# GST UPDATE
# (September, 2021)

**Directorate of Training, Excise and Taxation Department, Punjab**

# ABSTRACT OF GST UPDATE

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# (I) GIST OF GST NOTIFICATIONS

## 1. Rule 10B Aadhaar authentication for registered person & Other changes

### Aadhar Authentication for registered persons

♦ Aadhaar authentication of registration made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.

♦ Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory.

♦ Rule 96(1)(b) of the CGST Rules 2017 on IGST refunds amended

- IGST refund shall be given only if the applicant has undergone Aadhaar authentication in the manner provided in rule 10B

♦ Bank Account for credit of refund- Rule 96C inserted in the CGST Rules 2017

♦ For the purposes of rule 91(3), 92(4) and 94(Payment of refund in GST RFD-05), "bank account" shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number.

♦ In case of a proprietorship concern, the Permanent Account Number of the proprietor or shall also be linked with his Aadhaar number.

### Timelines for filing Form GST ITC-04

- **Requirement of filing FORM GST ITC-04 under rule 45 (3) of the CGST Rules, 2017**
- Rule 45(3) of CGST Rules 2017 (Amended vide **Notn No. 35/2021-Central Tax dated 24th September 2021**)
  - Taxpayers whose annual aggregate turnover in preceding financial year is above Rs. 5 crores shall furnish **ITC** -04 once in six months-commencing on the 1st April and the 1st October
  - Taxpayers whose annual aggregate turnover in preceding financial year is up to Rs. 5 crores shall furnish ITC-04 once in a financial year.

- **Restriction on filing GSTR-1 for not furnishing GSTR-3B**
- Rule 59(6) of the CGST Rules amended with effect from 01.01.2022 vide **Notn No. 35/2021-Central Tax dated 24th September 2021**
- A registered person shall not be allowed to furnish **FORM GSTR-1,** if he has not furnished the return in **FORM GSTR- 3B** for the preceding month

**[Notification No. 35/2021–Central Tax | Dated: 24th September, 2021]**

## 2. CBIC amends Notification No. 03/2021-Central Tax dated 23.02.2021

CBIC amends **Notification No. 03/2021-Central Tax dated 23.02.2021** vide Notification No. 36/2021–Central Tax | Dated: 24th September, 2021.

Provisions of 25(6A) of **CGST Act** (Requirement of authentication of Aadhar) shall not apply to following persons –

♦ A person who is not a citizen of India

♦ A Department or establishment of the Central Government or State Government

♦ A local authority

♦ A statutory body

♦ A Public Sector Undertaking

♦ A person applying for registration under the provisions of section 25(9) of the said Act. (UINs)

**[Notification No. 36/2021–Central Tax | Dated: 24th September, 2021]**

## (II) PUNJAB GST NOTIFICATIONS



**PART III**

**GOVERNMENT OF PUNJAB**

DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

**NOTIFICATION**

The 21st September, 2021

**No. S.O. 99/P.A.5/2017/Ss. 9, 11, 15, 16 and 148/2021 .-** In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. SO.17/P.A.5/2017/Ss.9,11,15 and 16/2017, dated the 30th June, 2017, published in the Gazette of Punjab(Extraordinary), Part III, dated the 30th June, 2017, namely:-

**AMENDMENT**

2. In the said notification, in the Table, against serial number 3, in column (3), in item (iv), after clause (f), the following shall be inserted, namely, -

" *Provided* that during the period beginning from the 14th June, 2021 and ending with the 30th September, 2021, the state tax on service of description as specified in clause (f), shall, irrespective of rate specified in column (4), be levied at the rate of 2.5 per cent.".

3. This notification shall be deemed to have come into force on and with effect from 14thJune, 2021.

**A. VENU PRASAD,**
Additional Chief Secretary (Taxation) to
Government of Punjab,
Department of Excise and Taxation.

*2404/9-2021/Pb. Govt. Press, S.A.S. Nagar*

**PART III**

**GOVERNMENT OF PUNJAB**

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

**NOTIFICATION**

The 21st September, 2021

**No. S.O. 100/P.A.5/2017/S.11/2021.-** In exercise of the powers conferred by sub-section (1) of section 11 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) (hereafter in this notification referred to as "the said Act") and all other powers enabling in this behalf, the Governor of Punjab, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, is pleased to exempt the goods specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as the case may be, as specified in the corresponding entry in column (2), of the Table below, from the so much of the state tax leviable thereon under section 9 of the said Act, as in excess of the amount as specified in corresponding entry in column (4) of the aforesaid Table, namely:-

**TABLE**

| Serial No. | Chapter, Heading, Sub-heading or Tariff item | Description of Goods | Rate |
|---|---|---|---|
| **(1)** | **(2)** | **(3)** | **(4)** |
| 1 | 2804 | Medical Grade Oxygen | 2.5% |
| 2 | 30 | Tocilizumab | Nil |
| 3 | 30 | Amphotericin B | Nil |
| 4 | 30 | Remdesvir | 2.5% |
| 5 | 30 | Heparin (anti-coagulant) | 2.5% |
| 6 | 3002 or 3822 | Covid-19 testing kits | 2.5% |
| 7 | 3002 or 3822 | Inflammatory Diagnostic (marker) kits, namely-IL6, D-Dimer, CRP (C-Reactive Protein), LDH (Lactate De-Hydrogenase), Ferritin, Pro Calcitonin (PCT) and blood gas reagents. | 2.5% |

| | | | |
|---|---|---|---|
| 8 | 3808 94 | Hand Sanitizer | 2.5% |
| 9 | 6506 99 00 | Helmets for use with non-invasive ventilation | 2.5% |
| 10 | 8417 or 8514 | Gas/Electric/other furnaces for crematorium | 2.5% |
| 11 | 9018 19 or 9804 | Pulse Oximeter | 2.5% |
| 12 | 9018 | High flow nasal canula device | 2.5% |
| 13 | 9019 20 or 9804 | Oxygen Concentrator/ generator | 2.5% |
| 14 | 9018 or 9019 | Ventilators | 2.5% |
| 15 | 9019 | BiPAP Machine | 2.5% |
| 16 | 9019 | (i) Non-invasive ventilation nasal or oronasal masks for ICU ventilators | |
| | | (ii) Canula for use with ventilators | 2.5% |
| 17 | 9025 | Temperature check equipment | 2.5% |
| 18 | 8702 or 8703 | Ambulance | 6% |

2. This notification shall be deemed to have come into force on and with effect from 14th June, 2021.

3. This notification shall remain in force upto and inclusive of the 30th September, 2021.

**A. VENU PRASAD,**
Additional Chief Secretary (Taxation) to
Government of Punjab,
Department of Excise and Taxation.

*2404/9-2021/Pb. Govt. Press, S.A.S. Nagar*

# (III) CENTRAL TAX NOTIFICATIONS

**[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]**

**Government of India**
**Ministry of Finance**
**(Department of Revenue)**
**Central Board of Indirect Taxes and Customs**

**Notification No. 35/2021 – Central Tax**

**New Delhi, the 24th September, 2021**

G.S.R…(E).- In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

**1**. **Short title and commencement**. - (1) These rules may be called the Central Goods and Services Tax (Eighth Amendment) Rules, 2021.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

**2**. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), —

**(1)** In rule 10A of the said rules, with effect from the date as may be notified, -

(a) after the words "details of bank account", the words "which is in name of the registered person and obtained on Permanent Account Number of the registered person" shall be inserted;

