AIFTP

ETHICS EDUCATION EXCELLENCE

INDIRECT TAX & CORPORATE LAWS JOURNAL

Volume-4 | Part-11 & 12 | Nov. & Dec.-2023

Subscribe for Year 2024 Subscription form Inside

All India Federation of Tax Practitioners
215, Rewa Chambers, 31, New Marine Lines, Mumbai-400 020
Tel.: 22006342/49706343, 22006343 | E-mail : aiftpho@gmail.com | Website : aiftponline.org

AIFTP INDIRECT TAX & CORPORATE LAWS JOURNAL COMMITTEE

DR. ASHOK SARAF — Chief Advisor
PANKAJ GHIYA — Chief Advisor
DEEPAK KHANDELWAL — Chief Editor
RIBHAV GHIYA — Convenor
SAKSHI GHIYA — Convenor
S. S. SATYANARAYANA — Co-Convenor
Arpit Haldia — Co-ordinator
B.C. Jain Babel — Co-ordinator

AIFTP INDIRECT TAX & CORPORATE LAWS JOURNAL COMMITTEE MEMBERS

Rimika Khera — Member
Vineet Bhatia — Member
Ishaan Patkar — Member
Parth Badheka — Member
Hitesh J. Mehta — Member
N. Senthil Kumar — Member
S. Satish Raju — Member
P. S. Joseph — Member
V. Govinda Rao — Member
Bandaru Raghuram — Member
Aakash Phophalia — Member

AIFTP NATIONAL OFFICE BEARERS 2023

Pankaj Ghiya — National President
D. K. Gandhi — Imm. Past President
Narayan P. Jain — Dy. President
Anil Mathur — Vice President (CZ)
Vivek Agarwal — Vice President (EZ)
Dr. Naveen Rattan — Vice President (NZ)
C. Sanjeeva Rao — Vice President (SZ)
Samir Jani — Vice President (WZ)
Rajesh Mehta — Secretary General
Vinay Kumar Jolly — Treasurer
Dr. Hemant Modh — Jt. Secretary (CZ)
Pradosh Pattnaik — Jt. Secretary (EZ)
Anuj Bansal — Jt. Secretary (NZ)
M. V. J. K. Kumar — Jt. Secretary (SZ)
Nitin Gautam — Jt. Secretary (WZ)

NATIONAL EXECUTIVE MEMBERS

Elected Member

Achintya Bhattacharjee
Anand Kumar Pasari
Anagha Kulkarni
Anil Kumar Srivastava
Anjana Singh
Arvind Mittal
Arvind Kumar Mishra
Asim Zafar
Bharat Sachdev
Dr. Bhanu Giri
Bhaskar B. Patel
Chirag S. Parekh
Deep Chand Mali
Deepak R. Shah
Gouri Chandnani Popat
H. Ramakrishnan
Hari Lal Patel
Jamuna Shukla
Kishor T. Lulla
Mitesh Kotecha
Nanda Dulal Saha
Narendra Sonawane
Nitu Hawelia
P. V. Ravi Kumar
Rahul Kaushik
Rajesh Joshi
Dr. Ranjit Padhi
S. B. Kabra
S. Nanjunda Prasad
S. S. Satyanarayana
S. Venkataramani
Santosh Gupta
Siddeshwar Yelamali
T. Srinivasulu Reddy
Upendra J. Bhatt
Vijay Kewalramani
Y. N. Sharma

Co-opted Members

Aditya Tosniwal
Gautam Sharma
Girish J. Rathi
K. Bhima Shankar
Mukul Gupta
Padmanabh Dave
Prashanth GS
Sanjay Sharma
Sanjeev Kumar Anwar
Siddharth Ranka
Vinayak Patkar
Sumit Nema
Bibekanand Mohanti

Zonal Chairmen

Sandeep Agarwal
Basudeb Chatterjee
O. P. Shukla
G. Bhaskar
Ashvin Acharya

Special Invitees

Anil Garg
Arvind Shukla
Indu Chatrath
K. C. Kaushik
Prakash Gupta
R. D. Kakra
Ritu G.P. Das
Sanjay Ghiya
Smit Saurabh
Varinder Sharma

Advisors & Past Presidents

P. C. Joshi
Dr. K. Shivaram
M. L. Patodi
J. D. Nankani
Dr. M. V. K. Moorthy
Prem Lata Bansal
Ganesh Purohit
Dr. Ashok Saraf
Nikita Badheka
M. Srinivasa Rao

CONTENTS

SECTION: I

SECTION: II - GOODS & SERVICE TAX

SECTION: III - CORPORATE & OTHER LAWS

SECTION: IV - JUDGMENTS

President's Message

Friends,

On behalf of AIFTP I wish you all a Merry Christmas and a very Happy New Year. This month of November was special for us as it was also the Foundation Month of the AIFTP, As you are all aware that AIFTP was founded on 11 November 1976, and this year will be the 48th Foundation day and we had planned to celebrate it on All India basis at the offices / residence or other places by the various Associations and the Members.

It is really a proud moment for all of us that this year the Foundation Day on 11th November was Celebrated at more than 60 places throughout the Country and we have received the photographs and we are releasing an album of the Foundation Day Celebration for the benefit of all the members. Apart from the celebration on the 11th November, the Foundation Day Month is being celebrated throughout the country in November 2023 and various programmes including Conferences, Seminars, Webinars and CSR programme are being organised throughout the country in this month. We expect that almost more than hundred programmes will be celebrated.

The start of the Foundation Day Celebration was made with Seminar in the South Zone and thereafter a Grand National Tex Conference and NEC was organised at Varanasi by the North Zone. It was a really memorable time at Varanasi as the NEC and NTC was organised in the corridors of the Kashi Temple. On the first day, the Rudra Abhishek was organised at the Bajraa where in more than 300 participants was involved and took the ride of Bajraa. The Rudra Abhishek was performed by the Pandits and the Hon'ble Mr. Justice Rajesh Bindal, Judge, Supreme Court of India and Hon'ble Mr. Justice Piyush Agarwal, Judge, Allahabad High Court, were the Guests, The Rudra Abhishek continued for almost 3 hours and during the time the boat was floating on the river Ganga. We also did Ganga Aarti and the Bholenath Aarti on the Bajraa along with the Guest and other members of AIFTP. It was a lifetime remembrance moment for all of us. The next day the inauguration was done at the Conference Hall in the Corridor the Temple, and it was again a magnificent affairs and everybody appreciated it. It is remarkable that there was a participation of over 350 persons and the registration was closed before three days of the NTC and NEC. The NEC for the first time was also

organised at the Bajraa and it was again a moment which would be remembered by one and all and we had a great time in discussing the matters of AIFTP sitting on the Bajraa and floating on the river Ganga. The credit goes to Mr. O.P. Shukla and Mr. Anand Kumar Pandey, the Conference Chairman for the excellent working. In addition, the team of Varanasi deserves special appreciation. The working of the North Zone Secretary, Mr. Puneet Kumar Singh is also to be appreciated as he was coordinating each and every moment and program and was always there looking to the requirements.

It is also appreciated that the Central Zone had organised a RRC at Alwar and the elections of the Central Zone was also held. At this RRC discussions on the topics of Income Tax and GST was made and the speakers were Mr. Rajendra Arora from Delhi and Mr. Rajesh Mehta from Indore. The credit for this successful RRC goes to Mr. M.L. Gupta from Alwar and Mr. KK Khandelwal from Alwar and of course the Zone Chairman Mr. Sandeep Agarwal and Zone Secretary, Mr. Laxman Kashyap deserves a special appreciation for all the arrangements and coordination and holding of this RRC.

In November lot of programmes are being organised, and on the personal request of the undersigned special RRC was organised at Srisailam that is at Mallikarjuna, The Jyotirlinga and the Shakthi Peeth. As already discussed in many meetings, this year we had a special Them of visiting religious places and the organising of this RCC at Mallikarjun will be a special moment in the Foundation Month.

Thereafter for the first time the Zone Award Function was organized by AIFTP, East Zone and it was held on 26th November 2023 at the Bengal Club at Kolkata. It was attended by over 150 persons and was amazing. The persons was recognized by the AIFTP East Zone for their work and dedication and holding of programmes in the year 2023.

In between Election at the West Zone was organized at Mumbai at the Head office along with other functions. It was a gathering of around 300 persons who casted vote. Special thanks to Mr. Sanjeeva Rao, Vice President, South Zone and Election Officer, West Zone for his efforts.

Thereafter we had a wonderful one-day Seminar at Kochi. It was attended by over 200 Professionals and Member of AIFTP. Special credit goes to the AIFTP South Zone and Mr. G. Bhaskar, Chairman, South Zone for organizing such fantastic Seminar.

The second International Study Tour of 2023 was organized at Sri Lanka from 3rd December to 8th December 2023. It was a a great tour covering Colombo, Bentota and Kandy. It also covered Nurelia i.e. called to be the place where Sitaji went after being taken by Ravan. It is also called as Ashok Vatika. The credit goes to Mr. Laxman Kashyap for the wonderful organization of this Second International Study Tour.

Friends, AIFTP is marching ahead throughout the Country and we are making new members and new friends. Request all the members to continue in their efforts to make new members of AIFTP and ask professionals, particularly young professionals to join the AIFTP.

It is also pleasure that during the foundation month we will be completing the Zone Election throughout the country and all Five Zones managing committee would be elected in this month.

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

Regards,

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

ALL INDIA FEDERATION OF TAX PRACTITIONERS
215, Rewa Chambers, 31,
New Marine Lines, Mumbai-400 020
E-mail: aiftpho@gmail.com Website: www.aiftponline.org

Membership of All India Federation of Tax Practitioners as on 30 October, 2023					
Life Members					
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	2956	38	3	3002
Total	**12**	**10589**	**145**	**9**	**10755**

FORTH COMING PROGRAMMES		
Date & Month	**Programme**	**Place**
22nd Dec., 2023	Ordinary General Meeting	Kolkata
23rd and 24th Dec., 2023	National Convention (Eastern Zone)	Kolkata

ADVERTISEMENT TARIFF FOR AIFTP INDIRECT TAX & CORPORATE LAW JOURNAL

	Particulars	Per Insertion	Yearly
1.	Ordinary Half Page.....	Rs. 5000.00*	Rs. 50000.00*
2.	Ordinary Full Page.....	Rs. 10000.00*	Rs. 100000.00*
3.	Back Inner Page.....	Rs. 20000.00*	Rs. 200000.00*
4.	Back Page.....	Rs. 50000.00*	Rs. 500000.00*

*GST as applicable.

CHIEF-EDITOR'S COMMUNIQUE

Our Esteemed Members,

As we usher in the final months of 2023, it brings me immense joy to welcome you to the November and December edition of the AIFTP Indirect Taxes and Corporate Law Journal. These months mark the culmination of yet another year filled with legal insights, thoughtful analyses, and a shared passion for advancing our understanding of the dynamic fields of indirect taxes and corporate law.

Our dedicated team of contributors, comprising seasoned professionals and thought leaders, has meticulously curated content that reflects the ever-evolving nature of our field. From in-depth case studies to comprehensive legislative updates, each article is crafted to offer you valuable insights and perspectives.

As the Chief Editor, I extend my sincere gratitude to our esteemed contributors and the dedicated editorial team for their unwavering commitment to excellence. Your collective efforts have made this journal a cornerstone of insightful information and a beacon of knowledge for our readers.

In this edition, we are privileged to feature articles that not only address the current challenges faced by practitioners but also anticipate the case laws study. The pursuit of knowledge is a journey, and through the pages of this journal, we invite you to join us on this intellectual voyage. I extend my heartfelt gratitude to everyone for all the love and support. The Journal has been applauded by the Professionals and it has received wide acceptance.

As we approach the end of the year, I want to take a moment to express my heartfelt appreciation for your continued support and engagement. The AIFTP community is a testament to the strength of collaboration and shared expertise, and it is your active participation that makes our journal thrive.

I also request you all to renew your subscription for the upcoming year 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.

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 would like to express my gratitude to our contributors, editorial team, and the AIFTP community for their unwavering support and commitment. Together, we continue to elevate the standards of our profession and contribute to the wider discourse on taxation and corporate law.

In the spirit of the upcoming festive season and the anticipation of a new year, I extend my warmest wishes for a joyous holiday season and a prosperous New Year in advance. May the coming year be filled with new opportunities, growth, and success for each one of you.

Thank you for being an integral part of the AIFTP Indirect Taxes and Corporate Law Journal family. Here's to a fruitful conclusion to 2023 and a promising start to 2024!

Regards,

Deepak Khandelwal
Chief Editor
AIFTP Indirect Taxes and Corporate Law Journal
Contact : +91-9602302315,
E-Mail : cadeepakkhandelwal@yahoo.com

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		November, 2023	20th Dec. 2023
			December, 2023	20th Jan. 2024
(ii)	Detail of Outward Supplies: -	GSTR-1 (QUARTERLY)	Nov., 2023 (IFF)	13th Dec. 2023
	(a) QRMP		Oct.-Dec., 2023	13th Jan. 2024
	(b) Monthly Filing	GSTR-1	November, 2023	11th Dec. 2023
			December, 2023	11th Jan. 2024
(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	November, 2023	10th Dec. 2023
			December, 2023	10th Jan. 2024
(ix)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	November, 2023	10th Dec. 2023
			December, 2023	10th Jan. 2024

*****

RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Abhay Singla

NOTIFICATIONS–CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
17.11.2023	54/2023-Central Tax	Seeks to amend Notification No. 27/2022 dated 26.12.2022 to notify biometric-based Aadhaar authentication for GST registration in the State of Andhra Pradesh.
02.11.2023	53/2023-Central Tax	Seeks to notify a special procedure for condonation of delay in filing of appeals against demand orders passed until 31st March, 2023.
26.10.2023	52/2023-Central Tax	Seeks to make amendments (Fourth Amendment, 2023) to the CGST Rules, 2017

NOTIFICATIONS–INTEGRATED TAX

DATE	NOTIFICATION NO.	REMARKS
26.10.2023	05/2023-Integrated Tax	Seeks to notify supplies and class of registered person eligible for refund under IGST Route

CIRCULARS–CENTRAL TAX

DATE	CIRCULAR NO.	REMARKS
31.10.2023	206/18/2023-GST	Clarifications regarding applicability of GST on certain services.
31.10.2023	205/17/2023-GST	Clarification regarding GST rate on imitation zari thread or yarn based on the recommendation of the GST Council in its 52ndmeeting held on 7th October, 2023.
27.10.2023	204/16/2023-GST	Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST
27.10.2023	203/15/2023-GST	Clarification regarding determination of place of supply in various cases
27.10.2023	202/14/2023-GST	Clarification relating to export of services – sub-clause (iv) of the Section 2 (6) of the IGST Act 2017

*****

VAT CHANGES AFTER 16TH SEPTEMBER, 2016 - VOID

Adv. P.C. Joshi

The Moot Question about the competency of the State Legislatures to amend their VAT Act even after the GST regime, came to be considered by the Supreme Court in a recent judgment dated 20th October, 2023 in the case of The State of Telangana & Ors Vs. *M/s.Tirumala Constructions & Ors. (Civil Appeal No.1628 of 2023 and several others*).

2. The matters arose out of actions by State of Telangana, State of Gujarat and State of Maharashtra amending their respective VAT Act after the 101st Constitution Amendment Act, 2016 was brought into force with effect from 16.09.2016.

3. The appeals before the Supreme Court arose out of the judgments of Gujarat High Court and Telangana High Court challenged by the respective States while the Third batch of appeals were by concerned assessees against the full Bench judgment of the Bombay High Court. All those matters were clubbed up together for its final disposal.

4. THE FACTS IN DETAILWERE AS UNDER:

STATE of TELANGANA

An Ordinance was issued on 17th June, 2017 i.e. 13 days before the time granted by the 101st Constitution Amendment Act. The said Ordinance amended the local VAT Act; whereby, the period of limitation for reopening of the assessment was extended. The Ordinance continued till the legislature enacted the law. After receipt of the assent by the Governor, the law came into force on 2nd December, 2017. Such amendments were challenged by the dealers before the Telangana High Court. The High Court agreed with their submissions that the State had limited scope to amend the VAT Act in terms of section 19 of the 101st Constitution Amendment Act, only for bringing the VAT ACT in confirmative with the amended Constitution. The extension of period of limitation for re-opening of the assessment was held to be beyond the legislative competence after 1st July, 2017. The said judgment of the Telangana High Court was challenged by the State, before the Supreme Court.

5. STATE OF GUJARAT

By Gujarat Value Added Tax (Amendment) Act, 2018 published on 6th April, 2018, section 84A was introduced with effect from 1st April, 2006. The said amendment provided for exclusion of time taken in some other proceedings before the Higher Forum, for the purpose of initiating revision proceedings with retrospective effect as above, of the orders which had already attained finality as provided by the law prior to the above amendment. On a challenge of such amendment by the dealers, the Gujarat High Court, relying on Section 19 of the 101st Constitution Amendment Act; struck down the amendment as beyond the legislative competence of the State Legislature after 1st July, 2017.

6. STATE OF MAHARASHTRA

The appeals by the dealers aggrieved by the judgment of the full Bench of the Bombay High Court, upholding the Maharashtra Amendment Act, that was initially made on 15th April, 2017.That change was read down by the Nagpur Bench of the Bombay High Court on 28th September, 2018, in the case of *Ansul Impex Pvt Ltd Vs. The State of Maharashtra & Ors in Sales Tax Appeal No.2 of 2018 (73 GSTR 187)(Bom)*holding that the appeal proceedings for the periods prior to 15th April, 2017 were governed by the law inforce on the date of commencement of the lis and the amendment under challenge was prospective with effect from 15th April, 2017. The State filed an SLP before Supreme Court.That SLP was rejected on 11th March, 2019. Consequently the judgment of the Nagpur Bench of Bombay High Court in the case of *Anshul Impex* attained finality. Thus the prepayment of 10% of the amount assessed,for filing of the appeal was restricted to only those proceedings in which the lis may arise thereafter.In the meanwhile on 6th March, 2019 an Ordinance was promulgated whereby an Explanation was added to the amended provisions of section 26(6A), 26(6B)& 26(6C) of Maharashtra VAT Act, 2002 with effect from 15th April, 2017 with the object of removing the doubts in view of the judgment of the Nagpur Bench in the case of Anshul Impex Pvt. Ltd. The said Ordinance was converted into an Act on 9th July, 2019. That Explanation was challenged in writ jurisdiction by *M/s. United Projects and Larson & Toubro Ltd.* The later Division Bench could not agree with the Nagpur Bench Judgment and referred the matter to a larger Bench (73 GSTR 202). The larger Bench by its judgment dated 12th July, 2022 (109 GSTR 314)

agreed with the submissions of the State and held that the earlier Nagpur Bench Judgment in the case of *Anshul Impex Pvt. Ltd.,* was not the correct law and the questions referred were all answered in favour of the revenue. That judgment of larger Bench was challenged by the dealers, before the Supreme Court.

7. All the three Batch of appeals were considered in the judgment referred in para 1.

8. The Supreme Court referred to the above facts and the impact of 101st Constitution Amendment Act, on such amendments; in nutshell as under:

9. By referring to Section 19 of the 101st Constitution Amendment Act, 2016 the Supreme Court referred to the fact that the said provision was a transitional provision and noted that the said provision and other sections particularly in relation to entry 54 of State list became effective immediately from 16th September, 2016 which meant that the operation of the existing laws were preserved till the repeal or amendment within a period of one year therefrom. The apex court further observed that Section 19 sought to achieve three aims.First to preserve the existing status quo which regard to the indirect tax regime for a period of one year from the 16th September, 2016 or till a new law in conformity with the 101st Constitution Amendment Act, 2016 was enacted; whichever was earlier. The Second was to authorise the competent legislatures, to amend the existing laws in force in the concerned State and other parts of the country, both the Central and the State laws and the third was to repeal such laws. There was no saving provisions, other than Section 19.It was a part of the amendment. The amendment removed, the legislative authority of both the State and the Parliament, in regard to the pre-existing powers and fields of taxation. The apex court further observed that mere circumstance; that section 19 was not added to the Constitution, made no difference but the fact remained that it was introduced as part of the same amendment Act, which revamped the entire Constitution. After referring to another proviso to Section 14 of the 101st Constitution Amendment Act, the apex court held in para 83 that both the sections 19 & 20 were incidental and transitory provisions having limited life.

