaring information namely 'Permanent Account Number, State or Union territory', as required in Part A of Form GST REG 01. A notable inclusion is the addition of a person supplying online money gaming from a location outside India to a person in India, as referred to in Section 14A of the IGST Act, to the list of individuals exempted from this requirement.

(b) Rule 14 has been amended to specify that a person engaged in the supply of online money gaming from a place outside India to a person in India must apply for registration in Form GST REG 10 through the common portal.

(c) New rules have been introduced following Rule 31A. Rule 31B deals with the valuation of supply concerning online gaming, including online money gaming, while Rule 31C addresses the valuation of supply in connection with casinos.

(d) The proviso to Rule 46(f) is updated to indicate that in cases where online money gaming is supplied to an unregistered recipient, the tax invoice issued by the registered person must include the name of the state of the recipient, which is deemed to be the recipient's address on record. This provision applies regardless of the value of the supply.

(e) Rule 64 is substituted to define the form and manner of submitting returns for persons providing online money gaming from a location outside India to a person in India. This also covers individuals offering online information and database access or retrieval services from a place outside India to a non-taxable online recipient as per Section 14 of the IGST Act, 2017, or to a registered person other than a non-taxable online recipient. The return

must be filed in FORM GSTR-5A on or before the twentieth day of the month following the relevant calendar month.

(f) The second proviso to Rule 87(3) is modified to allow a person supplying online money gaming from a location outside India to a person in India, as referred to in Section 14A of the IGST Act, to make deposits under sub-rule (2) through international money transfer via the Society for Worldwide Interbank Financial Telecommunication payment network.

(g) Necessary changes have been made to Form GST REG 10 to accommodate applications for the registration of individuals supplying online money gaming from a location outside India to a person in India. Additionally, Form GSTR 5A is updated to collect details of supplies of online money gaming by entities located outside India to individuals in India.

These amendments reflect the evolving landscape of taxation, especially in the context of online money gaming, as the regulatory framework is adapted to address emerging business models and cross-border transactions in a rapidly evolving digital economy.

(G) The CBIC vide **Notification No. 11/2023-Central Tax (Rate) dated September 29, 2023 and Notification No. 14/2023-Integrated Tax (Rate) dated September 29, 2023**, seeks to amend Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 ("the CGST Goods Rate Notification") and Notification No. 1/2017-Integrated Tax (Rate) dated June 28, 2017 ("the IGST Goods Rate Notification") for GST rates to be appliable on specified actionable claim by way of betting, casinos, gambling, horse racing, lottery or online gaming to be leviable at 28% (14% CGST + 14% SGST) for Intra-State Supply or IGST @ 28% for Inter-State Supply of same. This notification further omits lottery from entry 228 and actionable claim from entry 229, butprovide specific inclusion and coverage within entry 227A.

(1)	(2)	(3)
"227A	Any Chapter	Specified actionable claim; *Explanation:* "specified actionable claim" as defined in section 2(102A) of the CGST Act, 2017 means the actionable claim involved in or by way of— (i) betting; (ii) casinos; (iii) gambling; (iv) horse racing; (v) lottery; or (vi) online money gaming;";

(H) The **CBIC vide Notification *No. 03/2023 – Integrated Tax dated the* 29th September, 2023** mandates that the supply of online money gaming is to be considered as goods for the purpose of import taxation. This means that online money gaming will be treated as goods for the purpose of taxation under the IGST Act, 2017. It further specifies that the proviso to sub-section (1) of section 5 of the said Act shall not apply to the import of online money gaming goods. As a result, the integrated tax shall be levied and collected on the import of online money gaming under section 5 (1) of the said Act as goods.

(I) CBIC vide **Notification *No. 04/2023 – Integrated Tax, dated the 29th September, 2023 mandated the* process of granting registration** for the supply of online money gaming. The notification, with the powers vested under section 14 (2) and section 14A (2) of the IGST Act, 2017, in conjunction with rule 14(2) of the CGST Rules, 2017, designates the Principal Commissioner of Central Tax, Bengaluru West, and all officers subordinate to him as the authorities empowered to grant registration. This registration applies specifically to cases involving the supply of online money gaming by a person situated in a non-taxable territory and received by a person within India. The notification defines "online money gaming" in accordance with its meaning as assigned in clause (80B) of section 2 of the CGST Act, 2017.

(J) **Amendments to Customs Tariff Act,1975**

(i) The Ministry of Finance vide**Notification No. 72/2023-Customs (N.T.) dated** 30 September 2023, introduced significant changes to the Customs Tariff Act, 1975. The notification updated HS Chapter 98 to include, among others, "actionable claims." Additionally, a new Note 8 was added to Chapter 98, providing definitions for "Online money gaming" and "specified actionable claim" as per the CGST Act, 2017. Tariff item 9807 was also introduced, covering various types of actionable claims related to betting, casinos, gambling, horse racing, lottery, and online money gaming, with a Nil duty rate. The exact part of the changes are as follows:

"9807		Specified actionable claim			
9807 10 00	–	Actionable claim involved in or by way of betting	–	Nil	–
9807 20 00	–	Actionable claim involved in or by way of casinos	–	Nil	–
9807 30 00	–	Actionable claim involved in or by way of gambling	–	Nil	–
9807 40 00	–	Actionable claim involved in or by way of horse racing	–	Nil	–
9807 50 00	–	Actionable claim involved in or by way of lottery	–	Nil	–
9807 60 00	–	Actionable claim involved in or by way of online money gaming	–	Nil	-"

Changes in GST on actionable claims

The decision to impose a 28% GST on online gaming websites stems from the recommendations of the GST Council and **all the notifications stated above are effective from October 1, 2023.**

The imposition of a 28% GST rate on online gaming has raised concerns about its potential adverse impact on the industry. Online gaming companies supplying actionable claims were initially paying GST at 18% on platform fees, ranging from 5% to 20% of the full-face value. The industry has contested the 28% levy on actionable claims related to betting and gambling in online gaming (now termed as 'online money gaming'). While the exact estimated tax collection due to the 28% GST on online gaming is not estimated, it is anticipated that the higher tax rate will contribute to an increase in revenue from the current levels. The change in GST rate could potentially result in higher tax collections from the online gaming industry.

The way forward

The treatment of GST on actionable claims is a complex and multifaceted issue that has significant implications for both taxpayers(suppliers) and the government. One of the key takeaways from the discussion is that the concept of actionable claims under GST is still evolving, and there is a need for greater clarity and consistency in its interpretation and application. The conflicting judgments by different courts and the lack of specific provisions in the GST law have led to uncertainty and disputes, which can be detrimental to both taxpayers and the government's revenue collection efforts.

The changes brought about by these amendments signal a more structured and clear approach to the taxation of actionable claims, aiming to reduce disputes and enhance compliance. There are further developments on law and procedures related GST levy on actionable claims is expected soon through state legislations. Further, on reviewing the present system by the Council after six months from the date of implementation it will be presented to the readers in due course. Also, developments of the listed cases in further appellate forums will be deliberated as when such decisions are awarded by the honourable courts.

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UPDATES ON NOTIFICATION AND CIRCULARS ISSUED UNDER GST LAWS DURING AUGUST AND SEPTEMBER 2023

CA Siddeshwar Yelamali

Gist of the Notification and Circulars issued under GST Laws during the month of August 2023 and September 2023 is provided hereunder:

1. **Clarifications regarding applicability of GST on certain services:** CBIC has clarified on the following issues w.r.t applicability of GST on the services specified herein:

Issue	Clarification
Whether services supplied by director to the company, in his personal capacity is taxable under RCM basis in the hands of the Company?	• Services supplied by a director to its company / body corporate, as or in the capacity of director, is taxable under RCM basis in the hands of that company/ body corporate. • ***Any other services supplied by him in his private or personal capacity***, such as services supplied by way of renting of immovable property to the company / body corporate are ***NOT taxable under RCM***. ***Additional comment:*** It may be noted that service by way of renting of residential dwelling to a registered person by any person is liable under reverse charge.
Whether supply of food or beverages in cinema hall is taxable as restaurant service?	• ***Supply of food or beverages in a cinema hall is taxable as 'restaurant service'*** if: - Such food or beverages is supplied by way of or as part of a service, and - Supplied independent of the cinema exhibition service. • If the sale of cinema ticket and supply of food and beverages are clubbed together, the same is taxable as a composite supply **and the principal supply would be cinema exhibition service**.

Circular No. 201/13/2023-GSTdated 01.08.2023

2. **Special procedure to be followed by e-commerce operators for supplies made by Composition Dealers and unregistered persons:** Effective

01.10.2023, an e-Commerce Operator (ECO) shall comply with the following procedure with respect to the supplies made through its platform by:

Persons registered under Composition Scheme	Unregistered person
▪ ECO ***shall not allow inter-State supply of goods*** through its platform; ▪ ECO to ***collect TCS on goods*** supplied by such composition dealer; ▪ ECO to report the details of the goods supplied by composition dealer in Form GSTR-8.	▪ The ***Un-registered person shall possess an enrolment number*** allotted by the GST common portal; ▪ Un-registered person ***shall not be allowed to make inter-State supply of goods;*** ▪ The ***ECO shall not collect any TCS*** on the goods supplied by such unregistered person; and ▪ ECO to report the details of the goods supplied by unregistered person in Form GSTR-8 (the form has been updated to facilitate the declaration of such supplies).

Notification No. 36/2023- Central Tax &Notification No. 37/2023- Central Tax both dated 04.08.2023

3. CGST (Second Amendment) Rules, 2023: Following changes have been made to the provisions of the CGST Rules:

A. Registration:

- **Place of business (PoB) to be verified without the *"Physical Presence of the applicant" before granting registration*:**Effective 04.08.2023, person who has applied for registration *without undergoing Authentication of Aadhar number or who has not opted for such authentication*, the officer would carry out the physical verification of places of business ***without Presence of the applicant***. Hitherto, the place of business was required to be verified in the ***presence of the applicant before grant of registration***.
- **Mandatory furnishing the details of bank account**: Effective 04.08.2023, every person who has been granted GST registration certificate in Form GST REG-06, shall furnish the details of bank account on the GST common portal:
  - Within 30 days of grant of registration; or
  - Before furnishing details of outward supplies in Form GSTR-1 or IFF,

whichever is earlier.