(b) the following proviso shall be inserted, namely:-
"Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.";

**(2)** After rule 10A of the said rules, with effect from the date as may be notified, the following rule shall be inserted, namely: -

**"10B. Aadhaar authentication for registered person .—** The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the purposes as specified in column (2) of the Table below:

**Table**

| S. No. | Purpose |
|---|---|
| (1) | (2) |
| 1. | For filing of application for revocation of cancellation of registration in **FORM GST REG-21** under Rule 23 |
| 2. | For filing of refund application in **FORM RFD-01** under rule 89 |
| 3. | For refund under rule 96 of the integrated tax paid on goods exported out of India |

Provided that if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

(a) her/his Aadhaar Enrolment ID slip; and

(b) (i) Bank passbook with photograph; or

(ii) Voter identity card issued by the Election Commission of India; or

(iii) Passport; or

(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.";

**(3)** In rule 23 of the said rules, in sub-rule (1), with effect from the date as may be notified, after the words "on his own motion, may", the words, figures and letter ", subject to the provisions of rule 10B," shall be inserted;

**(4)** In rule 45 of the said rules, in sub-rule (3), with effect from the 1st day of October, 2021, -

(i) for the words "during a quarter", the words "during a specified period" shall be substituted;

(ii) for the words "the said quarter", the words "the said period" shall be substituted;

(iii) after the proviso, the following explanation shall be inserted, namely: -

"Explanation. - For the purposes of this sub-rule, the expression "specified period" shall mean.-

(a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and

(b) a financial year in any other case.";

**(5)** In rule 59 of the said rules, in sub-rule (6), with effect from the 1st day of January, 2022, -

(i) in clause (a), for the words "for preceding two months", the words "for the preceding month" shall be substituted;

(ii) clause (c) shall be omitted;

**(6)** In rule 89 of the said rules, -

(i) in sub-rule (1), with effect from the date as may be notified, after the words "may file", the words ", subject to the provisions of rule 10B," shall be inserted;

(ii) after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.";

**(7)** In rule 96 of the said rules, in sub-rule (1), after clause (b), with effect from the date as may be notified, the following clause shall be inserted, namely:-

"(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;";

**(8)** After rule 96B of the said rules, with effect from the date as may be notified, the following rule shall be inserted, namely:-

"**96C. Bank Account for credit of refund**.- For the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, "bank account" shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.";

[F. No. CBIC-20006/26/2021-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published *vide* number G.S.R. 610(E), dated the 19th June, 2017 and were last amended *vide* notification No. 32/2021 - Central Tax, dated the 29th August, 2021 *vide* number G.S.R. 598(E), dated the 29th August, 2021.

**[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]**

**Government of India**
**Ministry of Finance**
**(Department of Revenue)**

**Central Board of Indirect Taxes and Customs**

**Notification No 36/2021-Central Tax**

**New Delhi, the 24th September, 2021**

G.S.R.....(E).– In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 03/2021-Central Tax, dated the 23rd February, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 132(E), dated the 23rd February, 2021, namely: -

In the said notification, in the first paragraph after the words "hereby notifies that the provisions of", the words, brackets, figure and letter "sub-section (6A) or" shall be inserted.

[F. No. CBIC-20006/26/2021-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: - The principal Notification No. 03/2021 -Central Tax, dated the 23rd February, 2021, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 132(E), dated the 23rd February, 2021.

# (IV) CENTRAL TAX (RATE) NOTIFICATIONS

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

**Notification No. 06 /2021- Central Tax (Rate)**

New Delhi, the 30th September, 2021

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, -
(i) in the Table, -

(a) against serial number 3, in column (3), in item (iv), in clause (g), after the figures and letters "12AA", word, figures and letters " or 12AB" shall be inserted;

(b) in serial number 17, -
(A) item (i) and the entries relating thereto in columns (3), (4) and (5) shall be omitted;
(B) for item (ii) and the entries relating thereto in columns (3), (4) and (5), the following entries shall be substituted, namely:-

| (3) | (4) | (5) |
|---|---|---|
| "(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right. | 9 | -"; |

(c) against serial number 26, in column (3), -
(A) after item (ic) and the entries relating thereto in columns (3), (4) and (5), the following entries shall be inserted, namely:-

| (3) | (4) | (5) |
|---|---|---|
| "(ica) Services by way of job work in relation to manufacture of alcoholic liquor for human consumption | 9 | -"; |

(B) in item (id), for the brackets, letters and word "(i), (ia), (ib) and (ic)", the brackets, letters and word "(i), (ia), (ib), (ic) and (ica)" shall be substituted;

(C) in item (iv), for the brackets, letters and word "(i), (ia), (ib), (ic), (id), (ii), (iia) and (iii)", the brackets, letters and word "(i), (ia), (ib), (ic), (ica), (id), (ii), (iia) and (iii)" shall be substituted;

(d) against serial number 27,-

(A) item (i) and the entries relating thereto in columns (3), (4) and (5) shall be omitted;

(B) for item (ii) and the entries relating thereto in columns (3), (4) and (5), the following entries shall be substituted, namely:-

| (3) | (4) | (5) |
|---|---|---|
| "Other manufacturing services; publishing, printing and reproduction services; material recovery services | 9 | -"; |

(e) against serial number 34, for items (iii) and (iiia) and the entries relating thereto in columns (3), (4) and (5), following items and entries shall be substituted, namely:-

| (3) | (4) | (5) |
|---|---|---|
| "(iii) Services by way of admission to;<br>(a) theme parks, water parks and any other place having joy rides, merry- go rounds, go carting, or<br>(b) ballet, -<br>other than any place covered by (iiia) below | 9 | - |
| (iiia) Services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like Indian Premier League. | 14 | -"; |

(f) against serial number 38, in column (3), in Explanation, for the figures, words and letter " 234 of Schedule I", the figures, letter and words " 201A of Schedule II" shall be substituted;

(ii) in the "Annexure: Scheme of Classification of Services", after serial number 118 and the entries relating thereto, the following shall be inserted, namely:-

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| "118a | **Group 99654** | | **Multimodal Transport of goods from a place in India to another place in India** |
| 118b | | 996541 | Multimodal Transport of goods from a place in India to another place in India". |

2. This notification shall come into force with effect from the 1st day of October, 2021.

[F. No. 354/207/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal notification No. 11/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 690 (E), dated the 28th June, 2017 and was last amended by notification No. 04/2021 - Central Tax (Rate), dated the 14th June, 2021 vide number G.S.R. 402(E), dated the 14th June, 2021.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

**Notification No. 07/2021 - Central Tax (Rate)**

New Delhi, the 30th September, 2021

G.S.R.-----(E). - In exercise of the powers conferred by sub-sections (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.12/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 691(E), dated the 28th June, 2017, namely:—

In the said notification, in the Table, -

(i) against serial number 1, in column (3), after the figures and letters "12AA", the word, figures and letters " or 12AB" shall be inserted;

(ii) against serial number 9AA, in column (3), after the words "hosted in India", the words "whenever rescheduled" shall be inserted;

(iii) after serial number 9AA and the entries relating thereto, the following shall be inserted, namely : -

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| "9AB | Chapter 99 | Services provided by and to Asian Football Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under AFC Women's Asia Cup 2022 to be hosted in India. | Nil | Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under AFC Women's Asia Cup 2022."; |

(iv) against serial numbers 9D and 13, in column (3), after the figures and letters "12AA", the word, figures and letters " or 12AB" shall be inserted;