10. According to the apex court, section 19 was the source enabling the Parliament and the State legislatures to amend the existing laws by the competent

legislatures. The Supreme Court negatived the submissions on behalf of the State of Telangana that on 17th June 2017, the day on which the Ordinance was issued, it had the power but when the same was in fact approved on 2nd December, 2017, the power of the State Legislature had already ceased. Especially in view of the fact that the original entry 54 of State list was substituted and thereby restricted the legislative power in relation to only specified petroleum products; therefore the later confirmation by the State legislature was held to be void.

11. As regards the Gujarat VAT Act, the revision notice was issued on 1st September, 2018 after insertion of Section 84A inserted by VAT (Amendment) Act, 2018 for revising the assessment for the period 2008-09 where the order of assessment was passed on 30th March 2013 which happened to be beyond the period of three years, as it then prevailed prior to insertion of section 84A. The court therefore held that the amendment made in February, 2018 cannot be traceable to newly inserted Article 246A and therefore the same was beyond the competence of the State Legislature.

12. As regards the Maharashtra Appeals were concerned, the Validating Act, 2017 published on 15th April, 2017, amended various provisions of various Acts, one of which was insertion of sections (6A), (6B) and (6C) to section 26; the effect of which was to require a mandatory pre-deposit of 10% of the disputed liability before filing an appeal. That was read down by the Nagpur Bench of Bombay High Court in the case of *Anshul Impex Pvt. Ltd.,* according to which, the law applicable was the law that prevailed on the commencement of the lis. The said amendment was further amendedby anOrdinance on 6th March, 2019 by which anExplanation w.e.f. 15.04.2017 was inserted for the purpose of removing the doubts that arose because of the above referred Nagpur Bench Judgment. The Ordinance was replaced by an Act, on 09.07.2019.That Explanation was challenged in appeal and the full Bench upheld the amendment holding that the State Government had legislative competence to remove the deficiencies found by the court.

13. Supreme Court in that regard agreed with the principles about the competency of legislatures to enact curative legislations with retrospective effect however the day on which that was sought to be done, the State Legislature lacked the competence.The amendment made on 9th July, 2019 was post amendment

and substantial change of entry 54 of list II therefore such an amendment was held to be void.

14. In the result the appeals by the States of Gujarat and Telangana were rejected while the appeals by the dealers from the State of Maharashtra, were allowed.

15. MY COMMENT

- The judgment have a very wide repercussions, having effect on similar actions by the State legislatures of other States amending their VAT Act after 16th September, 2016 which according to the Supreme Court was beyond the State Legislative Competence. It is possible that such amendments may not have been challenged before the respective High Courts.Such amendments if any, also would be void *ab-intio* in view of the above discussed Supreme Court Judgment
- It would be recalled that the 101stConstitution Amendment Act, 2016 received the assent of the President on 8th September, 2016. By notification No.2915 dated 10th September, 2016, Section 12(by which new Article 279A was inserted), was brought into force from 12th Sept, 2016. On the same day, the GST Council (hereinafter referred as Council) was constituted consisting of Union Finance Minister as Chairperson and other members as provided thereunder. The official notification constituting the Council, was issued on 16th September, 2016. The Council was empowered to make recommendations to the Union and the States on various aspects pertaining to the Goods and Service Tax Laws. By yet another notification, on the same day, bearing No.2986, by ministry of finance – Central Government,all other sections of the 101st Constitution Amendment Act 2016, was brought into force from 16th September, 2016.
- The impact of the aforesaid Constitution Amendment Act, 2016 on the powers of the State Legislatures to enact the laws for their respective States, was enormous. Before the said Amendment Act, came into force on 16th September 2016, the States had exclusive power to levy tax on various areas covered by list II of Seventh Schedule, while the Parliament had exclusive legislative power over the areas specified in list I of the said Schedule, under the provisions of Article 246.By insertion of new Article 246A with non-Obstante clause, the Parliament as well as the State Legislatures were empowered to levy tax on Supply of Goods and Services.

Thus a new legislative field outside the Union and State list of Seventh Schedule was created. It also created concurrent powers forboth the Parliament as well as the State Legislatures, to enact laws on the same subject matter and at the same time. Consequent to those changes, majority of indirect levies both by Parliament and States were subsumed to a larger legislative field i.e. GST.

- Apart from insertion of Article 246A as above, several other articles were also amended alongwith the changes in list I and list II of the Seventh Schedule. Though the Supreme Court referred to those which were relevant for its judgment I refer hereunder a few of them. In Union list, entry 84,which referred to excise on goods manufactured in India, was restricted to manufacture of specified petroleum products only. Entry 92, which related to taxes on sale or purchase of newspapers and on advertisements published therein, was omitted.Simultaneously entry 92C which related to taxes on services, was also omitted.
- As far as list II – State list is concerned, entry 52 and 55 relating to Entry Tax and taxes on advertisements other than in newspapers respectively were omitted, while entry 54 which earlier related to taxes on sale or purchase of goods, was substituted so as to limit it to petroleum products only.Thus from 16th September 2016 the States,ceased to possess its earlier exclusive powers in regard to levy of taxes on sale or purchase of goods other than petroleum products. Entry 62which related to luxury tax was substituted so as to provide for taxes on entertainment and amusements to the extent levied and collected by Panchayat or Municipality or a Regional Council or a District Council. In other words the State Government did not have anymore, power to levy tax, on luxuries.

16. All readers therefore are advised to be vigilant in so far as their proceedings under the respective VAT Act and challenge the adverse orders on the basis of the above discussed judgment of the Supreme Court if applicable.

*****

TIME LIMIT FOR APPLYING REFUND UNDER GST IS DIRECTORY AND NOT MANDATORY- A NEW TWIST UNDER THE GST REGIME

Adv. Hirak Shah

1. It has been almost six and a half years (6.5 years) but the Goods and Services Tax regime never fails to amaze tax payers and businesses across the country. In recent times where businesses across the country have found themselves inundated with Show Cause Notices (SCN) from GST Authorities due to a sudden surge in issuance of Notifications and clarifications, timely issuance of GST refund remains an everlasting issue for which businesses and exporters constantly pray.
2. The present articles delves into the relevant legal provisions of refund under the Central Goods and Services Tax Act and a recent ruling of Hon'ble Madras High Court which held that the timelimit for applying refund under Section 54 is directory and not mandatory.

Relevant Legal Provisions of the Central Goods and Services Act, 2017

3. The relevant legal provisions for in-depth analyzing therefund provision is as under:

Section 54: Refund of Tax

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

Relevant discussion and way forwards

4. Recently the Hon'ble Madras High Court in the case of M/s Lenovo (India) Pvt Ltd vs Joint Commissioner of GST (Appeals-1)& Others *vide* judgement dated 06.11.2023 ***[W.P.Nos.23604, 23605 and 23607 of 2022]***held that the time limit prescribed under section 54 of the CGST Act is directory and not mandatory.

5. Extract of the relevant paragraphs from the Judgement are as follows:

*"**15.7** Thus, a reading of the Section 54 (1) of CGST Act would make it clear that the assessee can make the application within two years. The terms used in said Section ''may make application before two years from the relevant date in such form and manner as may be prescribed", which means that the assessee may make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be made even beyond two years. The time limit fixed under Section 54 (1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.*

***15.8** In the present case, the application was filed within two years and therefore, the question of making claim after two years does not arise even assuming AO made endorsement after two years, the same would in no way debar the claim as barred by limitation. Further, even Rule 90 (3) of CGST Act permits to make fresh application, which means that in appropriate cases, the Officer concerned can permit the refund application even beyond the period of limitation. Therefore, I do not find any substance in the submission made by the learned Senior Standing Counsel for the respondent and both respondents have miserably failed to consider the saidaspect while passing the impugned orders and hence, the same are liable to be set aside. Hence, this Court holds that when the petitioner has filed application, which is within a period of limitation, viz. 2 years as stipulated under Section 54(1) of the CGST Act, the delay in filing the supporting document at the time of filing of reply/personal herein would only extend the time limit to pass an order under Section 54 (7) of the CGST Act andnon-submission of documents at the time of filing application for refund cannot be deemed to have filed with a delay, since there had been a delay in obtaining the endorsement owing to Covid-19, the petitioner could not produce the same at the time of filing application, however, produced the same at the time of personal hearing."*

Analysis and Comments

6. The aforesaid ruling in case of M/s Lenovo (India) Pvt Ltd has opened floodgates

for many exporters who were not able to file refund application due to lapse of the time limit of 2 years prescribed by the statute.

7. However, it is pertinent to note that the said rulingdoes not provide a blanket concession intended by the Hon'ble Court as the words used are "in appropriate cases" at para 15.7 of the judgement. The tax payers may take benefit of this in genuine cases only. Further, the observations made at para 15.5 and para 15.6 of the judgement based on CBDT circular are very useful to the assessee - the officers should be prompt in giving due refund as much as they are in collecting tax.
8. One aspect which seeks interpretation and the basis behind which the Hon'ble Court had passed such ruling, which in my respectful opinion, is the use of the word "may" is made because claiming of refund is an option available to the assessee and not a mandate. Therefore, using the words "shall" may have been considered inappropriate at the time of drafting of the statute. However, the Hon'ble Madras High Court has linked the word "may" to the time limit for filing refund application. In view of this, the Government may be forced to consider amending the refund provisions to the extent of making it amply clear that if a registered person wants to file a refund application, such application shall be filed within a period of 2 years from the relevant date only and no such refund application shall be filed after the expiry of 2 years from the relevant date.
9. Another possible scenario which may arise is that the Department may prefer an appeal before the Hon'ble Supreme Court against the said Madras High Court ruling and the Hon'ble Supreme Court may very likely grant stay of the said Rulingor otherwise as in particular facts of the present case of M/s Lenovo (India) Pvt Ltd,it was the fault of the Department in granting refund.
10. Only time will tell the ultimate fate of the final outcome before the Hon'ble Supreme Court and whether the assessee – M/s Lenovo (India) Pvt Ltd shall be granted refund in their particular case. The real question which is prejudicial to the Department is the interpretation of the time limit as prescribed under Section 54 of the CGST Act and that whether the same is directory and not mandatory or otherwise.

The views prescribed hereinabove are strictly based on the author's own interpretation of the legal provisions and their implications and do not have any legal impact.

*****

DEEMED EXPORTS IN GST REGIME

M.G. Kodandaram, Adv.
IRS. Assistant Director (Retd.)

Introduction to Deemed Exports under GST

Exports, a term commonly associated with the movement of goods or services from India to another country in exchange for consideration, play a pivotal role in trade dynamics. The government places great importance on exports due to their contribution to foreign exchange earnings. This, in turn, bolsters the economic prosperity of the exporting nation, India, and facilitates a more balanced trade account. To put it simply, exporting goods and services generates foreign currency for the country, whereas importing involves utilizing foreign reserves to cover the cost of incoming goods and services. Governments consistently strive to boost exports and curtail imports to fortify their economies. To achieve this, they offer tax exemptions (zero-rating) on exported goods and services, while imposing GST-driven import duties and appropriate charges on incoming products.

With the objective of reducing imports, the government actively promotes domestic manufacturers to substitute imported items with domestically procured goods, a practice termed as 'Deemed exports.' Entities engaged in deemed exports receive specific incentives, as their contributions aid in conserving foreign currency for the nation's financial reserves. It's important to acknowledge that the notion of deemed exports has evolved within the framework of GST. The purpose of this article is to delve into the legalities, processes, and advantages of deemed exports in the context of the GST regime.

Meaning Of Deemed Exports

Exporters, importers, manufacturers, merchant exporters, and other entities industry have mistakenly believed that any substitution of imported goods or services by the domestic industry, leading to foreign exchange savings for the exchequer, would be considered as 'Deemed Exports,' entitling them to all the benefits available to regular exports and exporters. However, this conclusion is partially correct, as the following discussions reveal.

In the past, under the earlier Foreign Trade Policies (FTP), particularly in Chapter 8 of the export-import policy, and now covered in Chapter 7 of the Foreign Trade Policy 2015-20,the generally understood concept was valid.However, subsequent

changes in the Indirect tax laws and procedures have restricted the meaning of Deemed Exports and reduced the benefits available to such transactions. In the current Goods and Services Tax (GST) regime, the FTP 2015-20 (with effect from 1.7.2017) and FTP 2023 (with effect from 1.4.2023) have been aligned with Section 147 of the CGST Act 2017, further limiting the benefits offered to these supplies.

Currently, the Deemed Export benefits are restricted to specified activities, and refunds are granted only to one person, either the supplier or the recipient, in the supply chain. These transactions are not considered as 'zero-rated' under Section 16 of the Integrated GST Act 2017 (IGST Act), which means they do not enjoy the same benefits as 'exports out of India' or 'supplies to Special Economic Zones (SEZ).'

Legal Framework Governing Deemed Exports

According to Section 2(39) of the CGST Act, 2017, Deemed Exports are defined as "*such supplies of goods as may be notified under Section 147*." As per Section 147 of the CGST Act 2017, the Government can notify certain supplies of goods as Deemed Exports, where the goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, provided the goods are '*manufactured'* in India. The term "manufacture" is defined in Section 2(72) of the CGST Act as *'the processing of raw material or inputs resulting in a new product with a distinct name, character, and use'*, and the term "manufacturer" is interpreted accordingly.

It's important to note that the legal source for the benefits under deemed exports is the Foreign Trade Policy, notified by the Director General of Foreign Trade (DGFT) of the Ministry of Commerce, Government of India. The Central Board of Indirect Taxes and Customs (CBIC), under the Ministry of Finance, Government of India, enforces these benefits through notifications issued under the CGST Act and relevant customs laws when necessary.

Based on the recommendations of the GST Council, the deemed export benefits are extended through three notifications issued by the CBIC. The details of the said notifications are as follows:

1) Notification No. 48/2017-Central Tax dated 18.10.2017 lists the following supply of goods as Deemed Exports:

a. Supply of goods by a registered person against Advance Authorisation.

b. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.

c. Supply of goods by a registered person to an Export Oriented Unit.

d. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated 30th June 2017 (as amended) against Advance Authorisation.

The notification also provides explanations for certain terms used, such as Advance Authorisation, Export Promotion Capital Goods Authorisation, and Export Oriented Unit.

2) Notification No. 47/2017-Central Tax dated 18.10.2017- CGST Rule 89(1) was amended to allow either the recipient or the supplier of deemed export supplies to file applications for refund. Previously, only the recipient could file for refund, but now the supplier can claim a refund if the recipient does not avail input tax credit on such supplies and provides an undertaking to this effect.

3) Notification No. 49/2017-Central Tax dated 18.10.2017 specifies the evidence required to be produced by the supplier of Deemed Export supplies for claiming a refund, including acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice signed by the recipient Export Oriented Unit confirming the receipt of Deemed Export supplies. The recipient of Deemed Export supplies is required to provide an undertaking that no input tax credit has been availed on such supplies and that they will not claim a refund for these supplies, allowing the supplier to claim the refund instead.

Procedure For Claiming of Refund of GST Paid

According to the 3rd proviso to Rule 89(1) of the CGST Rules, 2017, for deemed exports, the refund application can be filed either by the recipient of deemed export supplies or by the supplier of such supplies. In cases where the recipient does not avail input tax credit on such supplies and provides an undertaking to the effect that the supplier may claim the refund, the supplier can file the refund application.

Initially, due to the non-availability of the refund module on the common portal, the

procedure for refund involved manual filing of refund claims within the stipulated time. Circular No. 17/17/2017-GST dated 15.11.2017 and Circular No. 24/24/2017-GST dated 21.12.2017 were issued to prescribe detailed procedures for manual filing and processing of refund claims on account of deemed exports. The Circular No. 24/24/2017-GST dated 21st December 2017, issued under F. No. 349/58/2017-GST, prescribed the procedure for manual filing and processing of refund claims for deemed exports. As per the provisions of Rule 89(2)(g) of the CGST Rules, the statement 5B of FORM GST RFD-01A is required to be furnished for claiming refund on supplies declared as deemed exports.

To obtain a refund of tax paid on deemed exports, the supplier or recipient is required to file the application with supporting documents. Manual filing and processing of refund claims for deemed export supplies were permitted until the refund module became fully operational. The refund claim can be filed within two years from the date on which the return relating to such deemed export supply is electronically furnished. Deemed export supplies need to be disclosed in Table 6C of Form GSTR – 1, where the registered dealer provides invoice details and tax paid on such supplies. To claim refund benefits online, the refund procedure as prescribed in Section 54 of the CGST Act and Circular No. 125/44/2019-GST dated 18.11.2019 must be followed.

The conditions and procedure prescribed for the refund benefits under the deemed export scheme are as follows:

1. The EOU/EHTP/STP/BTP unit must give prior intimation by filing Form A to the supplier and the jurisdictional GST officer of the supplier and recipient.
2. Form A must have a running serial number and contain details of the goods to be procured, preapproved by the Development Commissioner.
3. The supplier must then supply goods under the cover of a tax invoice.
4. The tax invoice must be endorsed by the recipient, and an endorsed copy must be sent to the supplier and jurisdictional GST officer of the supplier and recipient.
5. Record of such goods received by the EOU/EHTP/STP/BTP unit must be maintained in Form B.

In case the supplier is claiming a refund of tax paid on deemed exports, the following

details/documents must be produced:

1. A statement containing invoice-wise details of deemed export supplies made by the supplier.
2. An acknowledgment by the jurisdiction tax officer of Advance Authorisation (AA) or Export Promotion Capital Goods (EPCG) holder that the deemed export supplies have been received OR in the case of EOU/EHTP/STP/BTP, a copy of the tax invoice signed by the recipient confirming the receipt of deemed export supplies.
3. An undertaking by the recipient that no input tax credit has been claimed.
4. An undertaking by the recipient that it shall not claim a refund in respect of such supplies.

Fully electronic refund process for Deemed Exports

The process for claiming refunds under Section 54 of the CGST Act for Deemed Exports has shifted from manual filing to a fully electronic refund process. Circular No. 125/44/2019-GST dated 18.11.2019 provides details on the electronic refund process for filing FORM GST RFD-01 and disbursing refunds through a single authority/agency. Starting from 26.09.2019, the applications for the following types of refunds will be filed in FORM GST RFD-01 on the common portal and processed electronically:

f. Refund to the supplier of tax paid on Deemed Export supplies g. Refund to the recipient of tax paid on Deemed Export supplies.

The guidelines for claiming a refund of tax paid on Deemed Exports are specified in Para 41 of the mentioned circular. To claim a refund as a supplier, the following documents prescribed in the circular, along with the procedures in Notification No. 49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017, must be provided:

(1) Statement 5(B) under Rule 89(2)(g) (2) Declaration under Rule 89(2)(g) (3) Undertaking in relation to Sections 16(2)(c) and Section 42(2) (4) Self-declaration under Rule 89(2)(l) if the claimed amount does not exceed two lakh rupees; certification under Rule 89(2)(m) otherwise.

Similarly, for claiming a refund as a recipient, the following documents must be provided:

(1) Statement 5(B) under Rule 89(2)(g) (2) Declaration under Rule 89(2)(g) (3)

Undertaking in relation to Sections 16(2)(c) and Section 42(2) (4) Self-declaration under Rule 89(2)(l) if the claimed amount does not exceed two lakh rupees; certification under Rule 89(2)(m) otherwise.

To obtain the refund, the recipient or supplier of Deemed Exports must file an electronic application through the Common Portal, either directly or through a facilitation centre notified by the Commissioner. The application should be filed before the expiry of two years from the date on which the return relating to such Deemed Export supplies is filed. The application has to be accompanied by a statement containing the number and date of invoices, along with any other evidence as notified. It's important to note that if the full refund is not granted within 60 days of filing the application, interest at the rate of 6% as prescribed under Rule 94 of the CGST Act is payable.