Further, consequential changes have made to provide that a registered person shall NOT be allowed to furnish his outward supplies in Form GSTR-1 or using IFF where he has not furnished the details of bank account. *Hitherto, the bank account details were required to be furnished on or before 45 days from the date of grant of registration or due date of filing Form GSTR-3B, whichever is earlier.*

- **GST Registration to be suspended if bank account details are not furnished:** Effective 04.08.2023, GST registration of a person may be suspended, if such person after obtaining the registration, has not furnished the details of the bank account within the time limit prescribed. However, such suspension is deemed to be revoked, if the details of the bank account is furnished by such person before the registration is cancelled by the proper officer.
- **Time limit for revocation of cancellation of GST registration has been extended from 30 days to 90 days:** Effective, a person whose GST registration is cancelled by the proper officer on his own account, may file the application for revocation of cancellation of registration in Form GST REG-21 **within 90 days** from the date of service of order of cancellation of registration. *Hitherto, such time limit was 30 days*. Further, such period of 90 days can be extended for a further period of up to 180 days, by the Commissioner or an officer not below the rank of Additional Commissioner or Joint Commissioner, as authorised.
- **Physical Verification of business premises - Report and photographs of Place of Business (PoB) to be uploaded before/after GST registration:** Effective 04.08.2023, where the proper officer is of the opinion that the PoB of a registered person is to be physically verified he may get such verification done and he shall upload the verification report, photographs and other relevant supporting's in Form GST REG-30 on the GST common portal within 15 working days from the date when such verification was undertaken.

B. Input Tax Credit

- **Amendment to ITC reversal against Exempted supplies (Rule 42 and 43):**

(i) **Transportation of goods by a vessel from the customs station of clearance in India to a place outside India:** Effective 04.08.2023, value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India shall NOT be considered as a part of the value of exempt supplies for the purpose of reversal of ITC under Rule 42 and 43 of the CGST Rules, 2017.

(ii) **Input tax credit reversal on supply by Duty-Free Shops in international airport:** Effective 01.10.2023, value of goods supplied from Duty-Free Shops at arrival terminals in international airports to incoming passengers shall be considered as value of exempt supply for the purpose of reversal of input tax credit**.**

- **Differences of ITC availed between Form GSTR-3B and Form GSTR-2B reported in Part A of Form GST DRC-01C:** Effective 04.08.2023, if the ITC availed by a registered person in Form GSTR-3B exceeds the amount of ITC appearing in Form GSTR-2B by a prescribed percentage (percentage yet to be prescribed), an intimation will be given in **Part A of Form GST DRC-01C** on the common portal and registered email address of the registered, highlighting the said difference. On receipt of such intimation, registered person shall within 7 days:
  - **Pay the amount of such excess ITC** availed as highlighted and furnish the details thereof in Part B of Form GST DRC-01C; or
  - **Furnish a reply with reason for such excess availment** of ITC in Part B of Form GST DRC-01C.

  In case the amount is not paid by such a registered person or the reply furnished by the registered person is not acceptable to the proper officer, he may proceed with the issuance of a show cause for demand of excess ITC availed.

C. Returns:

- **Filing of Form GSTR-1 to be blocked**: Effective 04.08.2023, a registered person shall not be allowed to declare his outward supplies in Form GSTR-1 or IFF for a subsequent tax period, if:
  - A registered person on an intimation issued under Rule 88(D) in ***Part***

A of Form GSTR DRC-01C for excess availed ITC has not been paid excess input tax credit or has not furnished any reply explaining the reasons in ***Part B of Form GSTR DRC-01C***; or

- The details of the bank account are not furnished by the registered person after granting the certificate of registration.

- **Supplies made to non-taxable online recipients or registered persons to be declared by OIDAR in Form GSTR-5A:** Effective 01.10.2023, every registered person providing online information and database access or retrieval (OIDAR) services **from outside India to a non-taxable online recipient or to a registered person** shall file Form GSTR-5A pertaining to a month within 20th of the succeeding month. *Hitherto, only supplies made **to unregistered persons** were required to be furnished in Form GSTR-5A*.

- **Updation of Form GSTR-9 & 9C:** Effective 04.08.2023, relevant changes are made to Form GSTR-9 & Form GSTR-9C to facilitate filing the same for the FY 2022-23. Further, Form GSTR-9C has been updated to facilitate reporting taxable supplies made at a rate of 6% and taxes payable thereon.

- **Notice in Form GSTR-3A to be issued for non-filing of Annual Returns:** Effective 04.08.2023, Notice in Form GSTR-3A will be issued to the taxpayers *for **non-filing annual returns in Form GSTR-9***. Currently, Form GSTR-3A is issued for ***non-filing of monthly return*** of supplies made or received in Form GSTR-3B or final return in Form GSTR-10.

D. Refunds:

- **Casual Taxable Person and Non-taxable Person to claim refund of advance deposit of tax only after filing last return:** Effective 04.08.2023, a casual taxable person or a non-resident taxable person will be eligible to claim refund of advance tax deposited, ***"only after furnishing the last return"***. *Hitherto, such refund was allowed in the **"last return filed"***.

- **Period of delay not to be considered for the computation of interest to be paid due to delayed refunds:** Effective 01.10.2023, the following periods shall be excluded for calculating interest payable due to delayed refunds:

- Any period in excess of 15 days from the date of receipt of notice rejecting refund application in Form GST RFD-08 to furnish a reply in Form GST RFD-09 or submission of additional documents or reply; and
- Any period taken by the applicant to furnish correct bank account details or for validating his bank account details furnished.

E. Recovery of tax and compounding of offences:

- **Intimation for recovery of tax remaining unpaid:** Effective 04.08.2023, where any tax or interest is unpaid by a registered person due to difference between liability of outward supplies compared to reported in Form GSTR 1 and return furnished in Form GSTR 3B, the proper officer will intimate the details of such unpaid amount in **Form GST DRC-01D** and direct such person to pay the amount along with applicable interest, within 7 days from the date of the said intimation further such amount will also be **posted in Part-II of the E-Liability ledger of registered person**.

  The intimation given shall be deemed to be treated as a "**recovery notice"**. In case such, if a registered person fails to pay the amount of tax or interest within the time limit, the proper officer shall proceed with initiating recovery proceedings in accordance with relevant provisions.

Sr.	Nature of Offence	Compounding Amount - Where the tax evaded / ITC wrongly availed or utilized / refund wrongly taken	
		Exceeds Rs. 5 crores	**Is between Rs. 2 crores to Rs. 5 crores**
1.	Goods or services supplied without issuance of any invoice	Up to 75% of the default amount, subject to a minimum of 50%.	Up to 60% of the default amount, subject to a minimum of 40%.
2.	ITC availed without any underlying supply or without bill		
3.	Amount collected as Tax but failed to pay to the Government beyond 3 months from the due date of payment		
4.	Evades tax or obtains refund fraudulently, which is not covered above		

5.	• Falsifies or substitutes financial records; or • Produces fake accounts or documents; or • Furnishes any false information, with an intention to evade payment of tax	25% of the tax evaded	25% of the tax evaded
6.	Acquires possession of or deals with goods which he knows or has reasons to believe are liable to be confiscated		
7.	Receives, or is in any way concerned, or deals with any supply of services which he knows or has reasons to believe is in contravention of the GST Law.		
8.	Attempts to commit or abets the commission of the aforesaid offences	25% of the default amount	25% of the default amount

If any person commits more than one offence specified above, in such a case, the compounding amount shall be the highest amount of the offences so committed.

F. Others:

- **E-Way bill in case of intra State movement of pearls, precious stones, jewellery, etc.:** Effective 04.08.2023, e-way bill in Part A of Form GST EWB-01 shall be mandatory where the Commissioner of a State or Union Territory mandates furnishing of information of intra-State movement of certain specified goods and the consignment value of such goods exceeds Rs. 2 lakhs before the commencement of movement of such goods in the following cases:
  - For supply of such specified goods or
  - for reasons other than supply of such specified goods; or
  - for inward supply of such specified goods from an unregistered person.

  Specified goods means:
  - Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71); or
  - Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter

71) excepting Imitation Jewellery (7117).

Consignment value means the transaction value declared in an invoice / bill of supply / delivery challan including the GST charged on such document but excludes the value of exempt supply of goods where a consolidated invoice is issued for both taxable and exempt supply of goods.

Other saliant features:

- Furnishing of information in Part B of Form GST EWB-01 is not required in such cases;
- If the aforesaid goods are supplied by an ECO or courier agency, such e-way bill may also be generated by them.
- Such e-way bill may be cancelled within 24 hours of its generation, however the same cannot be cancelled, if it has been verified in transit.

The information furnished in Part A of Form GST EWB-01 will be made available to the registered person for facilitating it in furnishing the details in Form GSTR-1.

- **Appeal to the appellate authority:** Effective 04.08.2023, appeal to the Appellate Authority can only be filed **electronically in Form GST APL-01** by the aggrieved party. However, such appeal can be filed manually only if:
  - The Commissioner notifies so; or
  - The decision or order to be appealed against is not available on the GST common portal.
- **Supply to Un-registered Person through ECO or by an OIDAR - Address on record:** Effective 04.08.2023, where any taxable services is supplied by or through an e-commerce operator (ECO) or by an online information and database access or retrieval services provider (OIDAR) to ***an unregistered person***, the tax invoice shall contain name of the State of the recipient which shall be considered to be the address on record of the recipient. Hitherto,name and address of the recipient along with its PIN code and the name of the State was required to be provided.

Notification No. 38/2023- Central Tax dated 04.08.2023

4. Electronic Credit and Re-claimed Statement introduced for reporting cumulative opening balance of ITC to be reclaimed which was reversed

earlier: For the returns filed for tax period beginning from Aug-22 *(for monthly filing of GSTR-3B)* / 2nd quarter of the FY 2022-23 *(for taxpayers with quarterly filing frequency)* onwards a new statement called ***Electronic Credit and Re-claimed Statement*** is introduced to maintain a track of ITC reversed through Table 4B(2) of Form GSTR-3B of a tax period and which is re-claimed in subsequent tax periods.

For the returns filed up to July-2023: Taxpayers are provided with afacility to report the cumulative balance of ITC reversals *(which is eligible to be reclaimed)* done till the return period for the tax period up to July 2023 until 30.11.2023.

Further, until 31.12.2023, taxpayers are given a facility to amend the ITC value however, such amendment facility can be only 3 times. **It may however be noted that ITC must be reported by 30.11.2023.**

Based on the values reported in the aforesaid statement, the GST portal will maintain a record of ITC reversed and re-claimed for each return in the said statement and any ITC availed subsequently will be validated on the GST portal based on the ITC balance available.