(v) against serial numbers 19A and 19B, in column (5), for the figures "2021", the figures "2022" shall be substituted;

(vi) serial number 43 and the entries relating thereto shall be omitted;

(vii) after serial number 61 and the entries relating thereto, the following shall be inserted, namely:-

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| "61A | Heading 9991 | Services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States. | Nil | Nil"; |

(viii) against serial number 72, in column (3), after the words "for which", the figures, symbol and words "75% or more of the" shall be inserted;

(ix) against serial numbers 74A and 80, in column (3), after the figures and letters "12AA", word, figures and letters " or 12AB" shall be inserted;

(x) after serial number 82A and the entries relating thereto, the following shall be inserted, namely : -

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| "82B | Heading 9996 | Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022 | Nil | Nil"; |

2. This notification shall come into force with effect from the 1st day of October, 2021.

[F. No. 354/207/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 12/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 691 (E), dated the 28th June, 2017 and was last amended by notification No. 05/2020 - Central Tax (Rate), dated the 16th October, 2020, published *vide* number G.S.R. 643(E), dated the 16th October, 2020.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 8/2021-Central Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. .....(E).- In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E)., dated the 28th June, 2017, namely:-

In the said notification, -

(a) in Schedule I – 2.5%, -

(i) after S. No. 71 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "71A | 1209 | Tamarind seeds meant for any use other than sowing"; |

(ii) S. Nos. 138 to 148 and the entries relating thereto shall be omitted;

(iii) after S. No. 186 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "186A | 3826 | Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel"; |

(iv) S. No. 187A and the entries relating thereto shall be omitted;

(v) S. No. 234 and the entries relating thereto shall be omitted;

(vi) in List 1, after item number 231 and the entries relating thereto, the following shall be inserted, namely: -

"(232) Pembrolizumab (Keytruda)";

(vii) in List 3, after item number (B) (2) and the entries relating thereto, the following shall be inserted, namely: -

" (3) Retro fitment kits for vehicles used by the disabled";

(b) in Schedule II – 6%, -

(i) against S. No. 80A, in column (3), for the entry, the following entry shall be substituted, namely: -

"Bio-diesel (other than bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel)";

(ii) S. No. 122 and the entries relating thereto shall be omitted;

(iii) S. Nos. 127 to 132 and the entries relating thereto shall be omitted;

(iv) after S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "201A | 84, 85 or 94 | Following renewable energy devices and parts for their manufacture:-<br>(a) Bio-gas plant;<br>(b) Solar power based devices;<br>(c) Solar power generator;<br>(d) Wind mills, Wind Operated Electricity Generator (WOEG);<br>(e) Waste to energy plants / devices;<br>(f) Solar lantern / solar lamp;<br>(g) Ocean waves/tidal waves energy devices/plants;<br>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.<br><br>Explanation:- If the goods specified in this entry are |

| | | |
|---|---|---|
| | | supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.”; |

(v) S. Nos. 205A to 205H and the entries relating thereto shall be omitted;

(vi) S. No. 232 and the entries relating thereto shall be omitted;

(c) in Schedule III – 9%, -

(i) after S. No. 26B and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| “26C | 2601 | Iron ores and concentrates, including roasted iron pyrites. |
| 26D | 2602 | Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight. |
| 26E | 2603 | Copper ores and concentrates. |
| 26F | 2604 | Nickel ores and concentrates. |
| 26G | 2605 | Cobalt ores and concentrates. |
| 26H | 2606 | Aluminium ores and concentrates. |
| 26I | 2607 | Lead ores and concentrates. |
| 26J | 2608 | Zinc ores and concentrates. |
| 26K | 2609 | Tin ores and concentrates. |

| | | |
|---|---|---|
| 26L | 2610 | Chromium ores and concentrates.”; |

(ii) after S. No. 101 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| “101A | 3915 | Waste, Parings and Scrap, of Plastics.”; |

(iii) for S. No. 153A and the entries relating thereto, the following S. No. and the entries shall be substituted, namely: -

| | | |
|---|---|---|
| “153A. | 4819 | Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.”; |

(iv) after S. No. 157 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| “157A. | 4906 00 00 | Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing. |
| 157B. | 4907 | Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips). |
| 157C. | 4908 | Transfers (decalcomanias). |
| 157D. | 4909 | Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. |
| 157E. | 4910 | Calendars of any kind, printed, including calendar blocks. |
| 157F. | 4911 | Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay |

| | | |
|---|---|---|
| | | cards, Pictures, designs and photographs, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices.”; |

(v) after S. No. 398 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| “398A | 8601 | Rail locomotives powered from an external source of electricity or by electric accumulators. |
| 398B | 8602 | Other rail locomotives; locomotive tenders; such as Diesel electric locomotives, Steam locomotives and tenders thereof. |
| 398C | 8603 | Self-propelled railway or tramway coaches, vans and trucks, other than those of heading8604. |
| 398D | 8604 | Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles). |
| 398E | 8605 | Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604). |
| 398F | 8606 | Railway or tramway goods vans and wagons, not self-propelled. |
| 398G | 8607 | Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof. |
| 398H | 8608 | Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing.”; |

(vi) against S. No. 447, in column (3), for the entry, the entry “Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens; stylograph pens and

other pens; duplicating stylos; pen holders, pencil holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609.", shall be substituted;

(d) in Schedule IV – 14%, -

(i) after S. No. 12A and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "12B | 2202 | Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice."; |

2. This notification shall come into force on the 1st day of October, 2021.

[F.No.190354/206/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017, and was last amended by notification No. 01/2021 – Central Tax (Rate), dated the 2nd June, 2021,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 374(E), dated the 2nd June, 2021.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 9/2021-Central Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. .....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.2/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 674(E), dated the 28th June, 2017, namely:-

In the said notification, in the Schedule, for S. No. 86 and the entries relating thereto, the following S. No. and entries thereto shall be substituted, namely: -

| | | |
|---|---|---|
| "86. | 1209 | Seeds, fruit and spores, of a kind used for sowing<br><br>*Explanation*: This entry does not cover seeds meant for any use other than sowing."; |

2. This notification shall come into force on the 1st day of October, 2021.

[F.No.190354/206/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 674(E), dated the 28thJune, 2017, and was last amended *vide* notification No. 15/2019-Central Tax (Rate) dated the 30th September, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R.712(E), dated the 30th September, 2019.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 10/2021-Central Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. (E).- In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.4/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 676(E)., dated the 28th June, 2017, namely:-

In the said notification, in the Table, after S. No. 3 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:

| | | | | |
|---|---|---|---|---|
| " 3A. | 33012400, 33012510, 33012520, 33012530, 33012540 | Following essential oils other than those of citrus fruitnamely: -<br>a) Of peppermint (Menthapiperita);<br>b) Of other mints : Spearmint oil (ex-menthaspicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-menthasylvestries), Bergament oil (ex-mentha citrate). | Any Unregistered Person | Any Registered Person."; |

2. This notification shall come into force on the 1st day of October, 2021.

[F.No.190354/206/2021-TRU]

(Rajeev Ranjan)
UnderSecretary to the Government of India

**Note**: - The principal notification No.4/2017-Central Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 676(E), dated the 28th June, 2017 and was last amended by Notification No. 11/2018-Central Tax(Rate) dated 28th May, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),*vide* number G.S.R. 504(E), dated the 28th May, 2018.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 11/2021-Central Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. .....(E).- In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 39/2017-Central Tax (Rate), dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 1310(E), dated the 18th October, 2017, namely:-