Conditions to be satisfied for Deemed Export benefits.

a) Deemed exports are applicable only for supplies of goods specified to GST registered recipients, such as those against Advance Authorisation, Export Promotion Capital Goods Authorisation, or to Export Oriented Units, Electronic Hardware Technology Park Units, Software Technology Park Units, or Bio-Technology Park Units as mentioned above.

b) Deemed exports are not applicable for other types of supplies, including non-manufactured goods, services, job-works, or other exempted supplies.

c) The goods supplied to recipients need not be taken outside India by the supplier.

d) The supplied goods must have been manufactured in India as per the definition of "manufacture" in Section 2(72) of the CGST Act.

e) Deemed exports do not apply to imported goods supplied to the mentioned recipients, as they haven't undergone further manufacturing in India.

f) Goods other than manufactured goods, such as agricultural produce, are not eligible for deemed export benefits unless they undergo manufacturing processes as specified in Section 2(72) of the CGST Act.

g) Payment for deemed export supplies can be received in Indian Rupees or convertible foreign exchange.

h) Deemed exports are not treated as zero-rated exports under Section 16 of the IGST Act, so benefits extended to 'exports out of India' and to 'supplies

to SEZ' are not available.

i) Deemed export supplies cannot be made under Bond / LUT, as they are not considered zero-rated supplies.

j) The supplier must pay GST on the supply at applicable rates, and the rates are the same as domestic supplies.

k) Refund of tax paid on deemed export supplies can be claimed by either the supplier or the recipient, provided appropriate taxes have been paid.

l) The recipient can claim a refund of input tax credit availed in respect of other inputs or input services used in deemed export supplies of goods.

m) The recipient of deemed export supplies on which the supplier has availed the benefit of Notification No. 48/2017-Central Tax cannot export on payment of integrated tax.

n) Supplies should be made directly to entities and third-party supplies are not eligible for benefits/exemption.

o) The recipient is not eligible to claim Input Tax Credit (ITC) if the supplier is claiming a refund of tax paid.

p) For claiming refund benefits online, the refund procedure as prescribed in Section 54 of the CGST Act should be followed.

Circulars on Deemed Exports

(i) Circular No. 166/22/2021-GST dated the 17th Nov, 2021 has been issued Clarifyingcertain deemed export refund related issues which is reproduced for reference.

Question: Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?

Clarification: Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under: *"(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;"*

On perusal of the above, it is clear that clause (b) of Explanation (2) under section

54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.

Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

(ii) Circular No. 172/04/2022-GST dated the 6th July, 2022 - Clarification on various issues pertaining to GSTRefund claimed by the recipients of supplies regarded as deemed export.

Question (i): Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.

Clarification: The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.

Question(ii): Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017.

Clarification: The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of

inverted rated structure under rule 89(5) of the CGST Rules, 2017.

Foreign trade policy on deemed export.

The Foreign Trade Policy for 2023, introduced in April 2023, in Chapter 7, contains detailed provisions regarding the management of deemed exports. The primary objective behind offering benefits for deemed exports is to ensure a level playing field for domestic manufacturers and to encourage the "Make in India" initiative, particularly in specific cases as determined by the Government over time.

Deemed exports, as defined in this policy, pertain to transactions in which goods supplied remain within the country, and the payment for these supplies is received either in Indian rupees or in free foreign exchange. To qualify as "Deemed Exports" under this policy, the supplied goods must be manufactured in India, as stated in Paragraph 7.01 of the FTP2023.

For the purposes of the Goods and Services Tax (GST), "Deemed Exports" will encompass only those supplies that are officially notified under Section 147 of the CGST/SGST Act, based on recommendations from the GST Council. The specific benefits and conditions related to GST for such transactions will be outlined by the GST Council in accordance with relevant rules and notifications. The categories of supply eligible for deemed export benefits are listed in FTP Paragraph 7.02.

Deemed exports, which include the supply of goods meeting the defined criteria, are entitled to various benefits. These benefits are applicable to the manufacturing and supply of qualifying goods classified as deemed exports, subject to the terms and conditions provided in the Handbook of Procedures (HBP) and ANF-7A. The benefits for deemed exports include:

(a) Advance Authorisation / Advance Authorisation for annual requirements / Duty-Free Import Authorization (DFIA). (b) Deemed Export Drawback. (c) Refund of terminal excise duty for excisable goods listed in Schedule 4 of the Central Excise Act, 1944, provided that the supply falls within the category of deemed exports and there are no exemptions applicable.

Form the above it is clear that the Foreign Trade Policy for 2023 places a significant emphasis on deemed exports to bolster domestic manufacturing and support the "Make in India" initiative. It defines deemed exports, delineates their eligibility criteria, and outlines the benefits they can receive, including GST-related benefits and exemptions from certain duties. This policy aims to create a conducive environment for domestic manufacturers and promote self-reliance in India's production capabilities. All suppliers must plan to obtain deemed export benefits in case of supplies to notified recipients.

COMPENDIUM ON GST CASE LAW

Q.**1.** **Whether the credit be denied when the mistake was committed by the assessee in filling TRAN-1?**

Ans. No, The Honorable **Madras High Court in M/s. Sri Renga Timbers v. The Assistant Commissioner (ST) (FAC) [W.P. No. 22854 of 2023 dated August 17, 2023]** quashed the order passed by the Adjudicating Authority and held that the credit validly availed cannot be denied, even if there were mistakes in the TRAN-1 returns filed twice.

The Honorable Madras High Court observed that the validly availed credit is indefeasible in law and the Petitioner's errors in filing FORM TRAN-1 and the revised return established that the amount of INR 89,88,498 was unutilized credit from the Petitioner's last return filed for June 2017. The Honorable Court relied Upon the Judgment of **Unichem Laboratories v. Commissioner of Central Excise [(2002)7 SCC 145]**, wherein the Honorable Supreme Court held that it is not on the part of the duty of the revenue to deny the benefit that was otherwise legitimately available to an assessee.

The Honorable Court quashed the Impugned order and remanded back the matter to the Adjudicating Authority to re-examine the records of the petitioner afresh from the last VAT return for June 2017 under the TNVAT Act.

Note:-

Important to mention here that the Trans credit is neither the input tax as per Section 2 (62) of the CGST Act, 2017 nor the output tax as per Section 2 (82) of the **CGST Act, 2017**. Therefore, the transition credit claimed and utilized, even if found to be ineligible cannot be demanded U/S 73 or 74 of the CGST Act as there is no jurisdiction with the proper officer under such provisions of the law. The transaction credit validly claimed cannot be distributed in the law.

Q.2. **Whether Revenue Department can cancel the GST registration retrospectively if the assessee fails to file GSTR 3B for several years?**

Ans. Yes, The Honorable Kerala High Court in **M/s Sanscorp India Pvt. Ltd. v. The Assistant Commissioner, Goods and Service Tax Network, Union of India [WP(C) No.24904 of 2023 dated September 14, 2023]**

held that, if an assessee fails to file the returns for a continuous period of six months, his registration is liable to be cancelled and interest will be levied for any delayed payments.

The Honorable Kerala High Court observed that if the Petitioner fails to file the returns for a continuous period of six months, his registration is liable to be canceled, there is no contradiction in the provisions of Section 50 or

Section 29 of the CGST Act and opined that the provisions for cancellation of registration and making payment of the tax due with interest are different, both the provisions have different scope, purpose, and intent.

The Honorable Court noted that the alternative remedy is available to the Petitioner as per the CGST Act and the Rules thereto, which the Petitioner should have resorted to within the statutory prescribed limit and it cannot be said that the GST portal is not viable as the whole country files returns and pays tax by uploading the same in the same software.

The Honorable Court held that the Adjudicating Authority can cancel GST registration if the Petitioner fails to make payment of the full GST amount or part thereof, and interest will be levied for any delayed payments.

Note:-

Section 29(2)(c) of the CGST Act provides for the cancellation of registration where the registered person fails to furnish returns for a continuos period of 6 months. The law has specified five explicit delinquencies in Section 29(2) which can lead to cancellation of registration after following the due process laid down in the legislature.

The proper officer is permitted to proceed with cancellation and pass a speaking order in REG19 and demand all dues, which extend to:

- ≥ Outstanding tax, interest, late fee, and penalties due;
- ≥ Due under section 29(5) in respect of credits.

Q.3. Can the Search be conducted without fulfilling all the conditions of Section 67 of the CGST Act, 2017?

Ans. No, The Honorable Delhi High Court in the case of **M/s. Bhagat Ram Om Prakash Private Limited &Anr. v. The Commissioner Central Tax GST Delhi-East [W.P. (C) 12304/2023 dated September 19, 2023]** stayed the proceedings under the search, conducted based on the directions

issued by the Special Judge, for checking the source of the amount, and directed the proper officer to authorize the search only if all the conditions specified under Section 67 of the Central Goods and Service Tax Act, 2017 are fulfilled.

The Honorable Delhi High Court observed that there are serious reservations about whether any such roving and fishing inquiry under the CGST Act could have been directed to be conducted by the Special Judge and opined that the respondent is authorized to search only if the conditions specified in Section 67 of the CGST Act are satisfied.

The Honorable Court directed that the Respondent shall also produce the relevant files containing the directions for searching.

Note:-

There are very fundamental and essential 'ingredients' that must be shown to exist before the grant of authorization by the Joint Commissioner to any other officer, who will be empowered to discharge duties as the 'Authorized officer' for inspection of the premises or goods. Inspection under section 67 is pre–authorized by **Circular No. 3/3/2018-GST dated 5 July 2017.**

Reference may be made to rule 139 where Form GST INS–01 is prescribed as the format of authorization to be granted by the Joint Commissioner. This format shows the specific 'contraventions' potentially involved, that support the authorization request.

Reasons to believe must be about 'Contraventions' listed in the section 67 that apply to 'taxable person':

- 'Suppressed' any transaction of supply;
- 'Suppressed' stock of goods;
- Claimed input tax credit 'in excess 'of entitlement; and
- Indulged in 'contravention to evade payment of tax'.

Important to note that the proceedings u/s 67 of the Act can be initiated based on only above stated "reasons to believe" that pre-existed on the day of authorization. These emergency powers must be used very cautiously.

Q.4. Whether the Appellate Authority have the power to condone delay beyond the period of one month as prescribed under Section 107(4) of the CGST Act?

Ans. No, The Honorable Kerala High Court in the case of **M/s. Isha Holidays Private Limited v. The Commissioner, SGST Department & Ors. [W.P.(C) No. 30666 of 2023 dated September 25, 2023],** dismissed the petition and held that the Appellate Authority has been vested with the power to condone the delay only by one month by satisfying that there exists a sufficient cause, which prevented the assessee from presenting the appeal beyond the period of three months.

The Honorable Kerala High Court observed that the Petitioner could not enumerate upon any powers vested with the Respondent under which the delay could be condoned beyond the period of four months and opined that as per Section 107(1) of the CGST Act, the appeal had to be filed within three months before the Respondent. Upon which the Respondent has the power to condone the delay by one month, if satisfied that there exists a sufficient cause.

The Honorable Court held that there are no powers vested with the Respondent to condone the delay beyond the period of four months as per Section 107(1) read with Section 107(4) of the CGST Act.

Note:-

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:

- Non–filing of an appeal within the normal time allowed is not questionable;
- Every day of delay is to be explained with affidavit;
- Reasons cited verified and rejected if not found satisfactory; and
- Condonation allowed by a Speaking 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.

When an appeal is filed after the period of condonation permitted in section 101(4), the Appellate Authority does not have statutory authority to condone the delay, not even if the reasons are ample and deserve to be entertained. The appeal must be dismissed for being fatally belated because the legislature

has allowed appellate authority this much authority and not more.

Q.5. Whether the Revenue Department can seize the goods and vehicles even after payment of penalty as per the terms and conditions stated in Section 129(1) of the CGST Act?

Ans. No, The Honorable Allahabad High Court in **M/s. Western Carrier India Ltd v. State of U.P. and 4 Others [WRIT TAX No. – 1020 of 2023 dated September 15, 2023]** held that since the assessee's goods in transit were accompanied by the necessary documents, including an E-Way bill and invoice, the department should have released the goods and vehicle under Section 129 of the Central Goods and Service Act, 2017.

The Honorable Allahabad High Court observed that vide Issue 6 of **Circular No. 76/50/2018-GST dated December 31, 2018**, either the consigner or the consignee accompanied with relevant documents should be deemed as the owner of the goods. Therefore, the Petitioner is considered as an owner of the goods and directed the Respondent to release the goods and vehicle seized in transit under Section 129(1)(a) of the CGST Act, as were accompanied by necessary documents, including an E-Way bill and invoice, etc.

Note:-

This is the case of absolute over–passionate administration. Section 68 read with section 129 gives the proper officer limited powers to verify documents required to be accompanied as per Rule 138A. Either prescribed documents are available, or they are not. There is no third possibility that the law admits. Intercepting Officers fuelled by their experiences in earlier tax regimes, can "sense" evasion of tax and expand the scope of their limited powers conferred by the legislature.

On detention of consignment, every effort must be made to secure release immediately. The delay raises a new presumption against the taxpayer's claim and permitting detention can lead to the development of the belief that e–auction under section 129(6) may be justified.

If the Proper officer is willing to release the detained consignment against bond in MOV8, then an application under section 129(1)(c)is in order. To this end, every detention must be followed by such an application, regardless of whether this option was informed by the Proper Officer or not, and

whether the application filed was allowed by the Proper Officer or not. It will furnish grounds in appeal.

Q.6. Whether the denial of an ITC mismatch claim in GSTR-3B and GSTR-2A be justified when the conditions outlined in Circular No. 183/15/2022-GST are not taken into account?

Ans. No, The Honorable Calcutta High Court in M/s. Makhan Lal Sarkar and anrs. vs. the Assistant Commissioner of Revenue, State Tax B.I. and Ors. [WPA/2146/2023 dated September 18, 2023] directed the Revenue Department to hear the appeal afresh as the benefit of Input Tax Credit (**"ITC")** was denied due to a mismatch of ITC claimed in Form GSTR-3B and that reflected in Form GSTR-2A by **Circular No. 183/15/2022-GST dated December 27, 2022.**

The Honorable Calcutta High Court observed that the Petitioner's contention of a breach of the Principal of Natural Justice can be upheld, as the Petitioner despite being granted several opportunities, voluntarily opts not to appear before the Respondent, thereby compelling the Respondent to proceed with an ex-parte decree.

The Honorable Court held that the Impugned Order is unsustainable because it imposes an obligation on the Respondent to ascertain the mismatch from the documentary evidence available and should have taken into consideration the clarification specified under the Circular about the respondent's approach in cases where the supplier had wrongly reported the said supply under B2C instead of B2B in Form GSTR-1, resulting in the omission of the relevant supply or in cases where an incorrect GSTIN of the recipient was declared in Form GSTR-1.

The Honorable Court directed the Petitioner to deposit 20% of the disputed tax amount in addition to the amount already remitted under Section 107(6) of the CGST Act.

Note:-

It is important to note that in FY 2017-18, reporting of ITC in GSTR-2A was not a mandatory prerequisite for claiming ITC. This aspect was clarified through a Press Release by CBIC issued on October 18, 2018. Additionally, the Honorable Supreme Court in the case of **Union of India v. Bharti**

Airtel [Civil Appeal No. 6520 of 2021 dated October 28, 2021], held that GSTR-2A serves as a facilitator, and the recipient is required to avail ITC based on self-assessment. Notably, the conditions related to the reflection of ITC in GSTR- 2A/GSTR-2B were initially introduced in October 2019 through Rule 36(4) of the CGST Rules and later on January 01, 2022, through the incorporation of Section 16(2)(aa) i.e. GSTR 2B, in the CGST Act.

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.7. Rule 89(4)(C) of the CGST Rules violates the rights of the supplier for the denial of refund of unutilized ITC accrued on account of export of zero-rated supply of goods.

Ans. Yes, The Honorable Delhi High Court in the case of **M/s. Indian Herbal Store Pvt. Ltd. vs. Union of India [W.P.(C) 9908/2021 and W.P.(C) 9912/2021 dated September 15, 2023]** allowed the writ petition and held that the Rule 89(4)(C) of the **Central Goods and Services Rules, 2017 ("the CGST Rules")** would not have any retrospective application. The Honorable High Court while relying upon the judgment of the Honorable Karnataka High Court in **M/s. Tonbo Imaging India Pvt. Ltd. vs. Union of India and Others [W.P.(C) No. 13185/2020 dated February 16, 2023]**, noted that the Honorable Karnataka High Court has already struck down the substitution made in Rule 89(4)(C), being arbitrary and ultra vires in nature and contrary to provisions of Section 54 of the Central Goods and Services Tax Act ("**the CGST Act**"). Therefore, the Honorable High Court set aside the Refund Rejection Order and Order-In-Appeal and directed the Revenue Department to process the claim for Refund of unutilized Input Tax Credit **("ITC").**

The Honorable Delhi High Court observed that the right to refund unutilized ITC accrues when the goods are exported. Therefore, the Petitioner under Section 54(1) of the CGST Act, has the right to apply for the refund of unutilized ITC within two years from the relevant date. As per Explanation

to clause 2(a) to Section 54 of the CGST Act, the relevant date of supply of goods for export would be the date on which the ship or aircraft on which goods are loaded leaves India.

The Honorable Court noted that the substitution of Rule 89(4)(C) of the CGST Rules would be applied prospectively from March 23, 2020, and the Respondent had erred in applying Rule 89(4)(C) of the CGST Rules for computing the export turnover for determining the refund claimed by the Petitioner for the Impugned Period 1 and 2, thereby, rejecting the contentions of the Respondent.

The Honorable Court opined that Rule 89(4)(C) of the CGST Rules would not be applicable for determining the amount of refund of unutilized ITC and the Petitioner has a rightful claim for refund of unutilized ITC.

Note:-

Earlier, the Honorable Karnataka High Court struck down Rule 89(4)(C) of CGST Rules, 2017 as amended vide

notification no. 16/2020- central tax dated 23/03/2020 for being ultra vires the provisions of section 16 of IGST Act, 2017 & Section 54 of CGST Act, 2017 read with section 164 of CGST Act,2017 being violative of Articles 14 and 19(1)(g) of the constitution. Additionally, the provision is arbitrary, unreasonable & vague. This is a big relief for the exporters claiming refunds for those who export via the LUT model and do not supply domestically special purpose or customized products.

It would be interesting to note how the courts will respond to another draconian rule i.e. Rule 96(10) of the CGST Rules, 2017.

Q.8. Whether the extended period of limitation can be invoked only on the ground that the returns are not scrutinized on time and records are not called by issuing of SCN?

Ans. No, The Honorable Supreme Court in the case of Commissioner of CGST and Central Excise, Jabalpur v. M/s. Birla Corporation Limited [Civil Appeal No. 6410 of 2023 dated October 03, 2023], dismissed the appeal filed by the Revenue Department, holding that the extended period of limitation for issuing Show Cause Notice **("the SCN")** has to be invoked as per facts of the case, thereby denying the benefit of the extended period of limitation to the

Revenue Department.

The Honorable Supreme Court observed that five audits for the relevant period have been conducted by the Appellant and a similar SCN has been issued by the Appellant for the same issue.

The Honorable Court held that the observations made in the Impugned Order, enumerating upon the duty of the Officer to scrutinize the returns and issue SCN within time, have been made about facts and circumstances of the case, and do not have any general application, thereby holding that extended period of limitation cannot be invoked.

Note:-

In GST, Notice U/s 74 is required to be issued when there is an allegation of "evasion of tax" and "special circumstances" of fraud; or willful – misstatement of facts to evade tax; or suppression of facts to evade tax exists.

It is incumbent upon the proper officer to show how these "special circumstances" exist and what benefit, if any is derived by the taxpayer.

Q.9. Whether GST paid by the recipient but not remitted by the Supplier to the Government is ground for denying ITC?

Ans. No, The Honorable Kerala High Court, in the case of M/s. Goparaj Gopal Krishnan Pillai v. State Tax Officer, Thripunithura & Ors. [WP(C) 29855 of 2023 dated October 5, 2023] allowed the writ petition and held that the Input Tax Credit **("ITC")** should not be denied on the ground that GST paid is not reflected in Form GSTR-2A due to non-remittance by Supplier. Therefore, the High Court set aside the Assessment Order to the extent of denial of ITC and directed the Revenue Department to examine the evidence placed on record by the assessee and pass fresh orders accordingly.