GST News & updates dated 31.08.2023

5. **Changes in taxability of Ocean Freight services from 01.10.2023:**Effective 01.10.2023, the taxability of Ocean Freight services has been amended in line with the ruling of the Supreme Court in the case of Union of India and Anr. vs M/s Mohit Minerals Pvt. Ltd., as below:

   - **Imports on CIF basis** - A registered person in India will not be liable to pay GST under reverse charge mechanism, on ocean freight services received from the foreign supplierfor shipment services of transporting goods from outside India to a customs port of India;
   - **Taxability of Shipment Services:** GST exemption has provided for shipment services provided by a foreign supplier to a person located outside India by way of transportation of goods in a vessel from a place outside India up to the customs station of clearance in India.

   An Indian importer is liable to pay tax under RCM separately on the Ocean Freight services only if the goods have been imported on Free on Board (FOB) basis.

Notification No. 11/2023- Integrated Tax (Rate) ; Notification No. 12/2023- Integrated Tax (Rate) and Notification No. 13/2023- Integrated Tax (Rate) all dated 26.09.2023

6. **Place of supply of goods supplied to an unregistered person notified:** Place of supply of goods to an unregistered person (other than cases of export), shall be:
   - **If** location of the recipient is recorded on the invoice: Place of supply shall be said location of the recipient as per the address recorded in the invoice (Recording the name of the state of the recipient shall be treated as recording the address of recipient); or
   - All other Cases: The location of the supplier.

The Integrated Goods and Services Tax (Amendment) Act, 2023 read with Notification No. 02/2023-Integrated Tax dated 29.09.2023

7. **Online gaming to be within the ambit of OIDAR services:** Supply of 'Online gaming' other than the 'Online money gaming' shall be considered as supply of 'online information and database access or retrieval services' (OIDAR services).

Notification No. 02/2023-Integrated Tax dated 29.09.2023

8. **GST payable on import of 'Online money gaming' from a place outside India:** Effective 01.10.2023, the GST on the supply of **online money gaming to a person located in India** by a person located in a non-taxable territory (i.e., outside India) is to be paid as follows:
   - By the supplier, by getting registered compulsorily under the 'Simplified Registration Scheme', and making an application in Form GST REG-10 *(declaration of the details of PAN is not required)* to the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him; or
   - By a taxable person representing such supplier by getting registered on his behalf; or
   - By a person located in the taxable territory, appointed by such supplier, in case the supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory.

   In case such supplier has failed to comply with the aforesaid provisions, any

computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public.

The Integrated Goods and Services Tax (Amendment) Act, 2023 read with The Central Goods and Services Tax (Amendment) Act, 2023 and Notification No. 02/2023-Integrated Tax; Notification No. 04/2023-Integrated Tax ; and Notification No. 51/2023-Central Tax all dated 29.09.2023

9. GST leviable on supply of 'specified actionable claims' at 28%:

- Effective 01.10.2023, supply of actionable claims involved in or by way of betting, *casinos*, gambling, *horse racing*, lottery or *onlinemoney gambling* (i.e., defined as *specified actionable claims*), where the consideration is received in money or money's worth including virtual digital assets, **will be liable to tax assupply of goods at the rate of 28%.**
- "Online gaming" is defined to mean offering of a game on the internet or an electronic network and includes online money gaming.
- "Online money gaming" means online gaming in which *players pay or deposit money or money's worth, including virtual digital assets*, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, 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;
- The person who organizes or arranges supply of such specified actionable claims, including a person who owns/manages/operates a digital/electronic platform for such supply will be deemed to be the supplier of such actionable claims.

The Central Goods and Services Tax (Amendment) Act, 2023 read with Notification No. 48/2023-Central Tax; Notification No. 11/2023-Central Tax (Rate) both dated 29.09.2023

- **Time of supply notified for supply of 'specified actionable claim':**The exemption from payment of tax on advances received in case of supply of goods is not available to the supplier of specified actionable claims. Accordingly, the time of supply of specified actionable claim shall be earliest of the following:

- Date of issue of invoice / last date on which the supplier is required to issue such invoice with respect to the supply; or
- Date of receipt of payment by the supplier with respect to the supply.

Notification No. 50/2023-Central Tax dated 29.09.2023

10. Amendments made to CGST Rules, 2017: Effective 01.10.2023, following amendments has been made to the provisions pertaining to the supply or supplier of online gaming:

- **Value of supply of online gaming and actionable claims in casinos prescribed:**
  - Online gaming including online money gaming: The value of supply will be the amount paid or payable to or deposited with the supplier, by way of money/money's worth, including virtual digital assets, by or on behalf of the player.
  - Casinos: The value of supply will be the amount paid or payable by the player for purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino or participating in any event in the casino, in cases where the token, chips, coins or tickets are not required.

  If a player uses the amount won by him in any game for participating in further games without withdrawing the same, the same shall not form part of the value of supply of such online money gaming or casino. Further, if any amount is returned or refunded to the player, for any reason, the same is not deductible from the value of supply of online money gaming or casino.
- **Invoice to contain the name of State of the unregistered recipient for supply of online money gaming:** In case of supply of online money gaming to an unregistered recipient, irrespective of the value of the supply involved, the invoice issued by the supplier should contain the name of State of such recipient which shall be deemed to be the address on record of the recipient.
- **Filing of the monthly returns:** Every registered person providing online money gaming from a place outside India to a registered person or a non-taxable online recipient is required to file Form GSTR-5A on or before 20th

of the month succeeding the month to which such supply relates to.

- **Deposit into the Electronic Cash Ledger:** From the date notified by CBIC, a person supplying online money gaming from a place outside India to a person in India may make the deposit into the e-Cash ledger through international money transfer through SWIFT payment network.

Notification No. 51/2023-Central Tax read with Notification No. 49/2023-Central Tax both dated 29.09.2023

11. **Time limit for reporting of invoices on the e-invoice portal notified:** Effective 01.11.2023, taxpayers with Annual Aggregate turnover (AATO) **greater than Rs. 100 Crores** are required to report invoices, debit and credit notes on the e-invoice portal (i.e. IRP) **within 30 days** from the date of raising such document. *For example, an invoice dated 01.11.2023 will not be allowed to report on IRP after 30.11.2023.*

GST News & updates dated 13.09.2023

12. **Geocoding of additional place of business introduced:** The CBIC had introduced the functionality for geocoding the principal place of business address (i.e. the process of converting an address or description of a location into geographic coordinates) on the GST Portal in February, 2023. Now, the functionality for geocoding the **additional place of business** has been introduced for normal, composition, SEZ units / developers, ISD and casual taxpayers registered in **all the States and Union Territories**. The aforesaid functionality can be accessed by navigating on the GST common portal by following '*Services >> Registration >> Geocoding Business Address*'.

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RECENT GST CASE LAWS

Q.1 Whether ITC can be denied to the recipient without conducting a proper investigation of the supplier?

Ans. No, the Honorable Calcutta High Court in Suncraft Energy Private Limited and Another v. The Assistant Commissioner, State Tax [MAT 1218 of 2023 dated August 02, 2023] set aside the order of reversing excess credit availed in Form GSTR-3B as compared to Form GSTR-2A and held that the demand notice issued to the assessee for reversing the ITC could not be sustained without proper inquiry into the supplier's actions.

The Honorable Calcutta High Court observed that the issuance of a demand notice on the recipient of service on account of a mismatch in Form GSTR-2A and Form GSTR-3B ITC cannot be sustained without any investigation being done at the end of the supplier whose invoices are not reflecting in Form GSTR-2A. Further opined that only in exceptional cases, such as collusion between the recipient and the supplier or the supplier's absence or closure of business, proceedings can be initiated against the recipient.

(In favour of assessee)

The Honorable Court relied upon the Judgment of the **Honorable Supreme Court in Union of India v. Bharti Airtel Ltd. and Ors. (2022) 4 SCC 328** wherein the court held that Form GSTR-2A is only a facilitator for taking a confirmed decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit the return based on such self-assessment in Form GSTR-3B manually on electronic platform.

Note:-

This is a welcome and a landmark judgment by the Honorable Court. Very rightly, it has been ordered that without launching any investigation into the defaulting supplier, no demand can be raised from the recipient. If the parallel proceedings are carried out on both the defaulting supplier and recipient, then it would lead to double taxation and violate Article 265 of the Constitution of India. Important to note that for such issues, no demand can be raised u/s 61 of the CGST Act, 2017 i.e. scrutiny of returns.

Q.2 Whether criminal proceedings can be initiated under IPC even in cases where GST law prescribes punishment for same offense?

Ans. Yes, The Honorable Jharkhand High Court in Anupam Kumar Pathak v. The State of Jharkhand and Ors. [W.P. (Cr.) No. 141 of 2022 dated July 04,

2023] held that the FIR logged and criminal proceeding initiated under Sections 120B/406/ 420/471 of the Indian Penal Code ("IPC") cannot be quashed merely because of the reason that the offense is covered under GST law.

The Honorable Jharkhand High Court relied upon the judgment of the Honorable Supreme Court of India in **Jayant and Others v. State of Madhya Pradesh** [(2021) 2 SCC 670] wherein the court held that in case where the violator is permitted to compound the offenses on payment of penalty as per of Section 23A(1), considering the Section 23A(2) of the Mines and Minerals (Development and Regulation) Act, 1957 ("the MMDR Act"), there shall be no further proceedings against the offender in respect of the offenses punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under Section 23A (2) of the MMDR Act shall not affect any proceedings for the offenses under the IPC, such as Sections 379 and 414 of the IPC and the same shall be proceeded without any restriction.

The Honorable Court held that the dispute in the case is related to the forging of invoices and bills without any transaction and it was found that there was such offence committed by the Petitioner. Since there is no bar for prosecution under IPC merely because the provisions of GST law prescribe punishment. *(In favour of revenue)*

Note:-

Very rightly the Honorable Court has held that there is no such bar in the statute to preclude from initiating proceedings under the Indian Penal Code (IPC).

Section 131 of the CGST Act, 2017, Chapter XIX states that any penalty imposed or confiscation made under the GST Act will not prevent proceedings under any other law for the time being in force.

It is a herculean task to prove the allegations under any other law, without bringing home the allegations levied under the GST law. This law is too complicated for other agencies like the police to frame the charges.

Q.3 Whether Revenue Department confiscate goods of assessee based on proceedings initiated against supplier of assessee?

Ans. No, The Honorable Andhra Pradesh High Court in M/s Arhaan Ferrous and Non-Ferrous Solutions Pvt. Ltd. v. Deputy Assistant Commissioner [Writ Petition No.15481 of 2023 dated August 03, 2023] held that the assessee is responsible only to the extent of establishing that he bonafide purchased goods from the supplier for valuable consideration after verifying the GST

registration of the said supplier on the GST portal.