In the said notification, in the Table, against S. No. 1, -

(i) in column (3), for the entry, the entry "(a) Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government;

(b) Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government." shall be substituted;

(ii) in column (4), in the entry, for the words "food preparations" at both the places, where they occur, the word "goods" shall be substituted;

2. This notification shall come into force on the 1st day of October, 2021.

[F. No.190354/206/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

**Note**: - The principal notification No. 39/2017-Central Tax (Rate), dated the 18th October, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 1310(E), dated the 18th October, 2017.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION(i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No. 12/2021-Central Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R….(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as "the said Act"), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the goods specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as the case may be, as specified in the corresponding entry in column (2) of the said Table, from so much of the central tax leviable thereon under section 9 of the said Act, as is in excess of the amount calculated at the rate as specified in corresponding entry in column (4) of the aforesaid Table, namely:-

**Table**

| Sl. No. | Chapter, Heading, Sub-heading or Tariff item | Description of Goods | Rate |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 1 | 30 | Tocilizumab | Nil |
| 2 | 30 | Amphotericin B | Nil |
| 3 | 30 | Remdesivir | 2.5% |
| 4 | 30 | Heparin (anti-coagulant) | 2.5% |
| 5 | 30 | Itolizumab | 2.5% |
| 6 | 30 | Posaconazole | 2.5% |
| 7 | 30 | Infliximab | 2.5% |
| 8 | 30 | Bamlanivimab & Etesevimab | 2.5% |
| 9 | 30 | Casirivimab & Imdevimab | 2.5% |
| 10 | 30 | 2-Deoxy-D-Glucose | 2.5% |
| 11 | 30 | Favipiravir | 2.5% |

2. This notification shall come into force from the 1st day of October, 2021 and remain in force up to and inclusive of the 31st December, 2021.

[F. No. 190354/206/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

# (V) IGST TAX (RATE) NOTIFICATIONS

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]
Government of India
Ministry of Finance
(Department of Revenue)

**Notification No. 06/2021- Integrated Tax (Rate)**

New Delhi, the 30th September, 2021

G.S.R.....(E).- In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 5, sub-section (1) of section 6 and clauses (iii), (iv) and (xxv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 683(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(a) against serial number 3, in column (3), in item (iv), in clause (g), after figures and letters "12AA" , the word, figures and letters " or 12AB" shall be inserted;

(b) in serial number 17, -
(i) item (i) and the entries relating thereto in columns (3), (4) and (5) shall be omitted;
(ii) for item (ii) and the entries relating thereto in columns (3), (4) and (5), the following entries shall be substituted, namely:-

| (3) | (4) | (5) |
|---|---|---|
| "(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right. | 18 | -"; |

(c) against serial number 26, in column (3), -
(i) after item (ic) and the entries relating thereto in columns (3), (4) and (5), the following entries shall be inserted, namely:-

| (3) | (4) | (5) |
|---|---|---|
| "(ica) Services by way of job work in relation to manufacture of alcoholic liquor for human consumption | 18 | -"; |

(ii) in item (id), for the brackets, letters and word "(i), (ia), (ib) and (ic)", the brackets, letters and word "(i), (ia), (ib), (ic) and (ica)" shall be substituted;
(iii) in item (iv), for the brackets, letters and word "(i), (ia), (ib), (ic), (id), (ii), (iia) and (iii)", the brackets, letters and word "(i), (ia), (ib), (ic), (ica), (id), (ii), (iia) and (iii)" shall be substituted;

(d) against serial number 27,-
(i) item (i) and the entries relating thereto in columns (3), (4) and (5) shall be omitted;
(ii) for item (ii) and the entries relating thereto in columns (3), (4) and (5), the following entries shall be substituted, namely:-

| (3) | (4) | (5) |
|---|---|---|
| "Other manufacturing services; publishing, printing and reproduction services; material recovery services | 18 | -"; |

(e) against serial number 34, for items (iii) and (iiia) and the entries relating thereto in columns (3), (4) and (5), following items and entries shall be substituted, namely:-

| (3) | (4) | (5) |
|---|---|---|
| "(iii) Services by way of admission to;<br>(a) theme parks, water parks and any other place having joy rides, merry- go rounds, go carting, or<br>(b) ballet, -<br>other than any place covered by (iiia) below | 18 | - |
| (iiia) Services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like Indian Premier League. | 28 | -"; |

(f) against serial number 38, in column (3), in Explanation, for the figures, words and letter " 234 of Schedule I", the figures, letter and words " 201A of Schedule II" shall be substituted.

2. This notification shall come into force with effect from the 1st day of October, 2021.

[F. No. 354/207/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: -The principal notification No. 08/2017 - Integrated Tax (Rate), dated the 28thJune, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 683 (E), dated the 28th June, 2017 and was last amended by notification No. 04/2021-Integrated Tax (Rate), dated the 14th June, 2021 vide number G.S.R. 402(E), dated the 14th June, 2021.

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

**Notification No. 07/2021- Integrated Tax (Rate)**

New Delhi, the 30th September, 2021

G.S.R.....(E).- In exercise of the powers conferred by sub-section (3) and sub-section (4) of section 5, sub-section (1) of section 6 and clause (xxv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.**9/2017**- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 684 (E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(i) against serial number 1, in column (3), after the figures and letters "12AA", the word, figures and letters " or 12AB" shall be inserted;

(ii) against serial number 10AA, in column (3), after the words "hosted in India", the words "whenever rescheduled" shall be inserted;

(iii) after serial number 10AA and the entries relating thereto, the following shall be inserted, namely : -

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| "10AB | Chapter 99 | Services provided by and to Asian Football Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under AFC Women's Asia Cup 2022 to be hosted in India. | Nil | Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under AFC Women's Asia Cup 2022."; |

(iv) against serial numbers 10E and 14, in column (3), after the figures and letters "12AA", the word, figures and letters " or 12AB" shall be inserted;

(v) against serial numbers 20A and 20B, in column (5), for the figures "2021", the figures "2022" shall be substituted;

(vi) serial number 45 and the entries relating thereto shall be omitted;

(vii) after serial number 64 and the entries relating thereto, the following shall be inserted, namely:-

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| "64A | Heading 9991 | Services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States. | Nil | Nil"; |

(viii) against serial number 75, in column (3), after the words "for which", the figures, symbol and words "75% or more of the" shall be inserted;

(ix) against serial numbers 77A and 83, in column (3), after the figures and letters "12AA", word, figures and letters " or 12AB" shall be inserted;

(x) after serial number 85A and the entries relating thereto, the following shall be inserted, namely : -

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| "85B | Heading 9996 | Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022 | Nil | Nil"; |

2. This notification shall come into force with effect from the 1st day of October, 2021.

[F. No. 354/207/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: -The principal notification No. 9/2017 - Integrated Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 684 (E), dated the 28th June, 2017 and was last amended by notification No. 5/2020 – Integrated Tax (Rate), dated the 16th October, 2020 vide number G.S.R. 643(E), dated the 16th October, 2020.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 8/2021-Integrated Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. .....(E).- In exercise of the powers conferred by sub-section (1) of section 5of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 666(E)., dated the 28th June, 2017, namely:-

In the said notification, -

(a) in Schedule I – 5%, -

(i) after S. No. 71 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "71A | 1209 | Tamarind seeds meant for any use other than sowing"; |