The Kerala High Court relies upon the judgment of the Honorable Kerala High Court in the case of M/s. Diya Agencies v. State Tax Officer [WP (C) 29769/2023 dated September 12, 2023], the High Court noted that the amount of GST paid, not reflected in Form GSTR-2A should not be the sole basis for denial of the claim for ITC when there is evidence on record to prove that the claim of ITC is bonafideand genuine. Further held that the Impugned Order to the extent of denial of ITC of Rs.19,830/- was set aside, hence the

Writ Petition is allowed.

The Honorable Court directed the matter be remanded back to the Respondent for examination of the evidence and documents submitted by the Petitioner for claiming ITC. Thereby, the Petitioner should be allowed to avail of ITC denied if the Respondent Officer is satisfied that the ITC claim is bonafide and genuine.

Q.10. Whether the assessment order could be passed without serving notice as per conditions stipulated in Section 169(1)(b) of the CGST Act?

Ans. No, The Honorable Madras High Court (Madurai Bench) in the case of **M/s. Tvl. Diamond Shipping Agencies Pvt. Ltd. v. Assistant Commissioner, Tuticorin [W.P. (MD) 6874 of 2023 dated August 29, 2023]** allowed the writ petition and held that an assessment order could not be passed without serving notice as per the conditions stipulated in Section 169(1)(b) of the Central Goods and Services Tax Act, 2017 **("the CGST Act")**.

The Honorable Madras High Court (Madras Bench) ruled that the Impugned Order was passed without serving notice under Section 169(1)(b) of the CGST Act and because the Petitioner has three business verticals and therefore the Impugned Order is quashed. The Honorable Court directed that the Respondent shall grant the opportunity for personal hearing to the Petitioner and Petitioner shall produce the evidence and required documents. Thereafter, the Respondent officers shall pass the required orders.

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.

Q.11. Tax Invoices, E-way bills, and Goods Receipts are not sufficient proof to avail of ITC.

Ans. No, The Allahabad High Court in the case of **M/s. Malik Traders v. State**

of Uttar Pradesh and Ors. [Writ Tax No. 1237 of 2021 dated October 18, 2023], dismissed the writ petition and held that details of the Tax Invoice, E-Way bill, and Goods Receipt are not sufficient to prove the genuineness of the transaction beyond a reasonable doubt, to avail Input Tax Credit (**"ITC"**). The recipient of purchased goods must provide essential information, including vehicle numbers used for transporting the goods, payment of freight charge, and acknowledgment of receipt, to substantiate the genuine physical movement of goods for availment of ITC.

The Honorable Allahabad High Court observed that the scheme of ITC was introduced to avoid the cascading effect of tax and to avoid double taxation. As per Section 16(2) of the UPGST Act, the registered dealer can avail of ITC only when the conditions under Section 16 are fulfilled. The proceedings can be initiated against the Petitioner for ITC wrongly availed or utilized by any reason or willful misstatement or suppression of fact. Relying upon the judgment of the Honorable Supreme Court in the case of **State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited [Civil Appeal No. 230 of 2023 dated March 13, 2023]** the court noted the primary burden is upon Petitioner to prove beyond reasonable doubt that the actual transaction and physical movement of goods have taken place. The Petitioner is required to furnish the details of the selling dealer, vehicle number, payment of freight charges, acknowledgment of taking delivery of goods, Tax Invoices and payment particulars, etc. to prove and establish the actual physical movement of the goods. Furnishing details of the Tax Invoice, E-Way bill, and Goods Receipt are not sufficient to prove the genuineness of the transaction beyond a reasonable doubt, for availing ITC.

The Honorable Court opined that the facts of the aforementioned case would be applicable in the present case and proceedings have rightly been initiated by the Respondent against the Petitioner and held that the court is not inclined to interfere with the proceedings initiated by the Respondent and dismissed the writ petition.

Note:-

Judgment by the Honorable Supreme Court in the case of **State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited [Civil Appeal No. 230 of 2023 dated March 13, 2023]** has gained unmatchable limelight,

although, it is delivered in the context of Karnataka VAT Act, 2003 but it will have the larger repercussions for the GST regime also. In the GST Law, Section 155 of the CGST Act, 2017 places the "Burden of Proof" in case of eligibility to ITC availed on the taxpayer. So to prove that the ITC availed by the taxpayer is eligible, the taxpayer has to satisfy the conditions of Section 16 read with Section 155 of the CGST Act, 2017. Once the taxpayer discharges the "burden of proof" by showing fulfillment of conditions of Section 16, then the "Onus to proof" shifts onto the department to prove that the ITC is ineligible (Section 101 of the Indian Evidence Act, 1872).

Q.12. Court admitted the writ challenging the amendment to Rule 61(5) of the CGST Rules

Ans. The Honorable Madras High Court in **M/s. Sakthi Industries v. Union of India [W.P.No.26901 dated September 12, 2023]** admitted the writ challenging the amendment to Rule 61(5) of the Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**) and directed the Petitioner to pay 10% of the disputed amount within 4 weeks to get the interim stay from all further proceedings.

The Honorable Madras High Court noted that the Petitioner has availed ITC, which, according to the Respondent is beyond the limitation prescribed under Section 16(4) read with Section 39 of CGST Act read with Rule 61(5) of the CGST Rules and further noted that the petitioner has also challenged the amendment to Rule 61(5) of the CGST Rules vide **Notification No. 49/ 2019 – Central Tax dated October 09, 2019**. The Honorable Court stated that the Petitioner has an alternate remedy and challenged the impugned order on the strength of the challenge to the amendment to Rule 61(5) of the CGST Rule vide **Notification No. 49/2019 – Central Tax dated October 09, 2019**.. Therefore, the court has admitted the writ.

Q.13. Whether the provisions of Section 73A of the Finance Act, 1994 applicable based on the calculation sheets to allege collection of Service Tax?

Ans. No, The CESTAT, Chandigarh in the case of **M/s. Pearls Buildwell Infrastructure Limited v. Commissioner of Central Excise & Service Tax, Chandigarh – I [Service Tax Appeal No. 1196 of 2011 dated September 19, 2023]** set aside the demand confirmed by the Commissioner

for Service Tax based on the calculation sheet only. The Tribunal found that the appellants did not collect any service tax from their customers, substantiated by the absence of invoices and a certificate from their customer confirming this. Consequently, the Commissioner's reliance on calculation sheets to establish service tax collection was considered insufficient. As a result, the impugned order was deemed unsustainable, and the appeal was allowed. Simultaneously, the Department's appeal against the dropped demand was dismissed.

The CESTAT, Chandigarh observed that for the applicability of section 73A of the Finance Act in this case, it was crucial to determine whether the Appellants had collected service tax from their customers, and if so, whether this collection was more than the assessed service tax.

Going through the provisions of Section 73A, it is evident that sub-clause 2 of Section 73A remains applicable in the instant case. It is observed that to invoke this clause, the notice must have collected an amount that is not legally mandated to be collected, in any manner that represents Service Tax. In the present case, it has not been established by the Department that the Appellant has issued invoices or bills indicating the collection of service tax from their customers. Further, noted that the Certificate issued along with the absence of challenged records, indicated that the Appellant had not collected any from their customers.

The CESTAT observed that the allegations against the Appellant were primarily based on isolated and uncorroborated calculation sheets discovered during the search. These sheets were deemed insufficient to establish the collection of service tax.

The CESTAT held that the impugned order could not be sustained and was set aside.

Q.14. Whether the writ petition maintainable when filed almost four years after the issuance of the Impugned Order?

Ans. No, The Honorable Kerala High Court in the case of **M/s. Krishna Steel Rolling Mills v. Deputy Commissioner of State Tax [WP(C) NO. 15991 of 2023 dated September 15, 2023]** dismissed the writ petition, while allowing the assessee to pay in installments of the arrears of tax and further directed the Commissioner to decide the application within 7 days

from the day the assessee approached the Commissioner.

The Honorable Kerala High Court held that the writ petition is not maintainable as the Petitioner had not initiated any proceeding within four years and directly approached this Court without availing alternate remedy of filling statutory appeal. The Honorable Court observed that under Section 80 of the Central Goods and Service Act, 2017, the Commissioner has the power to grant up to 12 installments for the payment of arrears of tax and directed that the Petitioner may approach the Respondent within 7 days from the pronouncement of the order for payment of arrears of tax in the form of installments and the Respondent should decide it within 7 days and dismissed the writ petition.

Note:-

1. Section 80 empowers the commissioner to grant permission only to the taxable person to make payment of any amount due on an installment basis, on an application filed electronically in **FORM GST DRC–20**.

   The commissioner after considering the request by the taxable person (in **FORM GST DRC–20**) and report of the jurisdictional office, may issue an order in **FORM GST DRC–21**, allowing the taxable person to either extend the time or allow payment of any amount due under the Act on an installment basis.
2. This section applies to amounts due other than the self–assessed liability shown in any return.
3. The installment period shall not exceed 24 months.
4. The taxable person shall also be liable to pay prescribed interest on the amount due from the first day such tax was due to be payable till the date tax is paid.
5. If default occurs in payment of any one installment the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

Q.15. Limitation Period u/s 54(1) of the CGST Act cannot be invoked when tax is collected without the authority of law

Ans. The Honorable Delhi High Court in the case of Delhi Metro Rail Corporation Limited vs. The Additional Commissioner, Central Goods and Services Tax

Appeals and Others [W.P. (C) 6793/2023 dated September 18, 2023] held that the limitation period of two years under Section 54(1) of the Central Goods and Service Tax Act, 2017 ("the CGST Act") for applying for a refund of tax, cannot be invoked when Revenue Department collected the tax without any authority of law. Hence the Writ Petition was allowed, and the Revenue Department was directed to process the claim for refund of the Petitioner.

Note:-

This judgment by the Honorable Delhi High Court is applaudable and it will provide relief to all the taxpayers seeking refunds where the tax was collected without the authority of law. Interesting to see, that where the tax is collected without the authority of law during inspection, and search proceedings and where no DRC–04 is issued by the proper officer, the taxpayer may raise refund claims and the department will be forced to accept those claims.

Q.16. Whether the ITC claim can be denied on the ground that there is a difference between GSTR 2A and GSTR 3B?

Ans. No, The Honorable Kerala High Court in the case of **M/s. Henna Medicals vs. State Tax Office, Thalassery & Ors. [WP (C) 30660 of 2023 dated September 19, 2023]** allowed the writ petition and held that the difference between GSTR 2A and GSTR 3B is not a ground for denial of the claim for Input Tax Credit **("ITC"),** thereby directed the Revenue Department to examine the evidence placed on record by the assessee and pass fresh orders accordingly.

The Honorable Kerala High Court relying upon the judgment of the Honorable Supreme Court in the case of **State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited [Civil Appeal No. 230 of 2023 dated March 13, 2023]** and the judgment of Honorable Calcutta High Court in the case of **M/s Suncraft Energy Private Limited and Another vs. The Assistant Commissioner, State Tax, Ballygunge Charge [MAT 1218 of 2023 dated August 2, 2023],** wherein Court observed that the claim of ITC should not be denied only on the ground that there is a difference between GSTR 2A and GSTR 3B.

Further relying upon the judgment of the Honorable Kerala High Court in the case of **M/s Diya Agencies vs. State Tax Officer [WP (C) 29769/**

2023 dated September 12, 2023], the Honorable High Court noted that the difference between GSTR 2A and GSTR 3B should not be the sole basis for denial of the claim for ITC when there is evidence on record to prove that the claim of ITC is bonafide and genuine. The Honorable Court directed the Assessing Authority to grant an opportunity to the assessee to give evidence to support his claim for ITC and the matter be remitted back to Respondent for examination of the evidence of the Petitioner for claiming ITC and after examination of evidence, the Respondent passes fresh orders by law.

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.

Deficiency in this SCN as to the cause of action is incurable and fatal to demand because mismatch is not the cause of action in law; it is only suspicion of possible non – non-compliance. The actual cause of action may arise under section 16(2) (aa) or section 16(2) (c), depending on which one Revenue chooses to pursue. Taxpayers cannot answer such 'either–or' allegations.

Q.17. Whether the Applicant eligible to claim the ITC of the GST paid by them for acquiring the rights of lease from the Transferor as service for the construction of Immovable Property?

Ans. No, The AAR, Gujarat, in the case of **M/s Bayer Vapi Private Limited [Ruling No. GUJ/GAAR/R/2023/29 dated August 24, 2023]** ruled that the transferee acquiring the rights of the lease for construction of the immovable property is not entitled to take Input Tax Credit **("ITC")** of the Goods and Service Tax ("**GST**") paid by them on the services received by the Transferor by way of the lease as per Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 **("the CGST Act").**

The AAR, Gujarat observed that Section 17(5)(d) of the CGST Act states that the registered person is not eligible to take input credit on GST paid

on goods and services received for construction of an immovable property (not plant & machinery) on his account including when such Goods/Services are used in course or furtherance of business. Further observed that the Gujarat Authority for Advance Ruling in **M/s GACL NALCO Alkalis& Chemicals Private Limited [Advance Ruling No. GUJ/GAAR/R/53/ 2021]** has ruled that the legislature has clearly expressed its intent that ITC shall not be available in respect of services about land received by a taxable person for the construction of an immovable property, including when such services are used in the course or furtherance of business. The above-mentioned point was also substantiated by the Telangana State Authority in the ruling of **M/s Daicel Chiral Technologies (India) Private Limited [TSAAR order No. 5/2020].**

The AAR, Gujarat opined that the intent of the Applicant through the annexure to the application and MOU is clear that the Applicant is acquiring the rights of leasehold land, which is industrial land adjacent to the manufacturing plant from the Transferor to set up a new manufacturing plant/expand its existing manufacturing plant.

The AAR, Gujarat ruled that the Applicant is not entitled to take ITC of GST paid by them on the services provided by the Transferor in the form of rights in the leasehold land in terms of Section 17(5)(d) of the CGST Act.

Q.18. GST Exemption for Notice Pay Deduction and Limited ITC for Canteen Facilities to the extent of cost borne by the assessee

Ans. The AAR, Gujarat, in the case of **M/s. Tata Auto Comp Systems Ltd [Ruling No. GUJ/GAAR/R/2023/23 dated June 19, 2023],** held that deductions from employees' salaries for availing canteen facilities, transportation services provided to the employees, and notice pay are not considered taxable under GST, and Input Tax Credit ("**ITC**") can be claimed on GST charged by service providers, with restrictions based on the cost borne by the employer.

The AAR, Gujarat observed that as per **Circular No. 172/04/2022-GST dated July 06, 2023**, the contractual agreement entered between the employer and employee will not be subject to GST when the same is provided in terms of the contract between the employee and employer.

Further observed that the ITC will be available to the Petitioner in respect

of canteen facilities provided under the Factories Act, 1948. However, ITC on GST charged by CSP will be restricted to the extent that the Petitioner bears the cost.

The AAR, Gujarat opined that the ITC under Section 16 of the CGST Act can be claimed, subject to the conditions and restrictions specified in Section 49 of the CGST Act. The services received by the Petitioner are used in their business, making them eligible for ITC on the GST charged by their suppliers. Additionally, the amended Section 17(5) of the CGST Act allows ITC to lease, rent, or hire motor vehicles with a seating capacity of more than 13 persons (including the driver).

The AAR, Gujarat held that the Petitioner is not liable to pay GST on the amounts deducted towards notice pay vide **Circular No. 178/10/2022-GST dated August 07, 2022**, wherein no GST is applicable on the salary deducted instead of the notice period. The deduction is not considered a supply under GST and is viewed as compensation for the breach of employment terms.

Note:-

The AAR, Maharashtra in **Re: Emcure Pharmaceuticals Ltd. [2022 (60) G.S.T.L. 231 (AAR – GST-Mah.)]** ruled that the canteen facilities provided by the employer to its employees through third-party vendors are not a transaction made in the course or furtherance of business, and hence, cannot be considered as a "Supply" under the provisions of the CGST Act and therefore the employer is not liable to pay GST on the recoveries made from the employees towards providing canteen facility at subsidized rates.

Q.19. Whether the cancellation of GST registration is justified when the Petitioner contends that the cancellation orders are illegal and unjustified, particularly due to the absence of an opportunity for cross- examination regarding the business activities conducted at the registered premises?

Ans. Yes, The Honorable Kerala High Court in M/s. Steel India v. the State Tax Officer, Nattika, Thrissur, and Ors. [W.P.(C) No.29033 of 2023 dated October 5, 2023]held that the investigation carried out by the qualified officer should not be considered a trial. The Honorable Kerala High Court upheld the State Tax Officer's decision to cancel the Petitioner's registration due

to the absence of business activity at the declared location. The Honorable Court emphasized that the officer's inquiry was not a trial but a swift process to determine if the registered dealer operated from the declared business address, and the Petitioner failed to provide supporting evidence for his claim or documents to change the business location. Consequently, the writ petition was dismissed, affirming the authority.

Q.20. Whether the period from February 2020 to August 2020 to be considered cumulatively for availing GST Credit under Rule 36(4) of the CGST Rules?

Ans. Yes, The Honorable Allahabad High Court in the case of **M/s. Vivo Mobile India Private v. Union of India and Others [Writ Tax No. 433 of 2021 dated September 5, 2023]** allowed the writ petition and held that as per Rule 36(4) of the Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**), the period of February 2020 to August 2020 would be considered cumulatively for calculating the amount of eligible Input Tax Credit (**"ITC"**) for the invoices or debit notes, details of which has not been furnished, prescribing a limit of 10 percent of the eligible ITC, about invoices or debit notes furnished by the supplier.

The Honorable Allahabad High Court observed that the GST regime is founded on the premise that the GST is leviable at every link of value addition and the Assessee can claim ITC on the tax paid, which is used to offset outward tax liability. Section 16 of the CGST Act prescribes conditions for availing of Input Tax Credit wherein Section 16(1) of the CGST Act registered person is eligible to claim ITC as per the conditions enumerated in the Act. Section 16(2) enumerates the eligibility conditions for availing ITC. Section 16(2) of the CGST Act, states that in case the recipient fails to pay the supplier the value of supply along with GST payable, within 180 days from the date of issuance of the Tax Invoice, the ITC is reversed and the amount is added to the recipient outward tax liability. Further observed that the Respondent vide **Notification No. 49/2019 – Central Tax dated October 09, 2019**, inserted sub-rule (4) to Rule 36 of the CGST Rules stating that a registered person can claim ITC in respect of invoice or debit notes the details of which have not been uploaded by suppliers in GSTR-1, only to the extent of 20 percent of the eligible credit available in respect of invoice or debit notes

the details of which have been uploaded by the supplier. Further, by way of the Impugned Circular, a condition was imposed that the amount of ITC calculated in cases where the details of invoice and debit notes are not furnished would be based on invoices or debit notes the details of which have been uploaded by the suppliers under Section 37(1) of the CGST Act as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said period which has to be ascertained based on auto-populated FORM GSTR 2A available on the due date of filing of FORM GSTR-1 under Section 37(1) of the CGST Act. The amendment was made in Rule 36(4) of the CGST Rules vide **Notification No. 75/2019 dated December 26, 2019**, wherein the limit of ITC claimed under Rule 36(4) of the CGST Rules was reduced from 20 percent to 10 percent. Thereafter first Proviso to Rule 36(4) was inserted by way of the Notification, stating that the conditions in Section 37 of the CGST Act would apply cumulatively for February, March, April, May, June, July, and August of the year 2020 and the return in Form GSTR-3B for tax period of September, 2020 shall be furnished with cumulative adjustment of the ITC for the above said period.

The Honorable Court noted that the Impugned Circular being contrary to the statutory provision and first proviso of Rule 36(4) of the CGST Rules, cannot be enforced in the present case for the limited period of February 2020 to August 2020 and opined that the condition laid out in Rule 36(4) of the CGST Rules, stating that, the amount of the eligible ITC for the period of February 2020 to August 2020, not exceeding ten per cent of the eligible ITC as per Tax invoice or Debit Note, filed by supplier in GSTR-1 has to be calculated cumulatively. Further stated that the Respondent has the power to recover the amount from the Petitioner during the pendency of the writ petition even if the Petitioner has pre-deposited the ten percent of the disputed tax amount in the absence of an interim order issued by the Court granting protection from the recovery of the disputed tax amount, however, the Respondent actions to recover the entire disputed tax amount is unacceptable. The Respondent should have taken into consideration any amount which has been pre-deposited by the Petitioner.