The Honorable Andhra Pradesh High Court opined that it is clear that the proceedings for the detention of goods can be initiated while the goods are in transit in contravention of provisions of the CGST Act. In the instant case, the Respondent may initiate proceedings against the Supplier under Section 130 of the CGST Act because of his absence at the given address and not holding any business premises at the provided address. However, the Respondent cannot confiscate the goods of the Petitioner merely on the ground that the Petitioner happens to purchase goods from the said Supplier.

The Honorable Court noted that the claim made by the Petitioner of purchase of goods is highly doubtful as the physical existence of the said supplier is questioned. Thus, the Respondent can initiate proceedings under Section 129 of the CGST Act against the Petitioner and conduct an inquiry by allowing the Petitioner to establish their case.

Further held that the Petitioner's responsibility will be limited to the extent of establishing that he bona fide purchased goods from the Supplier for valuable consideration after verifying the GST registration of the said supplier on the GST portal. *(In favour of assessee)*

Note:-

Confiscation is not an emergency proceeding, unlike seizure. Only the offending articles (liable to confiscation) can be confiscated. Every instance of non–payment of tax, even under special circumstances of section 74 does not support confiscation U/s 130.

SCN u/s 130 must be issued to the right person with an allegation supported by evidence that identified goods "Offending Articles" are liable to confiscation by showing how to ingredients listed in any of the clauses u/s 130 (1) are fulfilled.

Determination that any goods are "liable" for confiscation is an irreversible step.

In the present case, the goods being transported are duly recorded in books of accounts; therefore they cannot be under no circumstances regarded as "Secreted" and "Offending Articles" liable to be confiscated.

Q.4 Whether the loan facility provided exclusively to the credit card holder be considered a credit card service and thereby exigible for GST?

Ans. No, The Honorable Calcutta High Court in Ramesh Kumar Patodia v. City

Bank N.A. and Ors. [APO 10/2023 with WPO 547/2019 dated July 25, 2023] held that the loan facility availed by a credit card holder, where being a credit card holder is a condition for eligibility, is not considered a credit card service. Instead, it is treated as a standard loan which is exempt under GST.

The Honorable Calcutta High Court observed that the agreement between the Bank and the Petitioner cannot be enforced in light of a well-settled principle of law that mere acceptance of a condition prohibited by law does not make the said condition, enforceable in law and noted that the loan was advanced by a cheque and not by using the credit card. Being a credit card holder was merely an eligibility criterion for availing of such a loan facility. The advanced loan and its repayment along with interest were an altogether separate transaction from the credit card facility offered by the Bank.

Further noted that the Banks have discretion whether to give a loan to a credit card holder but once it chooses to grant a loan to a credit card holder it has to treat the loan similar to other types of loan, and cannot treat the same as credit card facility and charge GST on it. The Honorable Court held that the transaction of granting of loan was a service that could not be termed as a credit card service and thus not eligible for the GST being exempt as per Sl. No. 28 of the Notification.

The court directed the Bank and other Respondents to refund the IGST paid by the Petitioner. *(In favour of assessee)*

Note:-

This is a remarkable judgment by the Honorable Court. The Honorable Supreme Court in Govind Saran Ganga Saran's [2022 – TIOL – 589 – SC – CT] case stated that 4 pillars of taxation together constitute the cornerstone for the levy.

In this particular scenario, the tax must not have been collected. The credit card holders who availed loan facility must revisit their statements and check if the bank has charged GST on such interest amount or not. If charged, the refund must be claimed

Q.5 Whether Section 129 (1)(b) of the UPGST Act can be invoked when the owner of the goods comes forward?

Ans. No, the Honorable Allahabad High Court in **M/s. Margo Brush India & Ors. v. State of U.P [Writ Tax No. 1580 of 2022 dated January 16, 2023]** set aside the penalty order passed under Section 129(1)(b) of the Uttar Pradesh Goods and Services Tax Act, 2017 ("the UPGST Act") by

the adjudicating authority and held that penalty under Section 129(1) (b) of the UPGST Act was unjustified and untenable since the owner has come forward for payment of penalty.

The Honorable Allahabad High Court observed that the Petitioner was present and had accepted the ownership of the seized goods and held that in light of the facts of the case and the Circular, the imposition of a penalty under Section 129(1)(b) of the UPGST Act was not justified, as the owner of the goods comes forward for payment of penalty. Only a penalty as per Section 129(1)(a) of the UPGST Act can be levied which is an amount equivalent to 200% of the tax payable. *(In favour of assessee)*

Note:-

It is a case of gross violation of the due process laid in the statute and unwarranted abuse of authority to confirm demand u/s 129(1)(b) of the Act. Moreover, the CBIC Circular dated December 31, 2018, has been issued to clarify to treat the consignor as a deemed owner in case the goods are accompanied by invoices. Since, in this case, the Petitioner was a consignor who accepted the ownership of goods, the penalty order passed under Section 129(1)(b) of the UPGST Act was not correct.

A similar judgment has been passed by the Honorable Allahabad High Court in case of **Bhawani Traders Pvt. Ltd. v. State of Uttar Pradesh [Writ Tax No. 854 of 2023 dated July 24, 2023]** wherein it is held that if the assessee comes forward and is willing to pay the penalty for the detained goods, the Revenue Department cannot issue penalty order under section 129(1)(b) of the Central Goods and Services Tax Act, 2017.

Q.6 Hostels and PG accommodation services attract 12% GST

Ans. The AAR, Karnataka, in the case of **Srisai Luxurious Stay LLP [Ruling No. KAR ADRG 25/2023 dated JULY 13, 2023]** ruled that hostel and PG accommodation cannot be considered equivalent to residential accommodation and thus such services are not eligible for exemption and accordingly are exigible to GST @12%.

The AAR Karnataka concerning the exemption of services observed that neither the service exemption notification nor the Central Goods and Services Tax Act, 2017, and rules made there under define the term 'residential dwelling'. However, it was observed that the education guide on taxation services interprets 'residential dwelling' based on normal trade parlance to mean a residential accommodation intended for permanent stay, excluding guest houses or lodges excluding places meant for temporary stay.

Held that the accommodation services provided by the Applicant are akin to the guest house and lodging services, and thus do not qualify as 'residential dwellings' and accordingly, not eligible for exemption under Sl. No. 12 of the service exemption notification.

Regarding additional services offered by the Applicant, the AAR observed that services such as meals and other facilities are optional and not integral to the main accommodation service and the Applicant is liable to pay GST on such services.

Regarding payment of tax under RCM the authority firstly observed that the Applicant has taken the building on rent from the owner of the building (landlord) and carried out business from such building and Stated that a new entry 5AA has been inserted vide **notification no. 05/2022- Central Tax (Rate) dated July 13, 2022**, in the principal **notification no. 13/2017- Central Tax (Rate) dated June 28, 2017**, which states that the registered recipient would be liable to pay GST under RCM for 'service by way of renting of a residential dwelling to a registered person'.

Held that the Applicant who is a registered person is liable to pay GST under RCM on the rental payment made to the landlord of the residential property.

Note:-

A similar ruling was passed by the AAR, Uttar Pradesh in the case of **M/s V S Institute & Hostel Private Limited [AR No. UP ADRG -26/2023 dated May 08, 2023]**. Although the ruling pronounced by both the AAR is only binding on the Applicants and the officers pronouncing the ruling. However, this would certainly impact the hostel industry.

Q.7 Whether the cash that does not form part of the stock in trade of the business can be seized during search proceedings under GST?

Ans. No, The Honorable Supreme Court in the matter of **State Tax Officer v. Shabu George (IB) Special Leave Petition (SLP) No.27670/2023 dated July 31, 2023]** dismissed the SLP filed by the Revenue Department against the order of the Honorable Kerala High Court ordering the Revenue Department to release the cash seized during the search since such cash does not forms part of stock in trade of business.

The Honorable Supreme Court dismissed the appeal of the Revenue Department and held that the court is not inclined to interfere with the judgment and order of the High Court. *(In favour of assessee)*

Note:-

It is important to note that even cash must be 'secreted' to qualify for the seizure but, more importantly, cash is not 'goods liable to confiscation' under section 130(1) but are 'things' which are considered "useful or relevant" by the Authorized Officer to carrying out "any further proceedings". What, therefore, can be the 'use or relevance' of cash to be seized? There is a popular, mysterious, and erroneous understanding that 'cash' is illicit if discovered in search proceedings. Officers tend to seize cash without even ascertaining to whom it belongs.

'Cash' seizure does not directly point to proceeds from unaccounted sales. That would have been easy but the Legislative wisdom is that (i) 'Evasion of tax is a must for proceedings under section 67 to be with the jurisdiction and lawful and (ii) No presumption flows in favor of the Revenue, especially, when cash may be treated to be 'things' and not 'consideration from supply'. After all, 'things' seized can only be if they are "useful or relevant" for that Authorized Officer in carrying out "any further proceedings".

Q.8 Whether communication to freeze a bank account be considered a valid attachment order under Section 83 of the CGST Act?

Ans. No, The Honorable Delhi High Court in M/s. Redamancy World v. Senior Intelligence Officer [W.P. (C) 6208/2019 dated July 31, 2023] held that the communication letter sent by the Directorate General of Goods and Services Tax Intelligence ("DGGI") to the assessee's bank and customers, directing them not to make payments for the goods supplied by the petitioner, was not legally authorized, being not issued in requisite Form DRC-22.

The Honorable Delhi High Court observed that no order in Form GST DRC-22 was issued to the petitioner under Section 83 of the CGST Act and the communication sent to various customers of the petitioner, restraining them from making payments for goods supplied by the petitioner, was without authority of law.

The Honorable Court noted that Section 83 of the CGST Act empowers the Commissioner to issue orders for provisional attachment of assets, including bank accounts, of the taxpayer only when necessary to protect the interests of Revenue. However, In the Present case, there was no specific noting in the files indicating that such action was necessary. *(In favour of assessee)*

Note:-

This welcome decision by the Honorable Delhi High Court and it comes to the resume of the taxpayers and once again the Rule of Land Stands tall against the over-passionate administration.

The Revenue Department has to understand that this kind of approach renders the due process "laid down in the statute superfluous, unnecessary, and nugatory, which is impermissible in the law.

Q.9 Whether the Revenue Department cancel GST registration from a retrospective date, eve n before the date of filing of an application for cancellation by Petitioner?

Ans. No, The Honorable Delhi High Court in the matter of Ashish Garg v. Assistant Commissioner of State Goods and Services Tax [W.P.(C) 6652 of 2023 dated July 20, 2023] held that although the Revenue Department has the discretion to cancel GST registration from a retrospective date but doing so without valid justification constitutes the arbitrary exercise of power.