(ii) S. Nos. 138 to 148 and the entries relating thereto shall be omitted;

(iii) after S. No. 186 andthe entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "186A | 3826 | Bio-diesel supplied to Oil Marketing Companies for blending with High SpeedDiesel"; |

(iv) S. No. 187A and the entries relating thereto shall be omitted;

(v) S. No. 234 and the entries relating thereto shall be omitted;

(vi) in List 1, after item number 231 and the entries relating thereto, the following shall be inserted, namely: -

"(232) Pembrolizumab (Keytruda)";

(vii) in List 3, after item number (B) (2) and the entries relating thereto, the following shall be inserted, namely: -

" (3) Retro fitment kits for vehicles used by the disabled";

(b) in Schedule II – 12%, -

(i) against S. No. 80A, in column (3), for the entry, the following entry shall be substituted, namely: -

"Bio-diesel (other than bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel)";

(ii) S. No. 122 and the entries relating thereto shallbe omitted;

(iii) S. Nos. 127 to 132 and the entries relating thereto shall be omitted;

(iv) after S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "201A | 84, 85 or 94 | Following renewable energy devices andparts for their manufacture:-<br>(a)Bio-gas plant;<br>(b) Solar power based devices;<br>(c) Solar power generator;<br>(d) Wind mills, Wind Operated Electricity Generator (WOEG);<br>(e) Waste to energy plants / devices;<br>(f) Solar lantern / solar lamp;<br>(g) Ocean waves/tidal waves energy devices/plants;<br>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.<br><br>Explanation:- If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified |

| | | |
|---|---|---|
| | | in the entry at S. No. 38 of the Table mentioned in the notification No. 8/2017-Integrated Tax (Rate), dated 28th June, 2017 [G.S.R. 683(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.”; |

(v) S. Nos. 205A to 205H and the entries relating thereto shall be omitted;

(vi) S. No. 232 and the entries relating thereto shall be omitted;

(c) in Schedule III – 18%, -

(i) after S. No. 26B andthe entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| “26C | 2601 | Iron ores and concentrates, including roasted iron pyrites. |
| 26D | 2602 | Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight. |
| 26E | 2603 | Copper ores and concentrates. |
| 26F | 2604 | Nickel ores and concentrates. |
| 26G | 2605 | Cobalt ores and concentrates. |
| 26H | 2606 | Aluminium ores and concentrates. |
| 26I | 2607 | Lead ores and concentrates. |
| 26J | 2608 | Zinc ores and concentrates. |
| 26K | 2609 | Tin ores and concentrates. |
| 26L | 2610 | Chromium ores and concentrates.”; |

(ii) after S. No. 101 andthe entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "101A | 3915 | Waste, Parings and Scrap, of Plastics."; |

(iii) for S. No. 153A and the entries relating thereto, the following S. No. and the entries shall be substituted, namely: -

| | | |
|---|---|---|
| "153A. | 4819 | Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like."; |

(iv) after S. No. 157 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "157A. | 4906 00 00 | Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing. |
| 157B. | 4907 | Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips). |
| 157C. | 4908 | Transfers (decalcomanias). |
| 157D. | 4909 | Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. |
| 157E. | 4910 | Calendars of any kind, printed, including calendar blocks. |
| 157F. | 4911 | Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay cards, Pictures, designs and photographs, Plan and drawings for |

| | | |
|---|---|---|
| | | architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices.”; |

(v) after S. No. 398 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| “398A | 8601 | Rail locomotives powered from an external source of electricity or by electric accumulators. |
| 398B | 8602 | Other rail locomotives; locomotive tenders; such as Diesel electric locomotives, Steam locomotives and tenders thereof. |
| 398C | 8603 | Self-propelled railway or tramway coaches, vans and trucks, other than those of heading8604. |
| 398D | 8604 | Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles). |
| 398E | 8605 | Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604). |
| 398F | 8606 | Railway or tramway goods vans and wagons, not self-propelled. |
| 398G | 8607 | Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof. |
| 398H | 8608 | Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signaling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing.”; |

(vi) againstS. No. 447, in column (3), for the entry, the entry “Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; pen holders, pencil holders and similar holders; parts

(including caps and clips) of the foregoing articles, other than those of heading 9609.", shall be substituted;

(d) in Schedule IV – 28%, -

(i) after S. No. 12A andthe entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|---|---|---|
| "12B | 2202 | Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice."; |

2. This notification shall come into force on the 1st day of October, 2021.

[F. No.190354/206/2021-TRU]

(Rajeev Ranjan)
UnderSecretary to the Government of India

Note: - The principal notification No.1/2017-Integrated Tax (Rate), dated the 28thJune, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666(E), dated the 28th June, 2017, and was last amended by notification No. 01/2021 – Integrated Tax (Rate), dated the 2ndJune, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 375(E), dated the 2nd day of June, 2021.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 9/2021-Integrated Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. .....(E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.2/2017-Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 667(E), dated the 28th June, 2017, namely:-

In the said notification, in the Schedule, for S. No. 86 and the entries relating thereto, the following S. No. and entries thereto shall be substituted, namely: -

| | | |
|---|---|---|
| "86. | 1209 | Seeds, fruit and spores, of a kind used for sowing<br><br>*Explanation*: This entry does not cover seeds meant for any use other than sowing."; |

2. This notification shall come into force on the 1st day of October, 2021.

[F.No.190354/206/2021-TRU]

(Rajeev Ranjan)
UnderSecretary to the Government of India

Note: - The principal notification No.2/2017- Integrated Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 667(E), dated the 28th June, 2017, and was last amended vide notification No. 15/2019-Integrated Tax (Rate) dated the 30th September, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 713(E), dated the 30th September, 2019.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 10/2021-Integrated Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. (E).- In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.4/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 669(E)., dated the 28th June, 2017, namely:-

In the said notification, after S. No. 3 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:

| | | | | |
|---|---|---|---|---|
| " 3A. | 33012400, 33012510, 33012520, 330125 30, 33012540 | Following essential oils other than those of citrus fruit namely: -<br>a) Of peppermint (Menthapiperita);<br>b) Of other mints : Spearmint oil (ex-menthaspicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-menthasylvestries), Bergament oil (ex-mentha citrate). | Any Unregistered Person | Any Registered Person."; |

2. This notification shall come into force on the 1st day of October, 2021.

[F.No.190354/206/2021-TRU]

(Rajeev Ranjan)
UnderSecretary to the Government of India

Note: - The principal notification No. 4/2017-Integrated Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 669(E), dated the 28th June, 2017 and was last amended by Notification No. 12/2018-Integrated Tax(Rate) dated 28th May, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 506(E), dated the 28th May, 2018.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 11/2021-Integrated Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. .....(E).- In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.40/2017-Integrated Tax (Rate), dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1311(E), dated the 18th October, 2017, namely:-

In the said notification, in the Table, against S. No. 1, -

(i) in column (3), for the entry, the entry "(a) Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government;

(b) Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government." shall be substituted;

(ii) in column (4), in the entry, for the words "food preparations" at both the places, where they occur, the word "goods" shall be substituted;

2. This notification shall come into force on the 1st day of October, 2021.

[F. No.190354/206/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

**Note**: - The principal notification No. 40/2017-Integrated Tax (Rate), dated the 18th October, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 1311(E), dated the 18th October, 2017.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION(i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No. 12/2021-Integrated Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R….(E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter in this notification referred to as "the said Act"), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the goods specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as the case may be, as specified in the corresponding entry in column (2) of the said Table, from so much of the integrated tax leviable thereon under section 5 of the said Act, as is in excess of the amount calculated at the rate as specified in corresponding entry in column (4) of the aforesaid Table, namely:-

**Table**

| Sl. No. | Chapter, Heading, Sub-heading or Tariff item | Description of Goods | Rate |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 1 | 30 | Tocilizumab | Nil |
| 2 | 30 | Amphotericin B | Nil |
| 3 | 30 | Remdesivir | 5% |
| 4 | 30 | Heparin(anti-coagulant) | 5% |
| 5 | 30 | Itolizumab | 5% |
| 6 | 30 | Posaconazole, | 5% |
| 7 | 30 | Infliximab | 5% |
| 8 | 30 | Bamlanivimab&Etesevimab | 5% |
| 9 | 30 | Casirivimab&Imdevimab | 5% |
| 10 | 30 | 2-Deoxy-D-Glucose | 5% |
| 11 | 30 | Favipiravir | 5% |

2. This notification shall come into force from the 1st day of October, 2021 and remain in force up to and inclusive of the 31st December, 2021.