The Honorable Court held that the Impugned Order is quashed and the entire amount recovered from the Petitioner by the Respondent shall be

returned to the Petitioner within six weeks along with interest @ 6 percent of Rs.11,00,69,010/- i.e. excess amount recovered, from the date of excess recovery to the date of actual refund. The Court granted the liberty to the Respondent to recover up to 10 percent of the interest amount from the erring official of the Respondent.

Q.21. Whether penalty can be imposed on wrongly availed ITC when Transitional Credit has been debited for discharging tax liability?

Ans. No, The Honorable Madras High Court in the case of **M/s. PMA Controls India Limited v. Joint Commissioner of Central Tax and others, Chennai [W.P. No. 16638 of 2023 dated September 20, 2023]** allowed the writ petition and held that the penalty could not be imposed on wrongly availed Input Tax Credit as there is no change in tax liability of the Assessee when Transitional Credit has been debited for discharging tax liability and wrongly availed Input Tax Credit has been reversed.

The Honorable Madras High Court observed that the issue is revenue neutral, as the Petitioner was entitled to transmit the ITC lying unutilized under the CENVAT account, which was lying unutilized under GST. Due to technical glitches, the transition could not be allowed under Section 140 of the CGST Act.

Relying upon the judgment **Ans.** of **RashtriyaIspat Nigam Limited v. Deputy Commissioner (CT) III [W.P. 22241 of 2019 dated June 20, 2022],** wherein the Court held that the transition of ITC, even if incorrect, the Petitioner's only way to protect the claim was to avail the transition of ITC and taking hyper-technical view while the imposition of penalty and levy of interest is not sustainable.

The Honorable Court opined that the amount for the utilization of ITC would have been available if the Petitioner was allowed a successful transition of ITC. Thus, the Petitioner has not caused any loss to the revenue, as the Petitioner utilized the Transitional Credit as regular ITC and wrongly availed ITC has been reversed and held that there exists no reason to sustain the Impugned Order and impose the interest and penalty on the Petitioner as there is no change in the tax liability. Hence, a Writ Petition is allowed.

Q.22. Whether the Petitioner liable to pay GST on payment received after implementation of the GST Act for the Works contract entered before implementation of the GST Act?

Ans. Yes, The Honorable Calcutta High Court, in the case of **Dipak Sarkar v. The State of West Bengal and Others [WPA/2127/2023 dated September 15, 2023],** dismissed the writ petition and held that the assessee is liable to pay the GST on payment received after implementation of the GST regime for the work orders given before the implementation of the GST regime.

The Honorable Calcutta High Court opined that the Impugned Order is reasoned and has been passed after taking into consideration all the points raised by the Petitioner. Thus, the Impugned Order is valid and devoid of any error of law.

The Honorable Court held that all the payments regarding the works contract are executed post-GST, making the Petitioner obligated to pay GST on the payment received and tax had to be deposited after filing of the required forms. Hence, the writ petition is dismissed.

Q.23. Whether the extended period of limitation can be invoked on the ground that the assessee was unaware of the charge ability of service tax concerning specific income earned?

Ans. No, The CESTAT, Ahmadabad in the case of **M/s. Sophisticated Instrumentation v. C.C.E & S.T.- Vadodara-I [Service Tax Appeal No. 11477 of 2013 dated September 22, 2023],** allowed the appeal and ruled that the assessee is a charitable trust and not covered under the definition of commercial training or coaching center as per Section 65(27) of the Finance Act, 1994 and thus invocation of an extended period of limitation by five years is not justified.

The CESTAT, Ahmadabad observed that the definition of CTCS as defined under Section 65(27) of the Finance Act, 1994 was silent on the nature of the institute which is covered under the definition of CTCS specifically concerning Appellant being a charitable trust, which was cleared by adding the explanation vide Finance Act, 2010 stating that any kind of organization providing coaching service or imparting training and deriving income through these activities would fall under the head of CTCS, thus service tax could be levied on such organizations w.e.f. July 1, 2003.

The CESTAT opined that the appellant was under the bona fide belief that they were not covered under the head of CTCS and, thus were not required

to pay service tax and held that the appellant has not willfully suppressed any fact to evade payment of service tax. Therefore, the extended period of limitation of five years could not be invoked in this case, hence appeal is allowed on the ground of limitation.

Q.24. Whether the Appellant liable to pay service tax on the commission received under business ancillary services?

Ans. Yes, The CESTAT, Ahmadabad in the case of **M/s. Natural Petrochemicals Private Limited vs. C.C.E & S.T, Rajkot [Final Order No. A/12059/ 2023 dated September 18, 2023]** has ruled that the assessee was aware of the changeability of service tax upon the commission received under the head of Business Ancillary Services (**"BAS"**) and had deliberately never disclosed the same in the monthly returns, thus the financial hardship faced by the assessee is no ground for non-payment of Service Tax, hence dismissed the appeal.

The CESTAT, Ahmadabad observed that the Appellant should have disclosed the income received under the category of BAS in the monthly returns even if the same is believed to be exempted under the Act and the Appellant was aware of their liability to pay service tax, and deliberately chosen not to pay service tax, owing to financial difficulties.

The CESTAT held that due to financial hardships, the Appellant cannot escape from the liability to pay service tax on the commission received in the form of income under the category of BAS and hence, dismissed the appeal.

Q.25. Whether the Petitioner can be considered an "intermediary" within the meaning of Section 2(13) of the IGST Act? Where taxpayer is referred to as an agent in the contract?

Ans. No, The Honorable Delhi High Court in **BOOKS Business Services Pvt. Ltd vs. Commissioner of Central Goods and Services Tax Delhi South and Anr. [W.P.(C) 1255/2023 dated August 22, 2023]** held that even when an assessee is referred to as an agent in the agreement, doesn't concretely mean that he is an intermediary and not a principal service provider. As a result, the denial of the refund was overturned, and the tax authorities were instructed to process the refund claim expeditiously.

The Honorable Delhi High Court held that the Petitioner could not be classified as an "intermediary" under the IGST Act. The Petitioner's services included bookkeeping, payroll, and accounting services using cloud technology. The Honorable Court noted that in the case of intermediary services, there are typically three entities involved: one providing the principal service, one receiving the principal service, and an intermediary acting as an agent or broker to facilitate or arrange such services for the recipient. Further noted that the agreement between the Petitioner and its foreign affiliate, Books Business Services Limited, did use the term "agent," but it was clear that the Petitioner was not acting as an agent to procure services for the service recipient. Since, the agreement clearly stated that the Petitioner was engaged to provide the principal services, and it was the principal service provider for bookkeeping, payroll, and accounts through the use of cloud technology.

The Honorable Court held that merely because the services were for the clients of the Petitioner's affiliate did not make the Petitioner an "intermediary" as per the IGST Act. Subsequently, the Court relied on relevant decisions, including **M/s Ernst And Young Limited v. Additional Commissioner, CGST Appeals-II, Delhi, and Anr. [2023:DHC:2116-DB]** and **M/s Cube Highways and Transportation Assets Advisor Private Limited v. Assistant Commissioner CGST Division & Ors.[2023: DHC:5822- DB]**,

*****

ANTI- MONEY LAUNDERING LAW : PMLA, 2002

CA Shilvi Khandelwal

I. An Introduction to "Money Laundering"

Money laundering is a complicated crime. In simple terms, 'money laundering' means any process or activity involving conversion of proceeds of crime to project them as licit income OR untainted property. Washing of Dirty money to make it legitimate is money laundering. The important principle for money laundering is eliminating the risk of seizure, confiscation and forfeiture so that the legal money can be enjoyed without any intervention of law. Its intention is to conceal money from the State so that to prevent loss by taxation, confiscation, etc. Criminals try to cover the origin of money by way of illegal activities to look like it has been obtained through legal places otherwise they won't be able to use such money as it would link to criminal activity and enforcement can seize it.

Money laundering is an economic offence to the society. It is not just an offence against an individual, rather the larger societal interest is at stake. This activity does not affect only single entities but the whole country.

II. Phases of Money Laundering

The process of money laundering involves cleansing of money earned through illegal activities like extortion, drug trafficking and gun running etc. The tainted money is projected as clean money through intricate processes of placement, layering and laundering. The dynamic process of Money Laundering involves three stages:

1. Placement : The first stage of money laundering is when the individual participating in criminal activity places cash proceeds into the financial system. This is done so that they can get rid of the cash that is derived from criminal sources. It can be unsafe for people to hold onto a large amount of cash at one time, so they may try to dump the cash somewhere that provides greater security. This stage corresponds to the greatest degree of vulnerability for the criminal. Financial officials are on the lookout for suspicious transactions that are cash-based. The criminal may try to bypass threshold reporting regulations, such as those that require bank officials to report any transactions over a certain threshold amount to the regulator. This is often done by exchanging illegal funds in smaller and less conspicuous amounts. The funds may be exchanged for other liquid forms

of cash, such as traveler checks, bank drafts or savings account deposits. Hawala and money mules are well known methods of placement.

2. Layering : The next stage of money laundering attempts to separate the money from its original, illegal source. This part of the process is usually complicated. By moving the money quickly and to different areas, the money may be transformed so that it is not detected through audits. During this stage, the money may be transferred between multiple companies in multiple destinations even in multiple countries. The money may take the form of various investments and move faster than the regulator can respond.

3. Integration : This is the final stage of the money laundering process. This involves the process to get the funds back to the criminal from what seems to be a reputable source. After placing and layering the cash into the financial system, the funds become integrated. In this manner, the criminal can receive funds from their original illegal source in methods that do not draw attention to the situation. This may include receiving money from a business purchased by the funds, such as a restaurant, department store, car wash or laundry business. The business may carefully follow all other regulations in order to avoid detection, such as carefully paying all the employees in time and also paying business taxes and filing tax returns on a timely basis.

III. Money Laundering : History

Money Laundering is an offshoot of parallel economy, which deprives most governments of legitimate revenue, thereby, the less endowed section of the society will be deprived of their upliftment. Money Laundering was coined in 1920s in USA -launderettes were used by mafia groups to convert illicit funds to licit by laundering the proceeds. Money laundering is originally originate from the Mafia ownership of Laundromats, during the time of famous gangsters that came initially out of the Prohibition-banning of alcohol. Various mechanisms used to cover the origins of huge amount of money which used to be generated by the import as well as sale of alcohol and also by way of extortion, gambling. Alphonse Gabriel Capone an American gangster who was highly involved in smuggling and other illegal activities was prosecuted and convicted in the year 1931 for tax evasion. He states that Money Laundering perfectly describes the taking place of dirty money which is put through various transactions so that at the other end legal money comes out. The sources of funds which are obtained illegally by way of successive transfers

and deal those funds will become a legitimate income.

Unluckily one method for hiding the source of money was through legal gambling. Further the main issue which the gangsters mainly faced was cash which is often in denomination of coins. If it is put in the bank than questions will be asked, so they created various businesses one of which was slot machines. The initial sighting was the newspapers reporting about Watergate scandal in the year 1973. After which the term has been globally accepted because of its popular usage in the world.

In India, there is history of economic scams, those have shaken the India Economy namely: Commonwealth Games Scam, Madhu Koda Case, August Westland Chopper Deal, NSEL Case, Abhishek Verma's Case, Graft Case, Karnataka Mining Scam, Saradha Scam, Manesar Land Deal Scam, Chhagan Bhujbal's Case, Kanishk Gold Pvt Ltd Case, Yes Bank and Cox & Kings Case etc.

IV. Prevention of Money Laundering : Globally and In India

The serious threat posed by money laundering to the financial systems and sovereignty was being progressively realized by various countries of the world. As a consequence of this realization, need of Anti Money laundering law was arisen. The international community took the following initiatives to curb the menace of money laundering:

(i) The first anti-money laundering structures came about with the Financial Action Task Force (FATF). It ensures that international standards are put in place to prevent money laundering. The Financial Action Task Force on money laundering (FATF), 1989 made 40 recommendations, which provide the foundation for comprehensive legislation to combat the problem of money laundering.

(ii) The Basle statement of principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money laundering;

(iii) The 1998 United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention of 1998), provided a comprehensive legal definition of money laundering. This definition has formed the basis of subsequent legislations on Money Laundering Laws of various countries; and

(iv) Political Declaration and Global Programme of Action adopted by UN General Assembly by its Resolution No. 5 17/2 of 23rd February, 1990 inter alia resolved the developing mechanism to prevent using of financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering. India, being a signatory to above declaration, was obliged to enact its national money laundering law.

In India, to curb such kind of money laundering practices before introduction to PMLA, 2002, some statues were there such as Income Tax Act, 1961, The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), The Smugglers and Foreign Exchange Manipulators Act, 1976 (SAFEMA), The Benami Transactions (Prohibition) Act, 1988, The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPSA), The Foreign Exchange Management Act, 1999 (FEMA), The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. But there was no specific law to curb money laundering.

The various forms of criminal activity has increased the threat, thus concern had been raised up due to lack of effective laws for dealing in smuggling, foreign trading violations, narcotics and also special provisions for detention and forfeiture of property. The Ministry of Finance had appointed an inter-ministerial Committee to look into all aspects of money laundering and to suggest suitable legislation, if necessary. The Committee in their report pointed Out that money laundering was posing serious threat to the financial systems of our country. Drug traffickers, smugglers and other undesirable elements have amassed huge wealth, which was being used to undermine the stability of financial institutions and social order.

The Committee submitted its report to the Ministry in July, 1997, wherein they suggested enactment of a comprehensive legislation to deal with this problem. The Report of the Committee and the draft legislation were discussed in the Ministry. The matter was also discussed with the Ministry of Law. On the basis of these discussions, Ministry came to the conclusion that the money laundering is posing threat to the financial systems and social order and integrity of the country and the same needs to be tackled by way of a separate legislation in view of the very fact that no comprehensive legislation is in force at present which can effectively deal with the problem. Accordingly, it was decided to introduce the proposed Bill.

On the other hand, Anti money laundering statutes adopted by some other countries

are as below:

Sr. No.	Country	Statutes
1.	USA	1. Bank Secrecy Act, 1970; 2. Money Laundering Control Act, 1986; 3. Annunzio-WyLie Anti Money Laundering Act, 1992; 4. Money Laundering Suppression Act, 1994; 5. Money Laundering & Financial Crimes Strategy Act,1998; 6. Patriot Act, 2001; 7. Intelligence Reform & Terrorism Prevention Act, 2004.
2.	UK	1. Terrorism Act, 2000; 2. Proceeds of Crime Act, 2002; 3. Money Laundering Regulations, 2007.
3.	Germany	1. Money Laundering Act, 1993;
4.	Australia	The Anti-Money Laundering & Counter Terrorism Financing Act, 2006.
5.	New Zealand	1. Proceeds of Crime Act, 1991; 2. Mutual Assistance in Criminal Matters Act, 1992; 3. Financial Transactions Reporting Act, 1996.
6.	Singapore	1. Monetary Authority of Singapore (Anti-Terrorism Measures) Regulations, 2002; 2. Monetary Authority of Singapore (Freezing of Assets of Person) Regulations, 2002.
7.	Thailand	The Money-Laundering Prevention & Suppression Act, B. E. 2542.
8.	Malaysia	Anti – Money Laundering Act, 2001.

V. Prevention of Money Laundering Act, 2022

1. Origin and legislative background of PMLA, 2002 : The Prevention of Money Laundering Bill, 1998 was presented in Parliament on 4th August, 1998. After the assent of President on 17th January, 2003 it became Prevention of Money Laundering Act, 2002 with effect from 1st July, 2005. This process of enactment to the act had following history:

- The PML Bill, 1998 was introduced in Lok Sabha on 04.08.1998.
- Bill was referred to the Standing Committee on Finance on

05.08.1998.

- The Standing Committee submitted its report on 04.03.1999.
- The Bill was presented in Rajya Sabha on 08.03.1999.
- Lok Sabha was dissolved on 26.04.1999.
- The PML Bill, 1999 was presented in Lok Sabha on 29.10.1999.
- The PML Bill, 1999 was passed in Lok Sabha on 02.12.1999.
- The Rajya Sabha referred the Bill to Select Committee.
- The Select Committee finalized its report on 24th July, 2000.
- The PML Bill, 1999 was passed by both Houses of Parliament in the year 2002.

This law had been revised three times in 2005, 2009 and 2012. The President signed the last change of 2012 on January 2013, and also the legislation came into impact in 2013. The Act has placed cash concealment, possession acquisition, use of crime issue, and possession of cash on the criminal list. It's value noting here that the banking company of India and also the regulative and Development Authority for Insurance were brought out beneath the authority of the Act. Therefore, all money establishments, banks, mutual funds, insurance corporations, and their money intermediaries shall be subject to the provisions of this Act.

2. Offence and Punishment of Money Laundering: When any person attempts to indulge and is knowingly assisting or is a party which is connected with the proceeds of crime i.e. includes possession, concealment, use or acquisition as untainted property is guilty of offence of money laundering (Section 3 of PMLA)

Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. (Section 4 of PMLA)

3. Attachment, Adjudication & Confiscation :

- **Attachment:** Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe (the reason for such belief to be

recorded in writing), on the basis of material in his possession, that –

- Any person is in possession of any proceeds of crime; AND
- Such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed [Section 5(1) of PMLA].
- **Adjudication:** When the complaint is received before the Adjudicating Authority and have reasons for believing that any person has committed offence under Section 3, he may issue a notice to such person of not less than thirty days calling upon him for indicating his source of income, assets or earning by which he acquired the attached property or seized. Further for the evidence which is relies upon and to show cause why any of such properties should not be property which is involved in money laundering and be confiscated by the Government.
- **Confiscation:** After knowing the response and all other information, the Authority can give final order of attachment and also confiscation order, which will be rejected or confirmed by the Special Court as the court finds appropriate.

4. Prosecution and Appellate Procedure :

PMLA is a unique law in which Civil proceedings as well as Criminal proceedings are prescribed. In this law, both the proceedings are initiated simultaneously.

Civil Actions: Under civil provisions, during course of investigation if the ED officer has reason to believe that any person is in possession of POC and same is likely to be concealed, transferred etc the same may be provisionally attached by him. The attaching authority is required to file a complaint before the adjudicating authority for confirmation of provisional attachment within 30 days of the said order of provisional attachment. (under section – 5 of PMLA).

The adjudicating authority upon receiving the compliant u/s 5 (5) or u/s 17(4) or u/s 18(10) if the adjudicating authority has reason to believe that any person has committed any offence of PMLA or is in possession of POC, it may serve

a notice of not less than 30 days on such person calling him out to indicate the sources of his income, earning or assets out of which or by means of which he has acquired the property attached, provide evidences on which he relies, and show cause why the said property should not be declared as property involved in money laundering.

After the investigation is complete, the investigating officer is required to file a prosecution complaint in the court of special PMLA Court for trial of the case and praying for punishment under section 4 for contravention of section 3 of PMLA.

Appeal against order of Adjucating Authority: The appellate tribunal constituted under SAFEMA also functions as Appellate Tribunal under PMLA. The appeal against the order of adjudicating authority lies with the appellate Tribunal as prescribed under section 25 of PMLA and the PMLA (Appeals) Rules 2005. The department or any other person aggrieved by the order of the adjudicating authority may prefer an appeal to Appellate Tribunal within a period of 45 days from the date of the copy of order.

Criminal Actions: There is a scheduled offence for the crime committed which is being investigated by other law enforcing agencies viz. CBI, Police, NIA, Customs, NCB etc. The trial is conducted in the respective courts having jurisdiction for those offences. However, for the offence of money-laundering generated out of these scheduled offences the trial is conducted in the special PMLA court. As per provisions of section 44(1)(a) of PMLA an offence punishable u/s 4 and any scheduled offence connected to the offence that section shall be subject to trial by the special PMLA court constituted for the area in which the offence has been committed. The provisions of CrPC shall apply, in so far as they are not inconsistent with the provisions of PMLA, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings during investigation under PMLA. The Provision of CrPC (including the provisions as to bails or bonds) shall apply to the proceedings/trial before the special PMLA court. The special PMLA court shall be deemed to be a Court of Session and persons conducting the prosecution before the special court shall be deemed to be a Public Prosecutor.