The Honorable Delhi High Court noted that as per section 29 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"), the Adjudicating Authority has the discretion to cancel the registration from a retrospective date, however, the said power cannot be exercised arbitrarily.

The Honorable Court observed that there is no material on record to justify such retrospective cancellation of GST registration by the Adjudicating Authority and opined that the Petitioner cannot be asked to file returns for the period after he had closed down his business. *(In favour of assessee)*

Note:-

This is an applaudable and much-needed judgment by the Honorable High Court of Delhi. Cancellation of registration from an earlier date, although, permitted u/s 29 of the GST Act, must not be resorted to arbitrarily. Such cancellation would lead to disruption of whole credit claims and hardships will be faced by the taxpayers who have already availed bonafide credit. If such extraordinary power has to be exercised by the Proper Officer, it must be well thought out, reasoned order based on documentary evidence in consensus with rule 21.

Q.10 Whether a purchasing dealer can be denied the benefit of ITC in cases where the supplier has collected the tax but not paid it to the government?

Ans. Yes, The Honorable Patna High Court in M/s. Aastha Enterprises v. State of Bihar [CWJ 10395 of 2023 dated August 18, 2023] held that ITC is like a benefit/concession and not a right extended to the assessee under the statutory scheme. The ITC to purchasing dealer will depend not only upon the collection by the seller but also the due payment by the seller to the Government and the burden of proof lies with the assessee to substantiate

that the tax collected has been paid to the government by the supplier.

The Honorable Patna High Court observed that the claim of ITC raised by the Petitioner cannot be sustained when the supplier has not paid the tax amount to the Government, despite the collection of tax from the Petitioner. The Honorable Court noted that the burden of proof lies with the purchasing dealer to substantiate that the tax collected has been paid to the government by the supplier. This requirement underscores the statutory compliance aspect and safeguards the integrity of ITC claims. The court maintained that this condition cannot be viewed in isolation, it is an essential prerequisite for enjoying the benefit of ITC and relied upon the Judgment in The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited [Civil Appeal No. 230 of 2023 dated March 13, 2023] wherein the Honorable Supreme Court held that to sustain a claim of ITC on purchases, the purchasing dealer would have to prove the genuineness of transactions by furnishing the details. Mere production of tax invoices would not be sufficient to claim ITC.

The Honorable Court opined that the statutory levy and the benefit of ITC conferred on the purchasing dealer depends not only upon the collection by the seller but also on the due payment by the seller to the Government and held that when the supplier fails to comply with the statutory requirement, the Petitioner cannot claim ITC and the remedy available to the Petitioner is only to proceed for recovery against the seller. *(In favour of assessee)*

Note:-

Section 155 of the GST Act places the burden on them to prove about eligibility of ITC on the taxpayer. But, there is a difference between "Burden to Prove" and "Onus to Prove" under the Evidence Law. Once the taxpayer fulfills all the conditions of section 16(2) of the Act, the required "Burden to Prove" is discharged, and now "Onus to Prove" shifts onto the department to prove that ITC is ineligible.

In the present case, non-payment of taxes by the supplier i.e. Section 16(2)(c) is alleged. But care must be taken to ensure the mechanism of how a recipient can make sure such a condition is fulfilled, in the view of no facility to check.

This petition lacked persuasive arguments to substantiate the claim of ITC, although other Honorable High Court has divergent rulings on the same subject matter.

The ruling of the Honorable Court will add to litigation.

Q.11 Whether the Revenue Department have the right to arrest the

Applicant without assigning any reason or without issuing of notice for Recovery of GST?

Ans. No, The Honorable Allahabad High Court in **Ravinder Nath Sharma v. Union of India [Criminal Misc. Bail Application No. 26376 of 2023 dated July 10, 2023]** granted the bail to the assessee on some conditions and held that the arrest was made without justifiable reasons and no GST recovery notice was issued.

The Honorable Allahabad High Court opined that the court has to keep in mind the nature of the accusation, the nature of the evidence, the character of the accused, the circumstances that are peculiar to the accused, his role and involvement in the offense, his involvement in other cases and reasonable apprehension of the witnesses being tampered with will have to be taken into consideration for granting bail.

The Honorable Court relied upon the judgment in Mahipal v Rajesh Kumar &Anr. [(2020) 2 SCC 118] wherein the Honorable Supreme Court held that at the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the Accused.

And held that the arrest was made without justifiable reasons and no GST recovery notice was issued. *(In favour of assessee)*

Note:-

Punishment is the sentence awarded after the conclusion of the trial. The arrest of a Person is not the Commencement of sentence but preparatory to filing of complaint u/s 190(1)(a) of Cr.PC by GST Officer requesting magistrate to take cognizance of the offense involved and direct trial. There is a popular saying, "Jail is an exception, and bail is a norm". As per Section 69(1) of the GST Act, where the commissioner for goods and sufficient " Reason to Believe" require arrest is warranted, an arrest can be made.

Issuance of SCN u/s 74 for offense and detention u/s 69 for prosecution u/s 132 may be taken up in parallel proceedings independently.

Instructive words as per instruction No. 2/2022 – 23 dated (GST Investigation) 17 August 2022 are reproduced:-

"***The occasion to arrest an accused during investigation arises when the custodial investigation becomes necessary or it is a heinous crime or where there is the possibility of influencing the witnesses or accused may abscond. Mere arrest can be does not mandate that arrest must be made."***

Q.12 Supreme court disallows SIP, where alternative remedy not exercised by the assessee

Ans. The Honorable Supreme Court in M/s. Vishwanath Traders v. Union of India & Ors. [Special Leave to Appeal (C) No(s). 15594 of 2023 dated August 04, 2023] upheld the order of the Honorable Patna High Court wherein the high court held that extraordinary jurisdiction under Article 226 of the Constitution of India cannot be invoked where the assessee has alternate remedies available and he was not diligent in availing such alternate remedies within the stipulated time.

The Honorable Supreme Court upheld the order of the Honorable Patna High Court rejected the SLP and stated that the Petitioner delayed in approaching the Appellate Authority therefore, the High Court was justified in dismissing the writ Petition.

The Honorable Patna High Court dismissed the writ and stated that they did not find any reason to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India, especially when the Petitioner had alternate remedies available and the Petitioner was not diligent in availing such alternate remedies within the stipulated time.

Note:-

It's a trite law that the High Court has discretion to decide whether or not to accept a writ petition under Article 226 of the Constitution of India.

However, the Honorable Supreme Court in the case of Magadh Sugar & Energy Ltd. v. State of Bihar LL 2021 SC 495 held that the existence of an alternate remedy does not bar the exercise of writ jurisdiction if the order is challenged for want of jurisdiction. The bench also noted that there are exceptions to the rule of alternate remedy arise, the court which are: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

Q.13 Whether the Revenue Department issue SCN on the same matters that have already been adjudicated by the Adjudicating Authority?

Ans. No, The CESTAT, Ahmadabad, in **Neeraj Sharma v. Commissioner of Customs, Kandla [Customs Appeal No. 12056 of 2018-DB dated July 24, 2023]** set aside the order passed by the Adjudicating authority on that matter which is already been adjudicated and held such order as void-Ab-initio.

The CESTAT, Ahmadabad, in Customs Appeal No. 12056 of 2018-DB observed that the Impugned Order was already adjudicated by the Ld. Commissioner of Customs vide order-in-original No. 5/2013-14/CC(I)JNCH dated June 30, 2014, and is currently pending before the CESTAT, Mumbai. Held that the present order passed by the Revenue Department is ab initio void and illegal.

Q.14 Invoice value is the deemed open market value for supplies between distinct persons

Ans. The AAAR, Maharashtra, in the matter of **M/s Chepp India Private Limited [Order No.MAH/AAAR/DS-RM/02/2023-24 dated June 05, 2023]** held that the transaction between two GSTINs of the same person would be considered a lease transaction and accordingly taxable as a supply of services in terms of Section 7 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") and since the recipient unit is eligible for full ITC the valuation may be done as per second proviso to Rule 28 of the Central Goods and Services Tax Rules, 2017 ("CGST Rules"). *(In favour of assessee)*

Q.15 Whether rejection of the refund applications solely based on a mismatch between GSTR-3B and GSTR-2A was justified?

Ans. No, the Honorable Delhi High Court in M/s Shivbhola Filaments Private Limited. v. Assistant Commissioner of CGST [W.P.(C) 9742/2023 dated July 25, 2023] restored the refund application rejected by the Adjudicating Authority and held that the assessee would not be left unheard.

The Honorable Delhi High Court observed that the rejection of the Petitioner's refund applications based on mismatches without providing them with an opportunity to reconcile and the discrepancies is deemed inappropriate and unfair and directed the Adjudicating Authority to review the Petitioner's submissions, explanation, and reconciliation statement and to issue a comprehensive and well-reasoned decision regarding the refund applications.

Note:-

This is an urgent need to understand that any mismatch between GSTR – 3B & GSTR – 2A figures does not mean any non–payment or evasion of tax. Yes, it can be a red flag for the Proper Officer to enquire deeply about the mismatch but the mismatch is not sufficient ground to impeach self–assessment of the taxpayer.

Q.16 Whether the penal interest and bounce charges collected by an NBFC attract service tax?

Ans. No, The CESTAT, Mumbai, in M/s Bajaj Finance Ltd. v Commissioner of

Central Excise and GST [Service Tax Appeal No. 90043 of 2018 dated August 07, 2023] set aside the impugned order and held that the assessee is not receiving penal interest and bouncing charges as a consideration for tolerating an act. Thus, service tax cannot be demanded. The CESTAT noted that the government had excluded the interest on delayed payment from the scope of payment of service tax as per clause (iv) to sub-rule 2 to Rule 6 of the Service Tax Rules, 2006 notified vide Notification No. 24/ 2012- S.T. dated June 06, 2012 and Relied upon the Judgment of CESTAT, Dehradun in M/s Rohan Motors v Commissioner of Central Excise wherein it was held that the bouncing charges are penal in nature and thus are not towards consideration of any service.

Note:-

The CBIC vide Circular No. 178/10/2022-GST dated August 03, 2022, has clarified that the fine or penalty imposed, for dishonor of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. This means thereby, the cheque dishonor fine or penalty is not a consideration for any service and thus, not taxable.

Q.17 Whether the Revenue Department have the authority to seize currency during search proceedings under Section 67 of the CGST Act?

Ans. No, The Honorable **Delhi High Court in Baleshwari Devi v. Additional Commissioner (Anti-Evasion), Central Goods and Service Tax [W.P.(C) 5056 of 2023 dated July 21, 2023]** held that the Revenue Department has no power to take possession of the personal assets without official seizure under the Central Goods and Services Tax Act, 2017 ("the CGST Act").