[F. No. 190354/206/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

# (VI) CGST CIRCULARS

**Circular No. 158/14/2021-GST**

**File No. CBIC-20006/17/2021-GST**

**Government of India**

**Ministry of Finance**

**Department of Revenue**

**Central Board of Indirect Taxes and Customs**

**GST Policy Wing**

*****

New Delhi, dated the 6th September, 2021

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)

The Principal Directors General / Directors General (All)

Madam/Sir,

**Subject: Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29th August, 2021 - Reg.**

Vide Circular No. 148/04/2021-GST, dated 18th May, 2021, detailed guidelines for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "**the CGST Act / said Act**") and rule 23 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "**the CGST Rules**") have been specified, till the time an independent functionality for extension of time limit for applying in **FORM GST REG-21** is developed on the GSTN portal. It may be noted that notification No.14/2021-Central Tax, dated 1st May, 2021, as amended, had, inter-alia, extended the date of filing of application for revocation of cancellation of registration till 30th June, 2021, where the due date of filing of application was falling between 15th April, 2021 to 29th June, 2021. Government has now issued notification No. 34/2021-Central Tax dated 29th August, 2021 (hereinafter referred to as "**the said notification**")

under section 168A of the said Act to extend the timelines for filing of application for revocation of cancellation of registration to 30th September, 2021, where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021. This extension is applicable for those cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act.

**2.** In order to ensure uniformity in the implementation of the said notification across field formations, the Board, in exercise of its powers conferred by section 168(1) of the said Act, hereby clarifies the issues relating to the extension of timelines for application for revocation of cancellation of registration as under:

**3. Applications covered under the scope of the said notification**

**3.1.** The said notification specifies that where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, the time limit for filing of application for revocation of cancellation of registration is extended to 30th September, 2021. Accordingly, it is clarified that the benefit of said notification is extended to all the cases where cancellation of registration has been done under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Ac, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021. It is further clarified that the benefit of notification would be applicable in those cases also where the application for revocation of cancellation of registration is either pending with the proper officer or has already been rejected by the proper officer. It is further clarified that the benefit of notification would also be available in those cases which are pending with the appellate authority or which have been rejected by the appellate authority. In other words, the date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of CGST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, is extended to 30th September, 2021, irrespective of the status of such applications. As explained in this para, the said notification would be applicable in the following manner:

**(i) application for revocation of cancellation of registration has not been filed by the taxpayer-**

In such cases, the applications for revocation can be filed upto the extended timelines as provided vide the said notification. Such cases also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.

**(ii) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer-**

In such cases, the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

**(iii) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection -**

In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

**(iv) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority-**

In such cases, appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal.

**(v) application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer-**

In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

**4**. It may be recalled that, with effect from 01.01.2021, proviso to sub-section (1) of section 30 of the CGST Act has been inserted which provides for extension of time for filing application for revocation of cancellation of registration by 30 days by Additional/ Joint Commissioner and by another 30 days by the Commissioner. Doubts have been raised whether the said notification has extended the due date in respect of initial period of 30 days for filing the application (in cases

where registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of CGST Act, 2017) under sub-section (1) of section 30 of the CGST Act or whether the due date of filing applications for revocation of registration can be extended further for the period of 60 days (30 + 30) by the Joint Commissioner/ Additional Commissioner/ Commissioner, as the case may be, beyond the extended date of 30.09.2021. It is clarified that:

(i) where the thirty days' time limit falls between 1st March, 2020 to 31st December, 2020, there is no provision available to extend the said time period of 30 days under section 30 of the CGST Act. For such cases, pursuant to the said notification, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September, 2021 only; and

(ii) where the time period of thirty days since cancellation of registration has not lapsed as on 1st January, 2021 or where the registration has been cancelled on or after 1st January, 2021, the time limit for applying for revocation of cancellation of registration shall stand extended as follows:

(a) Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, without any further extension of time by Joint Commissioner/ Additional Commissioner/ Commissioner.

(b) Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Commissioner, on being satisfied, as per proviso to sub-section (1) of section 30 of the CGST Act

(c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Joint/

Additional Commissioner and another 30 days by the Commissioner, on being satisfied, as per proviso to sub-section (1) of section 30 of the CGST Act.

**5**. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

**6**. Difficulty, if any, in the implementation of the above circular may please be brought to the notice of the Board (gst-cbec@gov.in). Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner

**F.No. CBIC-20001/8/2021-GST**
**Government of India**
**Ministry of Finance**
**Department of Revenue**
**Central Board of Indirect Taxes and Customs**
**GST Policy Wing**
***

New Delhi, dated the 20th September, 2021

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

**Subject: Clarification on doubts related to scope of "Intermediary"–reg.**

Representations have been received citing ambiguity caused in interpretation of the scope of "Intermediary services" in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in succeeding paragraphs.

**2. Scope of Intermediary services**

**2.1** 'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under–

*"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."*

**2.2** The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

*"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a*

*supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;"*

**2.3** From the perusal of the definition of "intermediary" under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

## 3. Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic pre-requisites, which are discussed below:

**3.1 Minimum of Three Parties**: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

**3.2 Two distinct supplies:** As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

**3.3 Intermediary service provider to have the character of an agent, broker or any other similar person**: The definition of "intermediary" itself provides that intermediary service provider-*means a broker, an agent or any other person, by whatever name called….*". This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes". The use of the expression "arranges or facilitates" in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

**3.4 Does not include a person who supplies such goods or services or both or securities on his own account:** The definition of intermediary services specifically mentions

that intermediary "*does not include a person who supplies **such** goods or services or both or securities on his own account". Use of word "**such**"* in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of "intermediary".

**3.5 Sub-contracting for a service is not an intermediary service:** An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.

**3.6** The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked **only when** either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

**4.** Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

Illustration 1

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations.

'A' outsources the task of design and development of a particular module of the software to 'C', for which "C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, ''B' is not an intermediary.