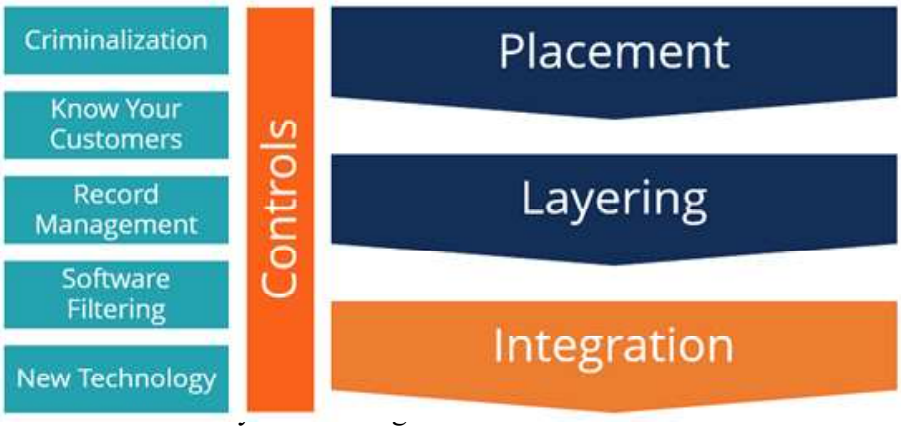
Summon and Arrest : The competent officer has power to summon any person whose attendance he considers necessary for investigation. The similar provisions

are there in section 160 (1) of CrPC where the police officer may summon any person for investigation, however, in the police power there is a rider proviso which says that no male person (under age of 15 years or above the age of 65 years or a woman etc.) shall be required to attend at any place other than the place in which such person resides.

DD/AD or any other officer authorised by Central Govt. by general or special order, has on the basis of material in his possession, reason to believe that any person has been guilty of an offence punishable under the act, he may arrest such person and inform him grounds of arrest. During investigation arrest of each accused is not mandatory. Very few people are being arrested only when they are either not cooperating in the investigation or when there is likelihood of tempering of evidence, chances of absconding, influencing the witnesses or effecting the POC.

5. Anti-Money Laundering Measures

The menace of cash wash is extremely diabolical in nature. It hits not solely at the foundation of a country's money structure however conjointly kills its social organization by finance anti-social activities, hiding in any country affects the state at massive and also the cash concerned in it's of the voters. So, additional strict actions ought to be taken by the social control agencies whereas keeping in mind the rights of third parties and also the whole method from attaching the property to arrogation and also the final conviction of associate in nursing suspect ought to be regulated through fast-track courts.



somewhere there are some loopholes which is not fulfilling the purpose. The problems are, due of growth in technology it is possible for money launderers to hide the origin of proceeds of crime by cyber techniques. Financial Intelligence Unit – India (FIU-IND) is an organisation under the Department of Revenue, Government of India which collects financial intelligence about offences under the Prevention of Money Laundering Act, 2002. It was set up in November 2004 and reports directly to the Economic Intelligence Council (EIC) headed by the Finance Minister. This agency monitors the anti-money laundering and which regulates over compliance by all intermediaries and institutions.

The Prevention of Money Laundering Act, 2002 is serving as an umbrella for financial institutions like Insurance Regulatory and Development Authority (IRDA), Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) which thereby involve to all intermediaries, insurance companies, banks as well as mutual funds. The Reserve Bank of India issued circular on Know Your Customer (KYC) norms/ Combat of Financing of Terrorism (CFT)/ Anti-Money Laundering (AML) standards under the Prevention of Money Laundering Act, 2002 and during opening of accounts banks are advised for following customer identification and managing transactions which are suspicious for reporting it to authorised authority.

Obligation of Banking Companies, Intermediaries and Financial Institutions : All reporting entity have to maintain record of every transactions which are executed, attempted and needs to be furnished to Director within the time as may be prescribed. Further, all such information verified or furnished, have to be kept confidential and needs to be maintained for ten years from the date of transaction between entity and client. Banks have been obliged to verify Identity , maintenance of records, provide access to information, enhanced due diligence, reporting information in the form of reports such as Cash transaction reports, CCR, NTR, CBWT, STR etc.

Obligation to Practising Chartered Accountants, Company Secretaries and Cost & Works Accountants : The Central Government, through a recent Gazette notification dated 03rd may 2023, brings Transactions by CA, CS and CWA for Clients under the Radar of PMLA Act. Earlier, the 'relevant person' in the act did not include any of the professionals. However, with the latest amendment, the Government has brought Practising Chartered Accountants, Company Secretaries

and Cost & Works Accountants under the ambit of the PMLA Act.

It has been notified that the financial transactions carried out Chartered Accountants, Company Secretaries and Cost and Works Accountants and on behalf of his/her client, in the course of his or her profession, in relation to certain activities will be covered under Prevention of Money Laundering Act, 2002. Following activities are brought under the ambit of PMLA if done by CA/CS/CWA on behalf of his/her client-

(i) buying and selling of any immovable property;

(ii) managing of client money, securities or other assets;

(iii) management of bank, savings or securities accounts;

(iv) organisation of contributions for the creation, operation or management of companies;

(v) creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities.

6. Conclusion :

Throughout the world, money earned through illegal means is a major cause for worry for the Government. The illegal money which is earned, is masked and reintroduced into the regular economy through varied ways, thereby bringing a shell of respectability for ill-gotten wealth and depriving the Government revenue arising out of such transactions. Money Laundering is thus, not a local crime but a serious offence which should not be taken lightly. The prevention of money laundering has become a dynamic process because the criminals are always looking for various ways for achieving the illegal motives. Furthermore, various countries are entering into multiple conventions and agreements for strengthening measures for combating money laundering, such money launderers are still exploiting those jurisdictions which do not have sufficient laws and that are weak. For having an efficient economic growth there needs be decrease in money laundering activities in financial sector because it will decrease the efficiency in economy and by diverting and discouraging money laundering and corruption which will slow down economic growth and have the capacity for affecting the external sector i.e. capital flows and international trade.

*****

HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2023

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.23604, 23605 and 23607 of 2022

M/s. Lenovo (India) Pvt. Ltd.,
Rep. by Its Authorized Signatory
Mr.Seiyadou Ahamadou. ...Petitioner in all W.Ps.

Vs.

1. The Joint Commissioner of GST (Appeals-1)
   O/o. the Commissioner of GST & Central Excise (Appeals-I) 26/1,
   Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034.
2. The Assistant Commissioner of GST and Central Excise,
   Division I, Puducherry Commissionerate,
   No.14, Municipal Street, Azeez Nagar, Reddiyarapalayam,
   Puducherry- 605 010.
3. The Central Board of Indirect Taxes and Customs,
   rep. by its Chairman, having Office at North Block, New Delhi- 110 001.
4. Union of India,
   Ministry of Industry and Commerce, rep. by its Secretary,
   Department of Commerce (SEZ Division) having Office at
   Udyog Bhawan, New Delhi - 110 107 ...Respondents 1 to 4 in all W.Ps.

Prayer in W.P.No.23604 of 2022

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for entire records relating to impugned order-in-Appeal No.222/2022 (GSTA-1) (JC) dated 26.07.2022 passed by the first respondent and to quash the same and to direct the second respondent to sanction the refund amount of Rs.84,80,988/- along with interest immediately.

Prayer in W.P.No.23605 of 2022

Writ Petition filed under Article 226 of the Constitution of India praying for the

issuance of a Writ of Certiorarified Mandamus, to call for records relating to impugned order-in-Appeal No.203/2022 (GSTA-1) (JC) dated 29.06.2022 passed by the first respondent and to quash the same and to direct the second respondent to sanction the refund amount of Rs.1,63,25,141/- along with interest immediately.

Prayer in W.P.No.23607 of 2022

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for entire records relating to impugned order-in-Appeal No.202/2022 (GSTA-1) (JC) dated 28.06.2022 passed by the first respondent and to quash the same and to direct the second respondent to sanction the refund amount of Rs.2,92,80,806/- along with interest immediately.

For Petitioners in all W.Ps.	:	Mr.Raghavan Ramabadran For M/s.Lakshmi Kumaran and Sridharan Attorneys
For Respondents 1 to 3 in all W.Ps.	:	Mrs.Hemalatha Senior Standing Counsel

Common Order

Heard Mr.Raghavan Ramabadran, learned counsel appearing for the petitioner and Mrs.Hemalatha, learned Senior Standing Counsel for the respondents 1 to 3 and perused the materials placed on record. Since the fourth respondent, Ministry of Industry and Commerce, is only a formal party, notice to fourth respondent is dispensed with.

2. The challenge in these Writ Petitions is to the Order-in-Appeal passed by the first respondent, Joint Commissioner of GST (Appeals-1) dated i) 26.07.2022; ii) 29.06.2022 and iii) 28.06.2022 and to quash the same and consequently, to direct the second respondent, Assistant Commissioner of GST and Central Excise to sanction the refund amount along with interest immediately.

3. Since the issue involved in all these three Writ Petitions is identical, all these Writ Petitions were heard together and disposed of vide this Common Order.

4. The facts of the case in short are as follows:-

i) The petitioner is engaged in manufacture/import of Computers (Desktops/ Laptops etc.) and supplying the said goods and related services to units in Special Economic Zones (in short, SEZ Unit). As per Section 16 of the Integrated Goods

and Services Tax Act, 2017 (IGST Act, in short) exports and supply of goods or services or both to SEZ units/developers are considered as zero-rated supplies (i.e. no tax is payable on such supplies). The petitioner filed applications under Section 16 of IGST Act read with Section 54 of Central Goods and Services Tax Act, 2017 (CGST Act) read with Rule 89 of CGST Rules, 2017, claiming refund of IGST paid by them for the months of December, 2019, January 2020 and February 2020. However, the petitioner's applications have been rejected in part by the second respondent by means of the Order-in-Original and when the petitioner went on appeal before the first respondent/Appellate Authority, the Appellate Authority also confirmed the order passed by the second respondent by way of Order-in Appeal. Challenging the Order-in-Appeal dated 26.07.2022, 29.06.2022 and 28.06.2022, the present Writ Petitions are filed.

5. Mr.Raghavan Ramabadran, learned counsel for the petitioner submitted that the petitioner is a Domestic Tariff Unit (DTA Unit) and for supply of goods/services to SEZ units made during the months of December, 2019 January 2020 and February 2020, the petitioner filed applications for refund through GSTN Portal claiming refund of IGST paid along with required declarations and undertakings, which is inclusive of Statement-4 along with copies of tax invoices with endorsement made by the Specified/Authorized Officer in respective SEZ. However, the second respondent rejected the said applications and the reason for such rejection in respect of three applications are detailed hereinbelow:-

A. In respect of the application for refund made for the month of December, 2019, dated 14.12.2021, to the tune of Rs.3,47,36,359, the second respondent vide order dated 23.02.2022, rejected the claim partially to the tune of Rs.2,92,80,806/- on the following grounds:-

i) Wrong mention of date of endorsement in Statement-4 so as to cover inordinate delay in getting endorsement from Authorized Officer/Specified Officer (AO/SO). The delay cannot be attributed to the pandemic since the lock down commenced only in March, 2020.

ii) Revised Statement-4 filed by the application is not liable to be considered since the same is time barred.

B. In respect of the application for refund made for the month of January, 2020 dated 27.01.2022 to the tune of Rs.2,49,30,254/- the second respondent vide order dated 25.03.2022 rejected the claim partially to the tune of Rs.84,80,988 on

the following grounds:-

i) DTA procurement certificate copies in respect of 11 invoices were submitted only during the personal hearing, which was beyond the period of two years from the relevant date for filing refund claim, and hence, the claim for refund cannot be considered.

ii) The claimant has made mistakes in the Statement-4 in order to veil the fact of inordinate delay in obtaining endorsements from SEZ Officer. The POD documents submitted in respect of II invoices after the personal hearing is beyond the period of two years.Hence, the refund claim cannot be allowed.

iii) Proof of receipt of consideration in respect of supply of services was not submitted along with the application and was submitted only with the reply, which was beyond the period of two years. As per Rule 30 (4) of the SEZ Rules, 2006, the endorsement should have been made withing 45 days and refund cannot be allowed, if the date of endorsement is beyond 45 days.

C). In respect of the application for refund made for the month of February, 2020 dated 26.02.2022 to the tune of Rs.1,89,22,862/- the second respondent vide order dated 26.04.2022 rejected the claim partially to the tune of Rs.1,63,25,141/- on the following grounds:-

i) The claimant has made mistakes in the Statement-4 in order to veil the fact of inordinate delay in obtaining endorsements from SEZ Officer. Hence, the refund claim cannot be allowed.

ii) Submission that endorsement to the effect that the goods are received in full cannot be accepted, inasmuch as the Rules require endorsement that the goods have been admitted in full for authorized operations. In the absence of such endorsement, refund cannot be allowed.

iii) In respect of two invoices amounting to Rs.29,13,768/- as mentioned in Annexure-IV, the AO/SO has certified for receipt of services, whereas, the consignment mentioned in the said invoices pertains to supply of goods, and that, since there is inappropriate endorsement in respect of two invoices, refund cannot be allowed."

6. The learned counsel appearing for the petitioner would submit that in all

these three applications, the reasons assigned by the second respondent for rejection of refund claim is on the ground of i) Inordinate delay in obtaining the endorsements, ii) POD not at the time of filing of application but only at the time of personal hearing, and hence, the claim is barred by limitation and iii) Mismatch in the Statement-4, which cannot be relied on and claim is rejected.

7. Rejection of application on the ground of inordinate delay in obtaining Endorsement/Inappropriate Endorsement/Endorsement seal is incomplete/Endorsement does not state that goods supplied were for authorized operations:-

7.1 The learned counsel appearing for the petitioner would pyramid his arguments by submitting that nowhere does the provisions of GST Act require the petitioner to obtain endorsement within period of 45 days from the Authorized Officer from the date of invoice. The learned counsel submitted that though the respondent-Department referred to Rule 30 (4) of SEZ Rules, 2006, which mandates that endorsement has to be obtained within 45 days from the date of invoice, as far as the petitioner's case is concerned, the said Rule 30 (4) of SEZ Rules, 2006 will not come into picture since the petitioner has adopted the mode of payment of tax under Section 16 (3) (b) of IGST Act, which enables the petitioner to seek for refund of IGST paid with respect to supply made to SEZ units and the petitioner has not opted to supply the goods to SEZ units without payment of tax under Section 16 (3) (a) of IGST Act. Therefore, the learned counsel contended that since the goods supplied by the petitioner were on payment of applicable IGST, the petitioner made applications for refund under Section 16 of the IGST Act read with Section 54 of the CGST Act read with Rule 89 of CGST Rules, 2017 and hence, it is not open to the respondent-Department to contend that as per Rule 30 (4) of SEZ Rules 2006, the endorsements ought to have been obtained within 45 days from the date of invoice, and hence, the impugned orders rejecting the petitioner's claim by applying SEZ rules is not sustainable.

7.2 The learned counsel further submitted that it is their SEZ customers, who are required to obtain endorsement from the Authorized Officer (AO) and the petitioner cannot insist the AO to issue the endorsement in time. Further, as per SEZ Act or Rules, the AO is not required to make endorsement in any particular manner, since the invoices submitted by the petitioner were endorsed by AO, there is no doubt that the goods were supplied to SEZ units under Section 16 of IGST

Act, and the petitioner is entitled for zero-rated tax benefit and delay in obtaining the endorsements, or mistake, if any, in such endorsements, are all technical irregularity and so long as the signature is not doubted, the petitioner cannot be penalized for the actions of AO, which is beyond the control of the petitioner and by such means, deprive the petitioner's right to claim benefit under 16 (3) (b) of IGST. Further, it is submitted that during the disputed period, there was difficulty in obtaining endorsement due to Covid-19. Therefore, the learned counsel submitted that the petitioner must not be denied their substantive right of refund on account of circumstances beyond their control.

7.3 The learned counsel for the petitioner would further submit that, in terms of Section 16 of IGST Act as it stood then, the provisions contained thereunder does not contemplate that use of goods is for authorized operation and submission of such endorsement as proof and the amendment to Section 16 stipulating the rules for use of goods for authorized operations was made prospectively w.e.f. 1.10.2023 onwards only. Therefore, the learned counsel contended that rejection of the application on the reason that "the endorsement does not specifically states that the goods have been admitted in full is for authorized operations and the endorsement only states that the goods were received in full and that is not sufficient, and hence, the claim is rejected" is not sustainable.

7.4 Therefore, the learned counsel contended that rejection of application on the aforesaid grounds is not tenable.

8. *Rejection of applications on the ground of alleged delay in submitting supporting documents:-*

8.1 The learned counsel for the petitioner would submit that Section 54 of CGST Act prescribes two years time limit for filing the refund application and though no supportive documents are attached, as per Rule 90(2) of CGST Rules, proper officer shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and if the application submitted is found to be complete, an acknowledgment shall be made available to the applicant through the common portal or in a situation, where, the Officer is in want of any particular document, as per Rule 90(3) of CGST Rules, the Officer is mandated to issue a deficiency memo calling for the applicant to comply with the deficiencies pointed out in the memo and file a fresh application and such application will not be treated as application filed beyond the period of limitation, rather, such delay will only be

excluded while calculating 60 days for the Officer to pass orders in such application under Section 54 (7) of CGST Rules.

8.2 Thus, by referring to the aforesaid provision, the learned counsel submitted that had there been any deficiencies noted in the applications for refund made by the petitioner, thesecond respondent ought to have pointed out the same within a period of 15 days from the date of receipt of such application by issuing deficiency memo, instead, what the second respondent done is that, he has issued an acknowledgment indicating that the application has no deficiencies, and thereafter, issued a show cause notice in Form RFD-08 proposing to reject the claim for refund to an extent of Rs.84,80,988/-in respect of the claim made for the month of January, 2020, which is untenable.

8.3 Therefore, the learned counsel contended that the refund claim cannot be rejected so long as such claim is filed within a period of limitation, viz. 2 years as stipulated under Section 54(1) of the CGST Act., and the delay in filing the supporting document at the time of filing of reply/personal hearing would only extend the time limit to pass an order under Section 54 (7) of the CGST Act and non-submission of documents at the time of filing application for refund cannot lead to an inference that application is filed with a delay.

8.4 The learned counsel for the petitioner further submits that in respect of a claim made for the month of December, 2019, the petitioner has furnished supportive documents only at the time of filing of reply/personal hearing on 28.01.2022 and the same had been accepted by the respondent-Department and the Department also processed the application, thereafter, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by stating that the documents were filed belatedly, that too, only during personal hearing and therefore, claim is rejected.

8.5 The learned counsel further relied on a notification issued by Central Tax, dated 05.07.2022, vide No.13/2022, wherein, it is stated that the period from 01.03.2020 to 28.02.2022 shall be excluded for computation of period of limitation for the purpose of filing refund application under Section 54 of the CGST Act. The learned counsel also in support of his contention relied on a decision passed by this Court, in the case of **M/s.Focus Trading Enterprises Vs. Joint Commissioner of GST Appeals I, in W.P.No.6638 of 2022, dated 13.10.2023,** wherein, impugned order of rejection of revised returns was quashed as being not barred by

limitation in the light of the said notification dated 05.07.2022. Therefore, the learned counsel submitted that non-filing of supporting documents at the time of filing application would not be fatal to the petitioner's claim as the same were filed well within the period of limitation.

9. Mismatch of details

9.1 The learned counsel for the petitioner would submit that in respect of the claim for refund made for the month of December 2019, though the respondent-Department pointed out that the date of endorsement in the invoices is different from the date of endorsement mentioned in Statement-4, but, subsequently, the said defect was rectified by the petitioner at the time of filing of reply on 28.01.2022 and the petitioner also furnished revised Statement-4. Therefore, the learned counsel submitted that the defect pointed out by the respondent-Department with regard to mis-match is procedural and curable and the same has been rectified, hence, claim cannot be denied on this technical ground as barred by limitation.