The Honorable Delhi High Court noted that there is no dispute that the Respondent is required to act strictly by the provisions of the statute and the rules thereunder and the action of the Respondent in dispossessing the Petitioner or any of the family members of any of their assets in the proceedings under Section 67 of the CGST Act, without seizing the same, is illegal.

The Honorable Court held that the Respondent cannot continue with the possession of the currency collected from the Petitioner's residence and opined that the assumption that the cash recovered from the locked room was in the possession of Seema Gupta (the Petitioner's daughter-in-law) is ex facie erroneous. *(In favour of assessee)*

Note:-

It is important to note that even cash must be 'secreted' to qualify for the seizure but, more importantly, cash is not 'goods liable to confiscation' under section 130(1) but are 'things' which are considered "useful or relevant" by the Authorized Officer to carrying out "any further proceedings". What, therefore, can be the 'use or relevance' of cash to be seized? There is a popular, mysterious, and erroneous understanding that 'cash' is illicit if discovered in search proceedings. Officers tend to seize cash without even ascertaining to whom it belongs.

'Cash' seizure does not directly point to proceeds from unaccounted sales. That would have been easy but the Legislative wisdom is that (i) 'Evasion of tax is a must for proceedings under section 67 to be with the jurisdiction and lawful and (ii) No presumption flows in favor of the Revenue, especially, when cash may be treated to be 'things' and not 'consideration from supply'. After all, 'things' seized can only be if they are "useful or relevant" for that Authorized Officer in carrying out "any further proceedings".

Q.18 Whether delay in making a pre-deposit due to the attachment of the bank account, is a sufficient cause to condone the delay to entertain an appeal?

Ans. Yes, The Honorable Andhra Pradesh High Court in M/s. S A Iron and Metal v. State of Andhra Pradesh and Anr. [W.P. No. 15490 of 2023 dated July 07, 2023] set aside the order refusing to entertain an appeal on the ground of delay in filing of the appeal and held that it is not the length of the delay, but cause for delay which would be paramount consideration.

The Honorable Andhra Pradesh High Court observed that the expression 'sufficient cause' is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of justice, while considering an application for condonation of delay, it is not the length of the delay, but cause for delay which would be paramount consideration. Further observed that when the bank account of the Petitioner is attached by the Respondent it is a relevant fact to consider the delay since the pre-deposit of 10% disputed tax at the time of filing of the appeal is mandatory and held that the language employed under Section 107(4) of the CGST Act and in the backdrop the factual and legal background of the case, the impugned order is to be set aside. *(In favour of assessee)*

Q.19 Whether the Revenue Department pass a rectification order under Section 161 of the CGST Act without providing the opportunity to be heard to the Petitioner?

Ans. No, the Honorable Madras High Court in **M/s. Vadivel Pyro Works v. The State Tax Officer [W.P No.11143 of 2023 dated July 26, 2023]** set aside a demand raised by the Revenue Department on the ground that rectification order under section 161 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") was passed without giving the opportunity of being heard to the assessee. The Honorable Madras High Court held that before passing the order under section 161 of the CGST Act, the Respondent should have followed the proviso and granted a personal hearing to the Petitioner. Therefore, while passing the rectification order there was a violation of the principle of natural justice. *(In favour of assessee)*

Q.20 Whether the claim of ITC through GSTR-3B justified since Form GST ITC-02 was not live on the common portal?

Ans. Yes, The Honorable Allahabad High Court in M/s TikonaInfinet Private Limited v. State of U.P. [Writ Tax No. 859 of 2023 dated July 25, 2023] set aside the demand raised on the ground that assesseeinstead of passing the Input Tax Credit ("ITC") through Form GST ITC-02 transferred ITC through Form GSTR-3B and held that the stand of the Revenue Department was not correct since the Form ITC-02 was not live on the common portal.

The Honorable Allahabad High Court observed that the Form GST ITC-02 was not available on the GST Portal since the whole system was at the nascent stage during the initial months after its implementation on July 01, 2017, and opined that the Petitioner had to raise a proper grievance on the GST portal help-desk and ought to have waited for the relevant Form to go live on the GST portal instead of making illegal adjustment by use of the Form GSTR-3B of the Petitioner (transferor) and the TDN (transferee company).

Further opined that a mere shortage of working capital cannot be an excuse to bypass the legal procedure laid down under the law.

Held that the stand of the Respondent for rejecting the claim of the Petitioner in the wake of the admitted fact that the GST common portal was not online cannot be justified.

The Honorable Court set aside the Impugned order and stated that the Respondent had the liberty to pass a fresh order after considering the objections of the Petitioner and affording the opportunity of hearing, strictly by law. *(In favour of assessee)*

Q.21 Whether the Petitioner files an appeal manually if the order was not electronically uploaded, especially when it is an undisputed fact that

the assessee communicated the orders and had received the same manually.

Ans. Yes, The Honorable Gujarat High Court in Britannia Industries Limited v. Union of India [Special Civil Application No. 14867 of 2022 dated August 07, 2023] rejected the refund claim filed by the assessee on the ground that no appeal was filed against the refund rejection order.

The Honorable Gujarat High Court observed that Section 107 of the CGST Act which states that any person aggrieved by any decision or order passed under the CGST Act may appeal to the Appellate Authority within three months from the date on which the said decision or order is communicated to the person and noted that the Appellate authority has power to condone the delay in filing appeal if the Petitioner shows sufficient cause which prevented them from filing an appeal within three months, then Appellate Authority can allow a further period of three months.

The Honorable Court relied upon the Judgment of M/s. Meritas Hotels Pvt. Ltd. v. The State of Maharashtra [Writ Petition No.7793 of 2021 dated December 03, 2021], wherein the Bombay High Court observed that Rule 108 of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") is no doubt, prescribes that the appeal has to be filed electronically, but it nowhere prescribes that the same is to be filed only after the order is uploaded on the GSTN Portal.

The Honorable Court held that merely because the order was not uploaded on the GSTN portal will not save the assessee's time to file appeals especially when the recovery proceedings have already been done and the order to freeze bank accounts has been made in exercise of powers under Section 79 of the CGST Act. *(In favour of assessee)*

Q.22 Whether the refund application be rejected without giving a proper time for the reply of SCN?

Ans. No, The Honorable Bombay High Court in the matter of **M/s. WallemShipmanagement (India) Pvt. Ltd. v. The Union of India & Ors [Writ Petition no.3460 of 2021 dated July 11, 2023]** set aside the order of Adjudicating Authority of not granting refund and held that the assessee should have given time to file reply since the notice was issued during the pandemic period.

The Honorable Bombay High Court noted that the reason furnished by the Petitioner to seek extended time to file a reply to the SCN on account of the pandemic was a sufficient reason and the Respondent gave only three days to file the reply, which cannot be termed as reasonable time or an adequate

opportunity of a hearing to the Petitioner.

The Honorable Court held that the Petitioner was not granted the proper opportunity to reply to the SCN and set aside the Impugned order being violative of the principle of natural justice. *(In favour of assessee)*

Q.23 Whether the assessee entitled to interest on the refund which was withheld by the Revenue Department without any intimation for more than 6 months?

Ans. Yes, The Honorable Gujarat High Court in M/s. Panji Engineering Private Limited v. Union of India [R/SPECIAL CIVIL APPLICATION No. 560 of 2022 dated July 10, 2023] held that disbursement of refund by the department beyond the statutorily prescribed period makes the assessee entitled to interest on such refund amount.

The Honorable Gujarat High Court relied upon the judgment of Ranbxi Laboratories Ltd. v. Union of India 2011 [Civil Appeal No. 6823 of 2010] wherein the Honorable Supreme Court held that in case of delayed refunds, the applicant shall be entitled to interest on such delayed refund amount.

The Honorable Court held that the Petitioner's case is fit for grant of interest on refund under section 56 of the CGST Act due to a delay of more than 60 days from the date of application as prescribed under Section 54(1) of the CGST Act. *(In favour of assessee)*

Q.24 Whether the Revenue Department can reject the appeal merely on the ground that the assessee has not filed a physical copy of the order even though the order copy was filed electronically?

Ans. The Honorable Calcutta High Court in Rama Shanker Modi v the Assistant Commissioner, Central Goods, And Services Tax and Central Excise [WPA 15639 of 2023 dated July 20, 2023] set aside the impugned order and held that mere non-filing of order physically within the time limit cannot be a valid ground to rejection of appeal.

The Honorable Calcutta High Court observed that the Petitioner was bonafide and made the mistake of not filing the appeal physically before the Appellate Authority within time and the Appellate Authority cannot reject the appeal merely on the technical ground of not filing an appeal physically before the authority without going into the merits.

The Honorable Court set aside the impugned order and directed the Appellate Authority to accept the certified copy filed by the Petitioner beyond time dispose of the appeal in question by law and pass a speaking order after giving an opportunity of hearing to the Petitioner.

Q.25 Whether the application for a refund can be rejected without giving any reason?

No, The Honorable **Delhi High Court in the matter of M/s Chegg India Pvt. Ltd. v. Commissioner of Central Goods and Services Tax [W.P.(c) 14886 of 2022 dated July 19, 2023]** held that the refund application cannot be rejected without giving a proper reason and stated that the Revenue department may issue a fresh notice, clearly setting out the reasons for proposing to reject the refund claim and the assessee file a response in Form RFD-09, within the prescribed period.

The Honorable Delhi High Court observed that there is a fundamental error in the manner in which the petitioner's refund applications have been processed and noted that the Appellate authority had not issued any notice as required under Rule 92(3) of the Central Goods and Services Tax Rules, 2017 setting out the reasons for rejecting the refund thus, the Petitioner had no opportunity to satisfy the Appellate Authority to its claim for refund to the extent it has been rejected.

The Honorable Court held that the application of refund claim cannot be rejected without giving a proper reason and a proper opportunity should be given to the Petitioner to show the reason why the refund should not be rejected. *(In favour of assessee)*

Note:-

Even if a refund is to be denied, a speaking order must be passed rejecting the refund for good and sufficient reasons and properly founded in the law.

Unlike other notices for demand, a refund is a very crisp proceeding because the taxpayer is fully seized of the facts and needs to be "put at notice" on certain specific matters that need a response to consider the application to sanction or reject the said refund.

Q.26 Whether the duty can be demanded solely based on differences between sales figures in the balance sheet and the ER-1 returns?