**5**. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

**6**. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

**F. No. CBIC-20001/8/2021-GST**
**Government of India**
**Ministry of Finance**
**Department of Revenue**
**Central Board of Indirect Taxes and Customs**
**GST Policy Wing**
******

New Delhi, dated the 20th September, 2021

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam / Sir,

**Subject: Clarification in respect of certain GST related issues - reg.**

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. The issues have been examined. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies each of these issues as under:

| S. No. | Issue | Clarification |
|---|---|---|
| 1. | Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September **following the end of financial year to which such** | 1. With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended *vide* the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.<br>The amendment made is shown as below:<br>*"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both* |

| | | |
|---|---|---|
| | **invoice or debit note pertains** or furnishing of the relevant annual return, whichever is earlier.<br><br>Doubts have been raised seeking following clarification:<br>1. Which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4):<br>(a) date of issuance of debit note, or<br>(b) date of issuance of underlying invoice.<br>2. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021? | *after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or* ~~***invoice relating to such***~~ *debit note pertains or furnishing of the relevant annual return, whichever is earlier."*<br>As can be seen, the words "invoice relating to such" were omitted w.e.f. 01.01.2021.<br><br>2. The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that "*Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to* ***delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.***<br><br>3. Accordingly, it is clarified that:<br><br>a) w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.<br>b) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the |

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| | | provisions of section 16(4), as it existed before the said amendment on 01.01.2021.<br><br>***Illustration 1***. A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.<br><br>***Illustration 2***. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier. |
| 2. | Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice). | 1. Rule 138A (1) of the CGST Rules, 2017 *inter-alia,* provides that the person in charge of a conveyance shall carry— (a) the **invoice or bill of supply or delivery challan**, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a **Radio Frequency Identification Device** embedded on to the conveyance in such manner as may be notified by the Commissioner.<br><br>2. Further, rule 138A (2) of CGST Rules, after being amended *vide* notification No. 72/2020-Central Tax dated 30.09.2020, |

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| | | states that "*In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded* ***Invoice Reference Number (IRN)*** *in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice*"<br><br>3. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded **Invoice Reference Number (IRN)** in it, may be produced electronically for verification by the proper officer **in lieu of the physical copy of such tax invoice.**<br><br>4. **Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.** |
| 3. | Whether the first proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which | 1. The term '**subjected to export duty'** used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is |

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| | are having NIL rate of export duty. | specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.<br><br>2. **Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and** in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, **would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.** |

2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner

**Corrigendum to Circular No. 160/16/2021-GST**

**No. CBIC-20001/8/2021-GST**
**Government of India**
**Ministry of Finance**
**Department of Revenue**
**Central Board of Indirect Taxes and Customs**
**GST Policy Wing**
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New Delhi, dated the 24th September, 2021

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

**Subject: Corrigendum to Circular No. 160/16/2021-GST dated 20th September 2021 issued vide F. No. CBIC-20001/8/2021-GST- reg.**

In the opening para of the said circular, in the table against S. No. 3, for the words '**first proviso'** wherever they occur, the words '**second proviso'** shall be read.

(Sanjay Mangal)
Principal Commissioner

**F. No. CBIC-20001/8/2021–GST**
**Government of India**
**Ministry of Finance**
**Department of Revenue**
**Central Board of Indirect Taxes and Customs**
**GST Policy Wing**
******

New Delhi, dated the 20th September, 2021

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam / Sir,

**Subject: Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017–reg.**

Various representations have been received citing ambiguity caused in interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services as mentioned in sub-section (6) of the section 2 of the IGST Act 2017. Doubts have been raised whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of sub-section (6) of section 2 of IGST Act.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issue in succeeding paragraphs.

**Relevant legal provisions**:

3.1 The export of services has been defined in sub-section (6) of the section 2 of the IGST Act 2017 as under:

*(6) "export of services" means the supply of any service when,—*
*(i) the supplier of service is located in India;*

*(ii) the recipient of service is located outside India;*
*(iii) the place of supply of service is outside India;*
*(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
***(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;***

3.2 Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

***Explanation 1.—****For the purposes of this Act, where a person has,—*

*(i) an establishment in India and any other establishment outside India;*
*(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
*(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.*

As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

3.3 Reference is also invited to the Explanation 2 of Section 8 of IGST Act, which is reproduced below:

*"Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory."*

3.4 Reference is also invited to the definition of "person" as provided under CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017. "Person" has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under:

*(84) "person" includes—*

*(a) an individual;*
*(b) a Hindu Undivided Family;*
***(c) a company;***
*(d) a firm;*
*(e) a Limited Liability Partnership;*
*(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*

*(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;*
*(h)* ***any body corporate incorporated by or under the laws of a country outside India;***
*(i) a co-operative society registered under any law relating to co-operative societies;*
*(j) a local authority;*
*(k) Central Government or a State Government;*
*(l) society as defined under the Societies Registration Act, 1860;*
*(m) trust; and*
*(n) every artificial juridical person, not falling within any of the above;*

3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under:

*(20) "company" means a company incorporated under this Act or under any previous company law;*

*(42) "foreign company" means any company or body corporate incorporated outside India which—*
*(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and*
*(b) conducts any business activity in India in any other manner.*

**Analysis of the issue**:

4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines "export of services", places a condition that the services provided by one establishment of **a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act**, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

4.3. In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4 From the perusal of the definition of "person" under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

**Clarification:**

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate **persons** under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".

5.2 Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 . Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner

**F. No. CBIC-20001/8/2021-GST**
**Government of India**
**Ministry of Finance**
**Department of Revenue**
**Central Board of Indirect Taxes and Customs**
**GST Policy Wing**
****

New Delhi, dated the 25th September, 2021

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

**Subject: Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act -Reg**

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder:

**2.1** Section 77 of the CGST Act, 2017 reads as follows:

> *"77. **Tax wrongfully collected and paid to Central Government or State Government.** — (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall be refunded the amount of taxes so paid **in such manner and subject to such conditions as may be prescribed.***
>
> *(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."*

Section 19 of the IGST Act, 2017 reads as follows:

> *"**19. Tax wrongfully collected and paid to Central Government or State Government**------(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid **in such manner and subject to such conditions as may be prescribed.***
>
> *(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable."*

**3. Interpretation of the term "subsequently held"**

**3.1** Doubts have been raised regarding the interpretation of the term "**subsequently held**" in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

**3.2** In this regard, it is clarified that the term "subsequently held" in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

**4. The relevant date for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017**

**4.1** Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017

(hereinafter referred to as "CGST Rules") vide notification No. 35/2021-Central Tax dated 24.09.2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

> *"(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in* ***FORM GST RFD-01*** *through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*
>
> *Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force."*

**4.2** The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

**4.3** Application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act is explained through following illustrations.

*A taxpayer "**A**" has issued the invoice dated **10.03.2018** charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:*

| Sl.no. | Scenario | Last date for filing the refund claim |
|---|---|---|
| 1 | Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on **10.05.2021.** | Since "**A**" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in ***FORM GST RFD-01*** would be **23.09.23** (*two years from date of notification*) |
| 2 | Having realized on his own that the said transaction is an inter-State supply, "A" paid | Since "**A**" has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of |

| | | |
|---|---|---|
| | IGST in respect of the said transaction on **10.11.2021 i.e. after issuance of notification No.** 35/2021-Central Tax dated 24.09.2021 | the CGST Rules, the last date for filing refund application in ***FORM GST RFD-01*** would be **09.11.2023** *(two years from the date of payment of tax under the correct head, i.e. integrated tax)* |
| 3 | Proper officer or adjudication authority or appellate authority of "**A**" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on **10.05.2019** | Since "**A**" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in ***FORM GST RFD-01*** would be **23.09.23** (*two years from date of notification*) |
| 4 | Proper officer or adjudication authority or appellate authority of "**A**" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on **10.11.2022 i.e. after issuance of notification No.** 35/2021-Central Tax dated 24.09.2021 | Since "**A**" has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in ***FORM GST RFD-01*** would be **09.11.2024** *(two years from the date of payment of tax under the correct head, i.e. integrated tax)* |

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No.35/2021-Central Tax, dated 24.09.2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

**4.4** Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

**5.** It is requested that suitable trade notices may be issued to publicize the contents of this circular.

**6.** Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

# (VII) ADVANCE RULINGS

## 1. GST on supply of coaching services along with supply of goods/printed material/test papers, uniform, bags

Case Name : **In re Symmetric Infrastructure Private Limited (GST AAR Rajasthan)**
Appeal Number : Advance Ruling No. RAJ/AAR/2021-22/09
Date of Judgement/Order : 02/09/2021

**Q.1** Applicant supplies services of coaching to students which also includes along with coaching, supply of goods/printed material/test papers, uniform, bags and other goods to students. Such supplies are not charged separately but a consolidated amount is charged, the major component of which is imparting of coaching. In such circumstances, whether such supply shall be considered, a supply of goods or a supply of services?