10. Thus, while summing up his arguments, the learned counsel for the petitioner would submit that when there is no doubt with regard to the supply of goods made by the petitioner to SEZ Uuits at zero-rated tax and when the applications are filed by the petitioner along with Statement-4, in terms of as per Section 16 (3) (b) of the IGST Act read under Section 54 (1) of the CGST Act, 2017 read with Rule 89 of CGST Rules for the months of December, 2019, January and February 2020, the applications are well within the period of limitation and the claim for refund cannot be negatived in whole or part on any of the aforesaid grounds.

11. Per contra, Mrs.Hemalatha, learned Senior Standing Counsel for the respondent-Income Tax Department would submit the claim made by the petitioner in respect of three months, viz,.December, 2019 and January and February 2020 were partially disallowed on the ground that there was inordinate delay of more than 45 days from the date of supply of goods in obtaining the endorsement, for which, no sufficient reason was shown by the petitioner in their reply to the show cause notice; that as per Rule 30 (4) of SEZ Rules, endorsement has to be obtained within 45 days from the date of invoice; that in respect of the claim made for February, 2020, there was no specific endorsement made by AO/SO stating the goods admitted were for authorized operations and the endorsement only states that the goods were admitted in full and that in respect of two invoices, AO/SO has certified "for receipt of services", whereas, the consignment mentioned in the said

invoices pertains to "supply of goods'', and that, since there is inappropriate endorsement in respect of two invoices, refund cannot be allowed; that in respect of the claim for the month of December, 2019 there was a difference between the dates of endorsement made by AO in the invoices to the date that was mentioned in the Statement -4 and though the petitioner filed revised Statement-4, the same is barred by limitation; that in respect of the claim made for the month January, 2020 petitioner has not submitted DTA procurement certificate at the time of filing refund applications and submitted the same only at the time of filing reply/personal hearing,which was beyond the period of two years from the relevant date for filing refund claim, and hence, the claim for refund cannot be considered.

11.1 The learned Senior Standing Counsel further submitted that though the learned counsel for the petitioner has taken a stand that the petitioner has supplied the goods to SEZ units and made application for refund under Section 16 of the IGST Act read with Section 54 of the CGST Act read with Rule 89 of CGST Rules and therefore, Rule 30 (4) of SEZ Rules 2006, cannot be applied, the learned Standing Counsel submitted that Rule 89 (2) (e) and Rule 46 of CGST Rules mandates that SEZ Rules have to be followed. The learned Standing Counsel further submits that Rule 30 (4) of SEZ Rules, 2006 and Rule 80 of CGST Rules have to be read conjointly, as the conjoint reading of above legal provisions makes it clear that supply made to SEZ developer or Unit shall be zero-rated tax and the supplier shall be eligible for refund of unutilized ITC or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ Developer or SEZ unit for authorized operations and an endorsement to this effect have to be issued by the SO of SEZ within a period of 45 days and in the absence of such an endorsement, the application for refund cannot be allowed.

11.2 The learned Senior Standing Counsel further submitted that the petitioner ought to have filed all the supportive documents at the time of filing the applications for refund, and the petitioner, in order to veil the inordinate delay in obtaining the endorsements not filed the documents at the time of filing applications and filed the same only at time of filing reply/personal hearing, and hence, the same were rejected on the ground of limitation. Had the petitioner filed those supporting documents at the time, when the refund applications were filed, obviously, the respondent-Department would be relied on those documents and based on the same, would have allowed the claim. Therefore, the learned Senior Standing Counsel submitted

that both the first and second respondent after having found all the aforesaid defects have rightly rejected the petitioner's claim though not wholly but partially and the same requires no interference.

11.3 The learned Senior Standing Counsel further submitted that though the petitioner has taken a stand non-issuance of deficiency memo under Rule 90(3) of CGST Rules vitiates the proceedings to reject the refund, in respect of the claim made for the month of January, 2020, the question of issuing deficiency memo would arise only when the application submitted by the petitioner is complete in terms of all documents and as per Rule 92 (3) when the refund is inadmissible, then, show cause notice needs to be issued and accordingly, show cause notice has been issued calling forth petitioner's reply and therefore, submitted that for all the cases, where, refund is inadmissible, it is not necessary to be proceeded with an deficiency memo and mere acknowledgment given by the respondent-Department stating that the applications are complete that per se would not lead to an inference refund applications are correct in all aspects and refund has to be sanctioned.

11.4 The learned Senior Standing Counsel further submitted that with regard to the rejection of the claim for refund made for the month of December 2019, since there had been mismatch of details contained in the Statement-4 as the date of endorsement made in the invoices is different from the date of endorsement mentioned in Statement-4, and though the petitioner filed revised Statement-4, since the same had been filed with a delay, the claim has been rejected on the ground of limitation. However, the learned Senior Standing Counsel fairly submitted that since the said defect pointed out by the respondent-Department with regard to mis-match is procedural and curable and the same has been rectified by the petitioner at the time of filing of reply on 28.01.2022 by filing revised Statement-4, the same is accepted.

12. I have given due considerations to the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents 1, 2 and 3.

13. In the present case, the applications made by the petitioner for refund of IGST paid for the supply of goods made to SEZ Units in respect of December, 2019, January, 2020 and February, 2020 came to be rejected partially on the following grounds :-

i) Inordinate delay in obtaining Endorsement; Inappropriate Endorsement; Endorsement does not state that goods supplied were for authorized operations;

ii) POD was made not at the time of filing applications but at the time of filing reply/personal hearing, and the same is barred by limitation. and

iii) Mismatch of details, as the endorsement date mentioned in the invoices differs from the endorsement date mentioned in Statement-4.

Inordinate delay in obtaining Endorsement; Inappropriate Endorsement; Endorsement does not state that the goods supplied were for authorized operations:-

14. So far as the rejection of the petitioner's claim on the above said ground is concerned, it is the contention of the petitioner that though the respondent-Department referred to Rule 30 (4) of SEZ Rules, 2006, which mandates that endorsement has to be obtained within 45 days from the date of invoice, as far as the petitioner's case is concerned, the said Rule 30 (4) of SEZ Rules, 2006 will not come into picture since the petitioner had supplied the goods to SEZ unit not without payment of tax under Section 16 (3) (a) but on payment of tax under Section 16 (3) (b) of IGST Act, which enables the petitioner to seek for refund of IGST paid by them, and the provisions of GST Act does not require the petitioner to obtain endorsement within period of 45 days from AO from the date of invoice.

14.1 To resolve the issue as to whether the petitioner has to obtain endorsement within 45 days as per SEZ Rules 2006 or whether as per the provisions of GST, the petitioner is not required to obtain endorsement within a stipulated period, firstly, it has to be find out as to under which provisions the petitioner's case would fall. In this context, it would be beneficial to refer to Section 16 (3) of IGST Act and Rule 30 (4) of SEZ Rules 2006, which are extracted hereinbelow:-

" **Section 16 (3) of IGST Act, 2017:-**

A registered person making zero-rated supply shall be eligible to claim refund either of the following options, viz.,

(a) he may supply goods or service or both under bond or letter of undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized intput tax credit.

(b) he may supply goods or service or both subject to such conditions, safeguards and procedure as may be prescribed on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

Rule 30 (4) of SEZ Rules, 2006 :-

''A copy of the document referred to in sub-rule (1) or copy of Bill of Export, as the case may be, with an endorsement by the authorized officer that the goods have been admitted in full into the SEZ shall be treated as proof of export and copy with such endorsement shall also be forwarded by the Unit or Developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the DTA Supplier within 45 days failing which, the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the DTA Supplier''

14.2 A conjoint reading of Section 16 (3) of IGST Act, 2017 and Rule 30 (4) of SEZ Rules, 2006 would make it clear that the goods can be supplied to SEZ under two situations. One in terms of Section 16 (3)(a) and another in terms of Section 16 (3) (b). In terms of Section 16 (3) (a), goods can be supplied without payment of tax, upon execution of bond or letter of undertaking. In terms of Section 16 (3)(b), goods can be supplied on payment of tax. Rule 30 (4) of SEZ Rules deals with issue of endorsement by the AO to ensure that the goods have been admitted in full into the SEZ and to treat the same as proof of export. Once the endorsement is made, it would be considered that the goods have been exported. In any event, any duty has been paid in terms of Section 16 (3) (b) of the Act, the assessee would be entitled for refund. In the event, without payment of duty, if the goods had entered into SEZ, endorsement shall be made in terms of Rule 30 (4) within 45 days and the same has to be forwarded by the Unit or Developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the DTA Supplier within 45 days, failing which, the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the DTA Supplier.

14.3 As far as Rule 30 (4) of SEZ Rule is concerned, the significance of the endorsement made by AO are as follows:-

i) The endorsement would only ensure that goods have reached the SEZ. Upon production of endorsement, refund of tax can be made.

ii) In the event, if no endorsement is made within 45 days from the date of entry of goods into SEZ, the concerned Officer, viz., the Goods and

Services Tax or Central Excise Officer shall raise demand of tax or duty against the DTA Supplier to ensure that either the goods will reach the SEZ within 45 days or else to pay tax.

14.4 In the present case, the question of payment of tax does not arise since the petitioner has paid IGST but there was delay in obtaining the endorsement. Thus, once the assessee had paid the tax and the goods have entered SEZ and obtained endorsement to that effect and furnished the same for the purpose of refund, at any cost, refund cannot be denied for any reason whatsoever. The Officer, who is processing the refund should be concerned only about the aspect as to whether the goods have reached SEZ zone and whether tax for such entry has been remitted or not. In the present case, there is no doubt on the aspect of payment of tax by the petitioner and also entry of goods into SEZ and endorsement also obtained. The delay in obtaining the endorsement and producing the same at any cost would result only in a delay of entertaining the application for refund and in which case, the affected party would only be the petitioner and the interest of the Department not going to be affected in any way. Thus, the refund cannot be denied on any other reason whatsoever, since, it is the petitioner's legal entitlement to get back the refund of tax paid by him. If at all, there is any lapse, the same has to be sought to be rectified by the petitioner and the application can be processed by the Department to grant refund. If the goods entered into SEZ and endorsement is made after the expiry of 45 days, in such circumstances, if the concerned Officer raised a demand under Rule 30 (4) of SEZ Rule, and the assessee paid demand of tax, in those cases also, the assessee is entitled to for refund. Therefore, significance of the endorsement is only to ensure that the goods have entered into SEZ and also for the purpose of payment of tax or demand against the DTA Supplier.

14.5 In the case on hand, it is an admitted fact that the goods have entered into SEZ and duty has also been paid by the petitioner. Therefore, the failure to obtain endorsement within 45 days is not due to fault on the part of the petitioner and it is for the AO to make endorsement in time, for which, the petitioner cannot be found fault with. Hence, the denial of refund claim by citing that endorsement obtained was not within 45 days and therefore, claim is barred by limitation and said findings to such effect are liable to be set aside since the failure of obtaining endorsement in time is only due to the fault of AO and the petitioner cannot be denied the claim on the ground of inordinate delay in obtaining endorsement.

14.6 As regards the other issue relating to 'Inappropriate Endorsement', as rightly pointed out by the learned counsel for the petitioner, as per SEZ Act or Rules, the AO is not required to make endorsement in any particular manner, since the invoices submitted by the petitioner were endorsed by AO, there is no doubt that the goods were supplied to SEZ units under Section 16 of IGST Act, and the petitioner is entitled for zero-rated tax benefit and delay in obtaining the endorsements, or mistake, if any, in such endorsements are all technical irregularity and so long as the signature is not doubted, the petitioner cannot be penalized for the actions of AO, which is beyond the control of the petitioner and by such means, deprive the petitioner's right to claim benefit under 16 (3) (b) of IGST, instead, the respondent-Department should have assisted the assesseee in rectifying the defects, rather than rejecting the petitioner's applications by citing technical reasons.

14.7 With regard to the issue that 'Endorsement does not state that goods supplied were for authorized operations', it is seen that provisions of Section 16 of IGST Act does not contemplate that use of goods is for authorized operation and submission of such endorsement as proof and the amendment to Section 16 stipulating the rules for use of goods for authorized operations was made prospectively w.e.f. 01.10.2023 onwards only and since the petitioner made claim with regard to the supply made to SEZ unit prior to 01.10.2023, the respondent-Department cannot insist that that endorsement must state that goods supplied, were for authorized operations, and such other endorsement. Therefore, this Court holds that the rejection of the petitioner's claim on the reason that the endorsement does not specifically states that the goods that have been admitted in full was for authorized operations, and it only states that the goods were received in full and that the endorsement is incomplete/insufficient/inappropriate, is not tenable. Hence, the findings rendered by the respondent-Department with regard to the denial of claim by citing the delay in obtaining endorsement, endorsement is inappropriate, etc., are set aside.

Rejection of claim as barred by limitation since POD was made not at the time of filing applications but at the time of filing reply/personal hearing.

15. So far as the second issue relating to denial of claim on the ground that the application is barred by limitation is concerned, it is seen that Section 54 (1) of CGST Act prescribes time limit of two years only for filing the refund application and accordingly, the petitioner filed claim for the months of December, 2019, January

2020 and February 2020 on the following dates i) 14.12.2021 ii) 27.01.2022 iii) 26.02.2022, which were well within the period of limitation and the same is not disputed by the respondent-Department, however, the respondent-Department objection is only with regard to the non-furnishing of supportive documents at the time of filing application but producing the same at the time of personal hearing and therefore, only from the date on which all relevant documents are received along with application in full, period of limitation would start reckoned and hence, the claim is barred by limitation. This Court is unable to accept the contention of the learned Senior Standing Counsel for the respondent-Department.

15.1 To decide the issue as to whether the POD at the time of filing applications but at the time of filing reply/personal hearing, would be fatal to the petitioner's case, it is beneficial to refer to Rule 90(2) & (3) of CGST Rules, which is extracted hereinbelow:-

Rule 90 (2) of CGST Rules, 2017:-

''The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer, who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be incomplete in terms of sub-rule (2) (3) and (4) of Rule 89, an acknowledgment in Form GST RFD-02 shall made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

Rule 90 (3) of CGST Rules, 2017:-

Where any deficiencies are noticed, proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through the common portal electronically, requiring him to file fresh refund application after rectification of such deficiencies''

15.2 In terms of Rule 90 (2) of CGST Rules, the proper officer shall, within period of fifteen days of filing of the said application, scrutinize the application for its completeness and in case the application is found to be complete, an acknowledgment shall be made available to the applicant through the common portal or in case, the Officer is in want of any particular documents, as per Rule 90(3) of CGST Rules,

the Officer is mandated to issue a deficiency memo calling for the applicant (petitioner) to comply with the deficiencies pointed out in the memo and file a fresh application.

15.3 In the present case, admittedly, the second respondent in respect of the claim made for the month of January 2020 has issued an acknowledgment indicating that the application has no deficiencies but thereafter, issued a show cause notice in Form RFD-08 proposing to reject the claim for refund to an extent of Rs.84,80,988, which is incorrect. If it is the case of the respondent-Department that the petitioner has filed the applications with deficiencies, the respondent-Department ought to have issued any memo pointing out such deficiency under Rule 90(3), instead the second respondent has accepted the petitioner's applications and issued acknowledgment, and therefore, it is not open to the respondent to contend that the supporting documents were filed with a delay.

15.4 Further, it is noticed that, in respect of the claim made for the month of December, 2019, the petitioner has furnished supportive documents only at the time of filing of reply/personal hearing on 28.01.2022 and the same had been accepted by the respondent-Department and the Department also processed the application, while that being so, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by citing that the documents were filed belatedly, and therefore, claim is not acceptable.

15.5 At this juncture, this Court would like to refer to a Circular issued by the Central Board of Direct Taxation, bearing CBDT No.14 of 1955 dated 11.04.1955, wherein, certain administrative instructions were given for guidance of Income Tax Officers on matters pertaining to assessment , which remains in force as on date. For better appreciation, the relevant guidelines of CBDT are extracted hereinbelow:-

> ''1. The Board have issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assessees in matters affecting their interest and convenience. It appears that these instructions are not being uniformly followed.
>
> 2. Complaints are still being received that while ITO's are prompt in making assessments likely to result into demands and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs

due to assessees under the Act. Dilatoriness or indifference in dealing with refund claims (either under s. 48 or due to appellate, revisional, etc., orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.

3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, officers should :—

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

4. .....

5. While officers should, when requested, freely advise assessees the way in which entries should be made in various forms, they should not themselves make any in them on their behalf. Where such advice is given, it should be clearly explained to them that they are responsible for the entries made in any form and that they cannot be allowed to plead that they were made under official instructions. This equally applies to the Public Relation Officers.

6. The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasize that we should not

take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him."

15.6 Thus, on a reading of the above Circular would make it clear that when the taxpayer made a claim for refund and if there is any discrepancies or defects in the application made for such claim, the Officer concerned should come forward to assist the assessee bearing in mind the above principles laid down by the CBDT. This Court also expects the Officer concerned to assist the assessee, whenever, the assessee intends to make a claim for refund or any other issue in line with the Circular issued by CBDT. Even in terms of Rule 90 (3), the Officer is supposed to have intimated the deficiencies contained in the application and allowed the assessee to rectify those deficiencies and thereafter, he shall proceeded to consider as to whether the claim for refund is just and proper. But, in the present case, it is seen that the respondent-Department has acted in a way, which is totally contrary to the Circulars issued by the CBDT. Had the respondent-Department intimated about the deficiencies at the point of time, when the applications were entertained by issuing any deficiency memo, obviously, the petitioner would have rectified those defects pointed out by the respondent-Department and would have made fresh application. Even Rule 90(3) provides an opportunity to the assessee to file fresh refund application after rectification of certain deficiencies pointed out by the Officer concerned. When such being the intention of the Rule, Officer concerned ought to have acted in a manner facilitating the assessee to get his claim for refund. Instead, both the respondents have passed the impugned orders, which are contrary to the provisions of Rule 90 (3) of CGST Rules, 2017 and Circular issued CBDT, dated 11.04.1955. Even Section 54 (1) of CGST states that ***"any person claiming refund of any tax and interest, if any, paid on such tax, or any other amount paid by him, may make application before expiry of two years from the relevant date in such form and manner as may be prescribed".***

15.7 Thus, a reading of the Section 54 (1) of CGST Act would make it clear that the assessee can make the application within two years. The terms used in said Section **''may** make application before two years from the relevant date in such form and manner as may be prescribed'', which means that the assessee may make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be

made even beyond two years. The time limit fixed under Section 54 (1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.

15.8 In the present case, the application was filed within two years and therefore, the question of making claim after two years does not arise even assuming AO made endorsement after two years, the same would in no way debar the claim as barred by limitation. Further, even Rule 90 (3) of CGST Act permits to make fresh application, which means that in appropriate cases, the Officer concerned can permit the refund application even beyond the period of limitation. Therefore, I do not find any substance in the submission made by the learned Senior Standing Counsel for the respondent and both respondents have miserably failed to consider the said aspect while passing the impugned orders and hence, the same are liable to be set aside. Hence, this Court holds that when the petitioner has filed application, which is within a period of limitation, viz. 2 years as stipulated under Section 54(1) of the CGST Act, the delay in filing the supporting document at the time of filing of reply/personal herein would only extend the time limit to pass an order under Section 54 (7) of the CGST Act and non-submission of documents at the time of filing application for refund cannot be deemed to have filed with a delay, since there had been a delay in obtaining the endorsement owing to Covid-19, the petitioner could not produce the same at the time of filing application, however, produced the same at the time of personal hearing. Further, when the respondent- Department has accepted the supportive documents produced by the petitioner at the time of filing of personal hearing, in respect of the claim made for the month of December, 2019 and processed the application, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by stating that the documents were filed belatedly, and hence, refund claim cannot be allowed. That apart, in terms of notification issued by Central Tax dated 05.07.2022, vide No.13/2022, which excludes the period from 01.03.2020 to 28.02.2022 for computation of period of limitation for the purpose of filing refund application under Section 54 of the CGST Act. Thus, the petitioner's claim cannot be rejected on the ground of limitation. Hence, the findings of the respondents on the aforesaid aspect are liable to be set aside.

Mismatch of details, as the endorsement date mentioned in the invoices differs from the endorsement date mentioned in Statement-4.