Ans. No, The CESTAT, Kolkata in **M/s. Pratap Polysacks Ltd. v. Commissioner of Central Excise, Haldia[Excise Appeal No.175 of 2011 dated August 07, 2023]** set aside the demand order passed by the Adjudicating Authority and held that duty cannot be demanded merely based on the difference in sales figures between the balance sheet and the and ER-1 Returns, there has to be some positive evidence brought on record to substantiate the allegation of clandestine clearance.

The CESTAT, Kolkata observed that the demand in the Impugned Order is

mainly due to the difference between the sale figures available in the Schedule of the Balance Sheet for financial years 2004-05, 2005-06, 2006-07 and 2007-08 and the quantity of clearance of those products declared in the monthly ER-1 returns filed by the Appellant during the corresponding financial years and noted that the demand was confirmed based on the difference between the sales figures available in the Balance Sheet and the value declared in the ER-1 returns.

The CESTAT opined that a mere allegation of shortage based on the difference in sales figures between the balance sheet and the ER-1 Returns, cannot be the basis for confirming the central excise duty on the differential quantity and Central Excise duty cannot be demanded merely based on the difference in sales figures found between the balance sheet and the and ER-1 Returns, there must be some positive evidence brought on record to substantiate the allegation of clandestine clearance. *(In favour of assessee)*

Q.27 Whether the Assistant Commissioner can proceed against the findings of the higher authority?

Ans. No, The Honorable Bombay High Court in Jacobs Solutions India Pvt. Ltd. v. Union of India [Writ Petition No. 5808 of 2023 dated July 31, 2023] set aside the order passed by the Assistant Commissioner and held that the revenue officers are required to follow the principles of judicial discipline and accordingly are bound by the decisions of the Appellate Authority.

The Honorable Bombay High Court relied on the judgment of Globus Petroadditions Pvt. Ltd. v. Union of India 2022(64) G.S.T.L. 54 (Bom.) wherein the Honorable Bombay High Court observed that the Assistant Commissioner is required to comply with the orders passed by the Commissioner of (Appeals) and in taking such view the Assistant Commissioner would not have refused to comply with the orders of the higher authority and opined that Assistant Commissioner has no authority to re-visit the concluded findings of fact as derived by the Appellate Authority.

The Honorable Court held that the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department – in itself an objectionable phrase – and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. *(In favour of assessee)*

Q.28 Writ remedy not available if assessee defaults in compliance with law and non-cooperation in proceeding

Ans. The Honorable Madras High Court in M/s Karmaxx Infotech v. Assistant Commissioner (ST) [W.P. No. 18311 of 2023 dated June 20, 2023] dismissed the writ filed by the assessee against the order of cancellation of GST registration and held writ remedy cannot be granted to the assessee who defaulted in compliance with provisions of GST law and has not cooperated in departmental proceedings.

The Honorable High Court of Madras noted that the default of non-intimation of change of place of business to the department was well within the knowledge of the Petitioner before the issuance of the Notice, therefore such a notice cannot be held to be non-speaking.

Further held that the above facts of default on the part of the Petitioner, along with noncooperation with departmental proceedings, make the case unfit for grant of remedy under Article 226 of the Constitution of India.

Q.29 Whether R&D services provided to the foreign company considered an export of service?

Ans. Yes, The AAR Gujarat, in the case of M**/s. Hilti Manufacturing India Pvt. Ltd. [Advance Ruling No. GUJ/GAAR/R/2023/26 dated July 12, 2023]** held that, services provided by the assessee to the entities Located outside India is covered under section 13(2) of the Integrated Goods and Services Tax Act, 2017 ("the IGST Act"). Accordingly, such services would qualify to be treated as export of service.

The AAR, Gujarat observed that the Applicant is located in India HAG (the Recipient) is located outside India and the place of supply is the location of the Recipient of service, since the prototype on which R&D is conducted and whose report is supplied to HAG was not supplied by HAG but was developed by the Applicant. Thus, the service of R&D would not fall within the ambit of the second proviso of section 13(3)(a) of the IGST Act and held that services provided by the Applicant to the foreign company are covered under Section 13(2) of the IGST Act and is eligible to be treated as a 'zero-rated supply' under Section 16 of the IGST Act.

Further held that the services provided by the Applicant would fall under 'export of service' more so because all the five conditions as enumerated under section 2(6) of the IGST Act viz the Applicant (the Supplier) is located in India and HAG (the Recipient) is located outside India as in the application the payment of the supply is received in foreign exchange.

Q.30 Supreme Court to hear Revenue"s review petitions on taxability of duty-free shops

Ans. The Honorable Supreme Court in Commissioner of CGST and Central Excise Mumbai East v. M/s. Flemingo Travel Retail Ltd [Review Petition (Civil) No. 1017 of 2023 dated August 18, 2023] allowed the review petition by recalling the judgment dated April 10, 2023 wherein the Honorable Supreme court held that Duty-Free Shops at arrival or departure terminals of Airports are outside the customs frontiers of India and tagged the matter with the appeals mentioned in the signed order.

The Honorable Supreme Court observed that the memo of appeal lodged by the Commissioner against the judgment of the CESTAT which formed the subject matter of the appeal as well as the grounds in the review petition and noted that substantial grounds on law have been advanced by the Union Government during the course of the oral hearing in support of its case that the applicable regime regarding goods stands on a distinct footing from the regime applicable to the levy of service tax and later, under IGST.

Further noted that sixteen other appeals involving the same issue were stated in the synopsis to the paper book to be pending and allowed the review petition by recalling the judgment dated April 10, 2023, and held that the civil appeal shall stand tagged with the above appeals. The Registry shall obtain administrative directions so that all the appeals can be clubbed together and be heard by one Bench expeditiously. *(In favour of assessee)*

Q.31 Whether penalty can be imposed if the assessee has voluntarily paid the service tax before the issuance of show cause notice?

Ans. No, The CESTAT, Chennai in M/s. Susee Auto Sales & Service Pvt. Ltd. v. Commissioner of GST & Central Excise [Service Tax Appeal No.40764 of 2013 dated July 31, 2023] quashed the penalty imposed by the adjudicating authority and held that penalty under sections 77 and 78 of the Finance Act, 1994 ("the Finance Act") will not to be imposed in cases where duty and interest are paid voluntarily.

The CESTAT observed that the Appellant had voluntarily paid the tax liability hence judicious exercise of discretion on the part of the Respondent was required before the imposition of such a penalty and relied upon the Judgment in Hospitech Management Consultants Pvt. Ltd. Vs. CST (2023) 7 CENTAX 134 (Tri. Del.) Wherein the CESTAT, New Delhi held that that extended period of limitation for raising demand under proviso to section 73(1) of Finance Act could not be invoked if alleged suppression of facts was not willful with intent to evade payment of service tax.

The CESTAT opined that the Appellant had accepted and paid the service tax with interest before issue of the SCN, the matter should have been

closed and allowed to rest in terms of section 73 (3) of the Finance Act.

Q.31. Whether the pre-deposit can be made through E-Credit Ledger?

Ans. Yes, The Honorable Orissa High Court in **M/s. Kiran Motors v. Addl. Commissioner of CT & GST [W.P (C) No.22817 of 2023 dated August 10, 2023]** set aside the appeal rejection order passed by the First Appellate Authority and held that a pre-deposit under GST can be made through electronic credit Ledger (**"ECL"**).

The Honorable Orissa High Court noted that the CBIC vide circular dated July 06, 2022, clarified that payment of pre-deposit can be made by using the electronic credit Ledger and opined that the Petitioner has already made the pre-deposit using the electronic credit Ledger, which will now be accepted by the Revenue Department and Set aside the Impugned Order.

Note:-

This kind of order by the First Appellate Authority shakes the confidence of the taxpayers in the administration. The CBIC vide **Circular 172/04/2022-GST dated July 06, 2022**, clearly clarified that the Electronic credit ledger can be used to pay Pre–deposit required to prefer an appeal. Moreover, circulars issued under section 168 are binding on the Proper Officer. Circulars are issued to avoid administrative anarchy where divergent treatment is extended by different officers.

There was no reason to reject the appeal on such grounds and force the taxpayer to knock on the doors of the Honorable High Court. The Honorable Court must have taken strict action against such erring officers to set an example.

Q.**32. Whether the Adjudicating Authority passes an order without offering the opportunity to be heard?**

Ans. No, The Honorable Allahabad High Court in **B.L. Pahariya Medical Store v. State of U.P [Writ Tax No. 981 of 2023 dated August 22, 2023]** set aside the demand order passed by the Adjudicating Authority and held that the assessee is not required to request for opportunity of personal hearing, and it remained mandatory upon Adjudicating Authority to afford such opportunity before passing an adverse order.

The Honorable Allahabad High Court noted that the stand of the Petitioner may remain unclear unless a minimal opportunity of hearing is first granted and directed to issue a fresh SCN to the Petitioner within two weeks. The Honorable Court relied upon the Judgment of **Bharat Mint & Allied Chemicals v. Commissioner Commercial Tax & 2 Ors. [(2022) 48**

VLJ 325] wherein the Honorable Allahabad High Court held that the Adjudicating Authority was bound to afford the opportunity of a personal hearing to the Petitioner before he may have passed an adverse assessment order.

The Honorable Court held that a principle of law is laid down that the Petitioner is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Adjudicating Authority to afford such opportunity before passing an adverse order. *(In favour of assessee)*

Note:-

This is a welcome decision by the Honorable Allahabad High Court and it comes to the rescue of the taxpayer once again the Rule of Land stands tall against the over-passionate administration.

The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law.

Section 75(4) clearly states that "an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person".

A similar judgment was passed in the case of **Mohini Traders v. State of U.P. [WRIT TAX No. 551 of 2023 dated May 3, 2023].**

Q.**33. Whether the Superintendent has the power to issue a notice under Section 83 of the CGST Act to attach the bank Account?**

Ans. No, The Honorable Delhi High Court in **M/s Vikas Enterprises v. Commissioner of Central Tax (GST), Delhi North & Anr. [W.P.(C) 9495 of 2023 dated July 31, 2023]** set aside the letter issued by the Superintendent instructing to freeze the bank account of the assessee and held that the power to issue an order of attachment of bank accounts under the **Central Goods and Services Tax Act, 2017 ("the CGST Act")** is only with the Commissioner and not below the rank of Commissioner can pass such order. Further, imposed the cost of INR 5,000 on the Superintendent who issued such an order.

The Honorable Delhi High Court directed that the Revenue Department is required to act by the statutory provisions and relied upon the Judgment of **Radha Krishan Industries v. State of Himachal Pradesh &Ors. [(2021) 6 SCC 771]** wherein the Honorable Supreme Court held that the power under Section 83 of the CGST Act can be exercised only subject to the

conditions, as specified therein, being fully satisfied. No order under Section 83 of the CGST Act can be passed by any officer other than the Commissioner and this can be done only if he is satisfied that it is necessary to pass such an order for protecting the interest of Revenue.

Note:-

A similar Judgment was passed by the Honorable Delhi High Court in the case of Sakshibahl vs. Principal Additional Director General [W.P.(C) No. 3986 of 2023] dated March 29, 2023, where it was held that attaching a bank account can only be done in case conditions specified u/s 83 of the CGST Act are fulfilled and one of the prime condition is the formation of the opinion by the commissioner, not by any officer below the rank of Commissioner.

Such an extra legislative exercise of the power by the officers of the Anti-Evasion is Draconian in nature.

Q.34. Can the GST registration be canceled without specifying any reason?

Ans. No, The Honorable Delhi High Court in **Singla Exports v. Central Board of Indirect Taxes and Customs &Ors [W.P.(C) 2732 of 2023 dated August 09, 2023]** quashed the GST registration cancellation order by holding that the auto-generated order which does not specify reason for cancellation cannot be sustained. The Honorable Court noted that since the show cause notice issued for cancellation of registration did not provide any clue as to which provisions of the GST Act or GST Rules were allegedly violated by the assessee, the order for cancellation of the assessee's registration based on such show cause notice was to be set aside.

Note:-

This is a welcome decision by the Honorable High Court of Delhi and it comes to the rescue of the taxpayer and once again the Rule of Land stands tall against the over-passionate administration. The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law.

A similar judgment was passed in the case of **Rishiraj Aluminium Pvt. Ltd. v. Goods and Services Tax Officer [W.P.(C) No. 4125 of 2023 dated April 17, 2023]**

Q.35. Whether the taxpayer's ITC can be denied solely based on the ground that the transaction is not reflected in GSTR-2A?

Ans. No, the Honorable Kerala High Court in **Diya Agencies v. The State Tax Officer [WP(C) No. 29769 of 2023 dated September 12, 2023]** held

that if the taxpayer can prove that tax amount is paid to the seller and the Input Tax Credit claim is bonafide so the Input Tax Credit cannot be denied merely on non-reflection of transaction in GSTR-2A.

The Petitioner relied upon the judgment of **Suncraft Energy Private Limited and Another v. The Assistant Commissioner, State Tax [MAT 1218 of 2023 dated August 02, 2023]** wherein the Honorable Calcutta High court held that, before reverting the ITC by the assessee, the Adjudicating Authority should take action against the selling dealer if it is found that he has not deposited the tax paid by the assessee. Unless the collusion between the assessee and the seller dealer is proved, the ITC is not to be denied if the assessee has genuinely paid the tax to the seller dealer.

The Petitioner contended that it has fulfilled all the conditions stated under Section 16(2) of the **Central Goods and Services Tax Act, 2017 ("the CGST Act")**.

The Petitioner further contended that the Central Board of Indirect Tax and Customs (CBIC) had issued a press release dated October 18, 2018, clarifying that Form GSTR-2A is the facility to view the details furnished by the supplier in GSTR-1 and cannot impact the ability of the recipient to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the CGST Act.

The Honorable Kerala High Court observed that the Petitioner's claim for ITC has been denied only on the ground that the said amount was not mentioned in GSTR 2A. Further noted that if the supplier has not remitted the said amount paid by the Petitioner to him, the Petitioner cannot be held responsible and directed the Adjudicating Authority to give opportunity to the Petitioner to claim for ITC. The Honorable Court also considered the CBIC press release dated 18 October 2018 which clarified that GSTR-2A is like facilitation and does not impact the ability of the taxpayer to avail ITC on the self-assessment basis as per Section 16 of the CGST Act.

The Honorable Court held that merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the ITC. *(In favour of assessee)*

Note:-

There is an urgent need to understand that if one figure is not matching with another figure, it does not mean non-payment of taxes. SCN based on GSTR-2A vs. GSTR-3B mismatch is demand based on the presumption that the supplier has defaulted in payment of tax on supplies to the recipient (notice). There is no scope for presumption or conjecture to create demand under

the GST Law.

Q.36. Whether the Petitioner approach the writ Court directly without filing an appeal before the Appellate Authority?

Ans. No, The Honorable Patna High Court in **M/s. Narayani Industry v. State of Bihar [Civil Writ Jurisdiction No.11333 of 2023 dated August 11, 2023]** held that there is no jurisdictional error or violation of principles of natural justice or abuse of process of law averred or argued by the Petitioner in the above writ petition and relied upon the Judgment of **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr [(2005) 6 SCC 499]** wherein the Honorable Supreme Court held that if an assessee approaches the High Court without availing the alternate remedy, assessee should ensure that it has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction.

The Honorable Court opined that there is no ground stated in the writ petition that would enable invocation of the extraordinary remedy under Article 226 of the Indian Constitution and held that, when there is a specific period for delay of condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Indian Constitution.

Note:-

Belated appeals are permitted up to a maximum of one (1) month under section 17(4) after the end of the due date for filing under section 107(1) or (2/3). Appellate Authority has the power to condone delay, but this power cannot be expected by the appellant to be exercised routinely and automatically condone delay. Limitations Act, 1963 states in sections 5 and 14 that "sufficient cause" must be shown to justify the delay. In Ramlal v. Rewa Coalfields Ltd. ibid, Apex Court has held that:

a. Non–filing of appeals within the normal time allowed is not questionable;

b. Every day of delay is to be explained with an Affidavit;

c. Reasons cited verified and rejected if not found satisfactory; and

d. Condonation allowed by a speaker order.

The principle of law is that when the time to file an appeal lapses, the counterparty gets a vested right (or advantage or benefits from such failure) which cannot be denied by condonation of appeal in a routine and mechanical manner without 'good and sufficient' reasons.

A similar judgment has been delivered by The Honorable Madras High Court

in the case of **Thiruchy Royal Steels v. Deputy State Tax Officer [W.P.NO. 15338 OF 2023, W.M.P. NOS. 14861 and 14863 of 2023 dated May 11, 2023]** wherein the Honorable Court dismissed the writ and directed the assessee to file an appeal before the Appellate Authority and directed the Appellate Authority to dispose of the case on an emergent basis.

Q.37. Notice issued to Revenue Department challenging the arrest & summoning powers of GST officials

Ans. The Honorable Supreme Court in **Gagandeep Singh v. Union of India & Ors. [W.P. (Crl) No. 339 of 2023 dated August 25, 2023]** admitted the Writ filed by Gagandeep Singh **("the Petitioner")** and issued notice to the Revenue Department challenging GST provisions about power to arrest and power to summon.

The Petition has been filed a writ before the Honorable Supreme Court under Article 32 of the Constitution of India, contesting the constitutional validity of Section 69 (i.e., power to arrest), and Section 70 (i.e., power to summon individuals to furnish proofs and produce documents) of the **Central Goods and Services Tax Act, 2017** (**"the CGST Act"**).

The Petitioner contended that the above provisions are criminal, they could not have been enacted under Article 246A of the Constitution of India. The power to arrest and prosecute is not ancillary and incidental to the power to levy and collect goods and services tax. The Petitioners submitted that Entry 93 of List 1 of the Seventh Schedule of the Constitution of India confers jurisdiction upon the Parliament to make criminal laws only concerning matters in List 1, not CGST. Therefore, Sections 69 and 70 of the CGST Act are beyond the legislative competence of the Parliament.

The Petitioners have filed the present petitions, suspecting coercive action by the Respondents, and have asked that the proceedings against them under the CGST Act, in connection with an alleged non-cognizable offense, be quashed without adhering to the legal process as outlined in Chapter XII of the CrPC, specifically Sections 154 to 157 and Section 172 thereof.

The Supreme Court after hearing the case on August 25, 2023, tagged the present matter with the **GaganKakkar vs. Union of India [WP (Cr.) 357/ 2023]** and held that no coercive steps will be taken against the Petitioner.

Note:-

It is worth noting that even though CGST officers possess the powers of both police officers and civil court officials during their investigations, the

proceedings are consistently referred to as 'inquiries,' and the individuals summoned are not regarded as 'accused.' It has been emphasized that these officers are not officially recognized as police officers, resulting in the summoned individuals being denied the safeguard specified in Article 20(3) of the Indian Constitution. The cases asset that this scenario is leading to substantial unfairness for the petitioners.

Q.38. Whether service of an assessment order on a common GST portal after cancellation of GST registration be considered an effective mode of service of order under GST law?

Ans. Yes, The Honorable Kerala High Court in **Koduvayur Constructions v. Assistant Commissioner-Works Contract [WP(C) No. 21212 of 2023 dated August 07, 2023]** held that it is the assessee's responsibility to check the GST portal for any notice or order that had been served on it. The Contention that the assessment order was not served validly was untenable.

The Honorable Kerala High Court observed that a plain reading of Section 169(1) (a) to (f) of the CGST Act makes it clear that any decision, order, summons, notice, or communication under the CGST Act and its rules can be served on the taxpayer through any one of the methods listed. Further observed that section 169(1)(d) of the CGST Act recognizes the availability of orders on the common GST portal as an effective manner of delivery of the order.

The Honorable Court noted that in the present case, the Assessment order was made available on the common portal which is a valid mode of service as provided under section 169(1) of the CGST Act, and held that Petitioner must check and verify the common GST portal for any communication from Revenue Department and it was Petitioner's fault to have failed to do so.

Note:-

Although Section 169 of the CGST Act, 2017 specifies 14 different ways/ modes of serving any decision, order summons, notice, or order communication under the Act care must be taken by the authorities not to simply pick and choose any option, rather the best possible option must be chosen by which it is mostly likely to reach the notice. The notice or any other communication cannot be termed to be served until it has reached the intended notice.

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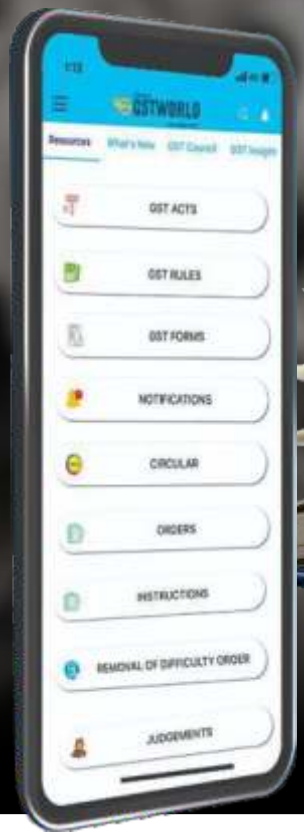

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