16. So far as the rejection of the claim on the ground of mismatch of details is concerned, though the respondent-Department pointed out that the date of endorsement in the invoices is different from the date of endorsement mentioned in Statement-4, in respect of the claim for refund made for the month of December 2019, since said defect was rectified by the petitioner at the time of filing of reply on 28.01.2022 and the petitioner also furnished revised Statement-4, and the same is also accepted by the learned Senior Standing Counsel for the respondent-Department, findings rendered by the respondent-Department on the ground of mismatch are also liable to be eschewed.

17. Thus, in the light of the aforesaid findings, this Court is of the view that both the first and second respondent have committed a serious flaw in the decision making process and therefore, the impugned orders have to be held to be unsustainable. Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and consequently, the second respondent is directed to process the petitioner's applications for refund and issue the refund within a period of 30 days from the date of receipt of a copy of this order. No costs.

*****

MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.04.2023

Pronounced On : 29.09.2023

Coram:

The Honourable Mr.Justice B.Pugalendhi

WP(MD)No.8016 of 2023 and

WMP(MD)No.7445 of 2023

Abdul Samad Mohamed Inayathullah ..... Petitioner

Vs

The Superintendent of CGST and C.Exicse,

Gandhi Market, City-1, Range, No.1, Willams Road,

Cantonment, Tiruchirappall - 620 001. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records on the file of the respondent in Reference No.ZA3306200650251 dated 25.06.2020 and to quash the same as illegal, arbitrary and direct the respondents to revoke the cancellation of petitioners GSTN registration No.33ANLPM1250C1Z1within such time as may be directed by this Court.

For petitioner : Mr.N.Sudailamuthu

For Respondent No.1 : Ms.S.Ragaventhirini
Jr. Central Govt.Standing Counsel

ORDER

This writ petition has been filed as against the cancellation of the petitioner's GSTN Registration No.33ANLPM1250C1ZI by the respondent vide order dated 25.06.2020.

2. The learned Counsel for the petitioner submits that the petitioner is a vegetable exporter and enrolled under central Goods and Service Tax Act, 2017. The petitioner has been provided with GSTN Registration No. 33ANLPM1250C1ZI. He further submits that the petitioner has engaged a part time accountant to file returns periodically. While so, the petitioner was issued with the show cause notice dated 09.01.2020 to appear for enquiry, however without any specific date for his

appearance. While so, without hearing him the impugned order has been passed by the respondent cancelling his registration under the GST Act. The petitioner has also filed an application for revocation of the order, but the same also was rejected vide order dated 20.11.2020.

3. The learned Counsel for the petitioner submits that the petitioner's accountant was filing the returns until June 2020 and the petitioner's accountant was contracted with Covid-19 and therefore he could not file the returns in time. He further submits that the though the appeal remedy is available under Section 107 of GST Act, in view of the statutory limitation period prescribed under the Act the GST portal does not accept his appeal. He further submits that since the GSTN number is mandatory for running his business and in view of the cancellation of his registration, his livelihood is affected and therefore, he prays this Court to quash the impugned order.

4. The learned Counsel for respondent submits that the petitioner has been provided with sufficient opportunities before cancellation of his registration under the GSTN Act. A show cause notice was issued to the petitioner as early as on 09.01.2020 and an ample time of seven days was given to the petitioner for offering his explanation. Since the petitioner failed to respond to the show cause notice, the impugned order came to be passed under the ambit of GST Act. He further submits that the petitioner failed to file the appeal within the prescribed limitation period under Section 107(4) of the GST Act. Therefore there is no reason to interfere with the impugned order.

5. This Court considered the rival submissions and perused the materials placed on record.

6. The petitioner is a vegetable exporter and enrolled under central Goods and Service Tax Act, 2017. The petitioner has been provided with GSTN Registration No.33ANLPM1250C1ZI. The impugned order has been passed cancelling his registration under the GST Act due to non filing of the returns for a period of six months. The petitioner claims that he has filed an application for revocation of the cancellation order and it was also rejected by order dated 20.11.2020. The petitioner claims that though he had handed over the documents to his accountant, due to Covid-19 pandemic it could not be filed in time. The portal is not opening and therefore he could not file the appeal. The respondent claims that the Statue prescribes specific limitation period of 90 days to file an appeal and hence the

portal will automatically get closed after the limitation period is over.

7. A similar issue has been dealt with by a Hon'ble Division Bench of Bombay High Court in WP.No.11833 of 2022, wherein it has been held as follows:

> *"8. We have considered the submissions advanced by both the sides. It appears that the petitioner was earning his livelihood through his fabrication business and requires registration under GST Act to run the business. The entire world suffered during the pandemic. The small scale industrialists and service providers like petitioner lost their business for more than two years. The financial losses suffered during this time cannot be ignored particularly when it comes to small scale businesses and service providers. To add apathy to this situation, the petitioner suffered medical emergency. He was required to undergo medical treatment for heart disease and the procedure like angioplasty. The stringent provisions of GST Act took its own course. The petitioner suffered cancellation of registration. Even he lost his appellate remedy because of lapse of limitation. The petitioner has been practically left remediless. He seeks to invoke jurisdiction of this Court under Art. 226 of the Constitution of India.*
>
> *9. In our view, the provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce to any citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of shortcomings in the scheme of GST enactment. The right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Art. 19(1)(g) and Article 21 of the Constitution of India. If the person like petitioner is not allowed to revive the registration, the state would suffer loss of revenue and the ultimate goal under GST regime will stand defeated. The petitioner deserves a chance to come back into GST fold and carry on his business in legitimate manner.*
>
> ***10. There is one more aspect as far as the issue regarding limitation in filing the appeal under Section 107 of MGST Act is concerned. Indeed the Deputy Commissiosner of State Tax has no power to condone the delay beyond 30 days. But then one cannot overlook the aspect of provisions stipulating limitations. The objective is to terminate***

the lis and not to divest a person of the right vested in him by efflux of time.

11. Since it is merely a matter of cancellation of registration, the question of limitation should not bother us since it cannot be said that any right has accrued to the State which would rather be adversely affected by cancellation.

12. In this regard, a reference can be made to the judgment of the Supreme Court in the case of Mafatlal Industries Ltd. Vs Union of India reported in (1997) 5 SCC 536. The supreme court observed that the jurisdiction of the High Court under Art. 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the provision of any Act to bar or curtail remedies. True that while exercising the constitutional power, the Court would certainly take note of legislative intent manifested in the provisions of the Act and would exercise jurisdiction consistent with the provisions of enactment. The constitutional Courts in exercise of such powers cannot ignore law nor can it override it.

*13. Applying the aforesaid gidelines to the facts of the present case, *we find that the petitioner, who is sufferer of unique circumstances resulting from pandemic and his health barriers, would be put to great hardship for want of GST registration. The petitioner who is small scale entrepreneur cannot carry on production activities in absence of GST registration. Resultantly, his right to livelihood would be affected. Since his statutory appeal suffered dismissal on technical ground, we cannot allow the situation to continue. We find that, in the facts and circumstances of this case it would be appropriate to exercise our jurisdiction under Art. 226 of the Constitution of India. 14 Even looking to the object of the provisions under GST Act, it is not in the interest of the government to curtail the right of the entrepreneur like petitioner. The petitioner must be allowed to continue business and to contribute to the state's revenue. The learned advocate for the petitioner has submitted before us that the petitioner is ready and willing to pay all the dues along with penalty and interest as applicable. In the light of the above submission, we are inclined to allow the writ petition as under:-*

(i) The writ petition is allowed.

(ii) The order dated 28-02-2022 suspending the GST registration, the order dated 14-03-2022 cancelling GST registration of the petitioner passed by the State Tax Officer and the order dated 21-10-2022 passed by the Dy. Commissioner of Tax, Aurangabad (Appeal) No.DC/APP/E-001/ABAD/GST/323/2022-2023 are quashed and set aside

(Hi) We hold and declare that the registration No. 27AHQPD2485F1Z7 in the name of the petitioner is valid, from 28-02-2022 onwards subject to the condition that the petitioner files up to date GST returns and deposits entire pending dues along with applicable interest, penalty, late fees in terms of Rule 23 (1) of MAST Rules, 2017. (iv) The Rule is made absolute in above terms."

8. The High Court of Uttarakhand in Special Appeal No.123 of 2022, dated 20.06.2022 in a similar situation has observed as follows

"8) Viewing from another angle, it is apparent that the law made by the Parliament as well as the Legislature with regard to the appeals is very strict, insofar as, that it does not provide an unlimited jurisdiction on the First Appellate Authority to extend the limitation beyond one month after the expiry of the prescribed limitation. In such case, the petitioner/ appellant is put to hardship and is left without remedy. In such cases, the party concerned may face starvation because of denial of livelihood for want of GST Registration. In this case, the petitioner/appellant is a semi-skilled labourer working as a painter doing painting on doors, windows of the houses. Now-a-days bills for any work executed for a private player or, even for the Government agency, are drawn on-line. In most cases, the payments are made direct to the bank on 6 production of the bill with the GST registration number In the absence of GST registration number, a professional cannot raise a bill. So, if the petitioner is denied a GST registration number, it affects his chances of getting employment or executing works. Such denial of registration of GST number, therefore, affects his right to livelihood. If he is denied his right to livelihood because of the fact that his GST Registration number has been cancelled, and that he has no remedy to appeal, then it shall be violative of Article 21 of the Constitution as right to livelihood

springs from the right to life as enshrined in Article 21 of the Constitution of India. In this case, if we allow the situation so prevailing to continue, then it will amount to violation of Article 21 of the Constitution, and right to life of a citizen of this country. "

9. This Court in Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST) and others reported in 2022 (2) TMI 933 wherein it was held that no useful purpose would be served keeping the petitioners out of the Goods and Service Tax regime as such the assessee would still continue to his businesses and supply goods and services and the relevant paragraphs are extracted as under:

"216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

217. There are adequate safeguards under the GST enactments which can also be pressed against these petitioners even if their registration are revived so that, there is no abuse by these petitioners and there is enough deterrence against default in either paying tax or in complying with the procedures of filing returns.

218. Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended privilege may be conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immoveable property will continue to batch supply such service irrespective of registration or not.

219. Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GSTfold and carry on their trade and business in a legitimate manner.

220. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government

pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.

221. While exercising jurisdiction, under Article 226 of the Constitution, the powers of the Court to do justice i.e., what is good for the society, can neither be restricted nor curtailed. This power under Article 226 can be exercised to effectuate the rule of law.

222. Therefore, power of this Court under Article 226 of the Constitution of India is being exercised cautiously in favour of the petitioners as this power is conceived to serve the ends of law and not to transgress them.

223. In MafatlalIndustries Ltd. Vs. Union of India, (1997) 5 SCC 536, in Paragraph No.77, the Hon 'ble Supreme Court observed that "So far as the jurisdiction of the High Court under Article 226 — or for that matter, the jurisdiction of this Court under Article 32 — is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it.

224. Notwithstanding the fact that the petitioners have shown utter disregard to the provisions of the Acts and have failed to take advantage of the amnesty scheme given to revive their registration, this Court is inclined to quash the impugned orders with grant consequential reliefs subject to terms.

225. The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or professoin also cannot be

curtailed. Only reasonable restriction can be imposed. To deny such rights would militate against their rights under Article 14, read with Article 19 (1)(g) and Article 21 of the Constitution of India.

226. As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the provisions of the Act and the limitation under it, they have acted in accordance with law. They cannot look beyond the limitations prescribed under provisions of the Act. Therefore, no fault can be attributed to their action.

227. This is a fit case for exercising the power under Article 226 of the Constitution of India in favour of the petitioners by quashing the impugned orders and to grant consequential relief to the petitioners. By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or service. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. Therefore, the impugned orders deserve to be quashed.

228. These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize the defaults. The authorities acting under the Act may impose penalty with the gravity of lapses committed by these petitioners by issuing notice. If required, the Central Government and the State Government may also suitably amend the Rules to levy penalty so that it acts as a deterrent on others from adopting casual approach.

229. In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:-

i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period offorty five (45) days from the date of receipt of a copy of

this order, if it has not been already paid. ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.

iii. If any Input Tax Credit has remained utilized, it shall not be

utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.

iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.

v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.

vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.

vii.The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.

viii.On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

ix. The respondents shall take suitable steps by instructing GST Network, New Delhi to make suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.

x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.

xi. No cost.

Xii. Consequently, connected Miscellaneous Petitions are closed."

10. The Central Goods and Service Act was enacted in the year 2017 with an object of levy and collection of tax on intra state supply of goods or services or both by the Central Government, it is not the interest of the government to curtail the right of the entrepreneurs like the petitioner. The petitioner must be allowed to continue his business and to contribute to the State's revenue, in the absence of GST Registration number a professional cannot raise a bill, if the petitioner is denied a GST registration number, it affects his chances of getting employment or executing works, which ultimately affects his right to livelihood, embodied under Article 21 of the Constitution.

11. The income tax assesses are expected to pay advance tax quarterly at the rates prescribed under Section 211 of the Income Tax Act ,1961. For non payment of this advance tax will attract interest. Even for non payment this advance tax, there is no serious action taken against the assesses. The Income Tax Department is only sending reminders to the tax payers, by way of repeated e-mails, SMS and and through post. However in these cases, the capital punishment of cancellation of registration is made by sending a system generated e-mail which is in English to the traders, who are not having acquainted with English. These notices are not even generated in the regional languages and actions are taken.

12. The Petitioner in this case is a vegetable exporter. Most of the small scale entrepreneurs like carpenters, electricians, fabricators etc... are almost uneducated and they are not accustomed with handling of e-mails and other advance technologies. Though they are providing e-mail IDs at the time of Registration, the applications are prepared by some agents by creating an e-mail IDs, however, on reality most of the Traders are not accustomed with handling of e-mails. They are also not aware about the consequences of not paying the Returns in Time. The department shall workout the possibilities of issuing these notices in the respective regional languages and also by SMS and registered post. So that, the uneducated traders can also respond to these notices to some extent, otherwise, these notices will be an empty formality and will not serve any purpose for which it has been issued.

13. The object of any Government is to promote the trade and not to curtail the same. The method which is adopted by the department as on today is like strangulating the neck of the small scale entrepreneurs. The cancellation of registration certainly amounts to a capital punishment so for as the traders are

concerned. If they are not filing an appeal within the statutory period, then his entire business comes to stance. He cannot do any business activities and without WP(MD)No.8016 of 2023 business, he cannot pay salaries to his employees, pay bills to the loans and ultimately, all his developments over a long period of time could be ruined in few months and it is also very difficult to regain the business in this competitive world. Therefore the department of GST has to think of the consequences and relax the rules and also find the modalities of conveying the show cause notice by way of SMS and also in the regional languages. This court expects the department of GST to take appropriate action by amending the relevant provisions considering the consequences on traders.

14. In fine, these writ petitions are disposed of in terms of the guidelines provided in the order in *Suguna Cutpiece's* case (supra). No costs. Consequently connected miscellaneous petition is closed.

15. The Registry is directed to mark the copy of this order to The Principal Chief Commissioner of GST & Cental Excise, Tamil Nadu & Puducherry.

*****

AIFTP INDIRECT TAX & CORPORATE LAWS JOURNAL

SUBSRIPTION FORM

☐(JAN. 2024 TO DEC. 2024) ☐(JAN. 2024 TO DEC. 2027)

SUBSCRIBER'S PARTICULARS

Name .....

Designation .....

Address .....

.....

.....

City ..... Pin.....

Tel./Mob..... E-mail.....

Signature.....

PAYMENT PARTICULARS

Enclose herewith Cheque/ Draft No..... dated .....

Drawn on .....Branch .....

For Rs. (Rupees.....)

SUBSCRIPTION RATES

Subscription for Jan 2024 to Dec. 2024	Rs. 1500/- (AIFTP Member)	☐
Subscription for Jan 2024 to Dec. 2024	Rs. 2000/- (NON AIFTP Member)	☐
Subscription for Jan 2024 to Dec. 2027	Rs. 4000/- (AIFTP Member)	☐
Subscription for Jan 2024 to Dec. 2027	Rs. 5000/- (NON AIFTP Member)	☐

For Payment Bank details given below :-

Account Name : All India Federation of Tax Practitioners
Bank Name : Equitas Small Finance Bank Ltd.
Branch : C-Scheme, Jaipur
Account No : 109829013626
IFSC : ESFB0016013

The remittances should be in favour of **"ALL INDIA FEDERATION OF TAX PRACTITIONERS".** Only **ALL INDIA FEDERATION OF TAX PRACTITIONERS** is Authorized Distributors & Booking Agent for this journal in all the States of India for collection of subscription. Remit payment through D.D. or Cheque at par, your envelope should bear the address :-

Pay through QR Code

Scan Here to Pay

ALL INDIA FEDERATION MUMBAI

All India Federation of Tax Practitioners
C/o Pankaj Ghiya Advocate, AIFTP Indirect Tax & Corporate Law Journal
10, Ganesh Colony, Bhairav Path, J.L.N. Marg, Jaipur-302004 M : 9829013626

SUBSCRIBE FOR 2024

AIFTP

ETHICS EDUCATION EXCELLENCE

INDIRECT TAX & CORPORATE LAWS JOURNAL

Price for 1 Year
For AIFTP Members
₹1500/-
(Jan. to Dec. 2024)

Price for 3 Year
For AIFTP Members
₹4000/-
Jan. 2024 to Dec.2026

Price for 1 Year
For Corporate & Non AIFTP Members
₹2000/-
(Jan. to Dec. 2024)

Price for 3 Year
For Corporate & Non AIFTP Members
₹5000/-
Jan. 2024 to Dec.2026

For Payment Bank details given below :-

Account Name	**: All India Federation of Tax Practitioners**
Bank Name	**: Equitas Small Finance Bank Ltd.**
Branch	**: C-Scheme, Jaipur**
Account No	**: 109829013626**
IFSC	**: ESFB0016013**

Pay through QR Code

Scan Here to Pay

ALL INDIA FEDERATION MUMBAI

After Payment Please Send Your Complete details :- Name, Address along with Screenshot of Payment on aiftpjournal@gmail.com

-: For more information please e-mail at :-

aiftpjournal@gmail.com

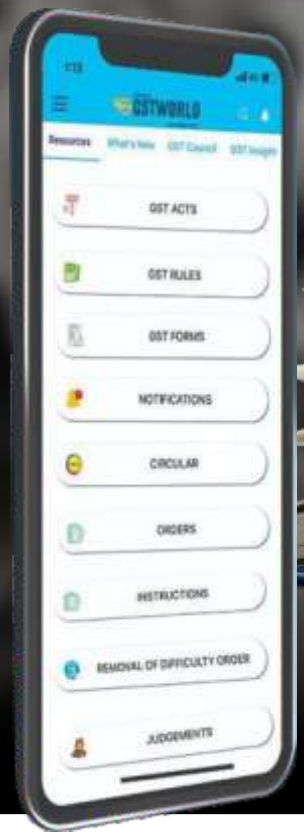
All You Need To Know Just About GST

GSTWORLD®
All About GST

GST Acts · GST Rules · GST Forms · Notifications
Circulars · Orders · Instructions · Judgements
Referencer · GST Tariff · Goods and Services....

on Your Fingertips
Anytime Anywhere

A Comprehensive Platform
Just about GST



Download Introductory Version
Klickon GST World

ANDROID APP ON Google play
Available on the App Store

Go Digital - Save Paper
Subscribe to our website:
www.klickongstworld.com

info@klickongstworld.com +91 9026 243 243

Printed by : Pankaj Ghiya, Published by : Pankaj Ghiya on behalf of All India Federation of Tax Practitioners (name of owner) & Printed at Pinkcity Offset, Sansar Chand Road, Jaipur (Name of the Printing Press & Address) and Published at All India Federation of Tax Practitioners, Jaipur • Editor : Deepak Khandelwal • **PUBLISHED ON 25TH EVERY MONTH.**

All India Federation of Tax Practitioners
C/o Panjak Ghiya Advocate, National President, AIFTP Indirect Tax & Corporate Law Journal
10, Ganesh Colony, Bhairav Path, J.L.N. Marg, Jaipur-302004 M : 9829013626 • Email : aiftpjournal@gmail.com