**Ans:-** Supply by the Applicant will be considered " Supply of Service".

**Q. 2.** If the answer to the aforementioned first question is supply of service, whether such supply shall be considered as composite supply? If yes. what shall be the principal supply?

**Ans:-** Yes, such supply shall be considered as Composite supply, and Coaching service shall be principal supply.

**Q.3.** Applicant provides coaching service under a business model through Network Partners as per sample agreement attached, containing obligations of Applicant and Network partners. Accordingly, the network partner provides the services to the students on behalf of Applicant. In such a case, who shall be considered as supplier of service and recipient of service under the agreement?

**Ans: –** Applicant will be service provider to the students and Network partner will be service provider to the applicant.

**Q.4** Subject to Q. No. 3 above, what shall be the value of service provided by Applicant to students and by network partner to Applicant?

**Ans: –** Total consolidated amount charged for which Tax invoice generated by the applicant will be the value of service supply by the applicant.

**Q 5.** Whether both, Applicant and network partner can avail eligible ITC for their respective supplies?

**Ans:-** Applicant can avail eligible ITC as per provisions of GST Act, 2017.

## 2. Supplies by Cost Centres of BEML cannot be termed as composite supply

Case Name : **In re BEML Limited (GST AAAR Karnataka)**
Appeal Number : Advance Ruling Order No. KAR/AAAR-08/2021

In the instant case, there is no doubt that there are multiple supplies of both goods and services being undertaken as part of this contract. While the supply from Cost Centre C is a supply of goods i.e the Standard Gauge Intermediate Cars, the supply by Cost Centre D is primarily a service of commissioning and installation of the Cars supplied by Cost Centre C. Similarly, the supply from Cost Centre E is a service of joint inspection and completion of defects/deficiencies observed during integration test and joint inspection. The supply of spares from Cost Centre G is purely a supply of goods. We find that there is no dispute on the nature of supply by each of the above-mentioned Cost Centres. The bone of contention is whether the supplies by Cost Centres C, D. E and G are to be termed as a composite supply or not. For a supply to be consider as a composite supply, its constituent supplies should be so integrated with each other that one cannot be supplied in the ordinary course of business without or independent of the other. In other words, they are naturally bundled. The term 'naturally bundled' has not been defined in the GST Act. The concept of the "Naturally Bundled", as used in Section 2(30) of the CGST Act, 2017, lays emphasis on the fact that the different elements in a composite supply are integral to the overall supply and if one of the elements is removed the nature of supply will be affected.We fail to see this concept in this contract. In this case, although there is only one contract, the different activities done by the Cost Centers C, D, E and G as part of the contract, are clearly specified and identifiable. The scope of works undertaken by each Cost Centre C, D, E and G are entirely independent and specific to that cost center and is not associated with any other Cost Centre. The work undertaken by the Cost Centre D commences only on completion of all the milestone activities of Cost Centre C. Similarly, the work undertaken by Cost Centre E and G commence only on completion of all the milestone activities of Cost Centers D and E respectively. Therefore, it is evident that each Cost Centre is independent and every milestone supply made from the Cost Centre is an independent transaction.,

Further, we also note that the contract has laid down the cost attributable to each milestone activity in each of the cost centers. The payment made by M/s BMRCL will be based on the invoices raised by M/s BEML on completion of each milestone in the Cost Centre. For example, as per the contract, the Cost Centre C will supply the Is1 indigenously manufactured 3 car unit (-MC+MC-TC-) along with dispatch documents, transit insurance and No Objection certificate from the Engineer within 65 weeks from the commencement date and the amount apportioned towards this supply is Rs 10, 33, 35, 703/-. Similarly, Cost Centre D will within 76 weeks from the commencement date, integrated the 1st 3 car unit into the existing 3 car train (DMC-TC-DMC) to form the 6-car train. Cost Centre D will also complete the functional tests of 6 car train and running of 6 car train in the depot and test track along with integrated testing and commissioning at the depot. The amount apportioned towards this supply is Rs 1,47,62,244/-. If there are any defects/deficiencies observed during main line type test and integration test or joint inspection of the 1st 3-car unit forming 3-car to 6 car train, the same will be attended to by Cost Centre E along with any other minor outstanding works, within a period of 78 weeks from the commencement date. The amount apportioned for this supply from Cost Centre E is Rs 36,90,561/-. Therefore, each supply by the Cost Centers C, D, E and G is clearly identifiable at the time of raising

the invoice as to whether it is a supply of goods or a supply of service and the cost attributable to each supply is predetermined and laid down in the Pricing document which is part of the Contract. As such we agree with the Appellant's contention that each transaction by the individual Cost Centers are to be assessed independently according to the nature of supply.

The lower Authority has erred in interpreting the creation of cost centres as per the contract as artificial creations to enable cash flow. When interpreting the nature of a contract, the form of the agreement is not important, it is rather the substance which has to be seen. The parties may use any words they like to suit their intention and it is therefore imperative that the agreement may not be taken as it is but its nature/substance has to be seen to arrive at the correct conclusions.In this case, although a single contract has been made for supply of Goods and services, the clear-cut demarcation of activities of supply of goods and supply of services to each Cost Centre clearly demonstrates the intention of the contracting parties that each of the cost centres C, D, E and G is an independent supply centre undertaking either a supply of goods or a supply of service. Hence, we are unable to subscribe to the views of the lower Authority and the Respondent that the supply of goods and services encompassed as per this contract are naturally bundled. The mere fact that a number of tasks have been entrusted to the Respondent through a single contract would not make it as 'composite supply' in terms of Section 2(30) of the CGST Act, 2017. We reiterate that the obligations of supplies envisaged in this contract are distinct and separable and hence the separate activities of supply of goods and supply of services have to be viewed independently on its own merits.

## 3. GST on man power services provided to Govt Schools/ Colleges/ Hospitals/ Offices

Case Name : **In re Sankalp Facilities and Management Services Pvt. Ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/51/2021
Date of Judgement/Order : 06/09/2021

1. The Subject Supply for the purpose of Security, Cleaning and Housekeeping services provided to the cited schools are **exempt** from GST.

2. GST is liable to be paid on subject supply provided to all cited Government Colleges providing education services of above higher secondary level.

3. GST is liable to be paid on subject supply provided to all cited Government offices.

4. GST is liable to be paid on subject supply provided to all cited Government hospitals.

## 4. GST on batteries for use in warship applications of Indian Navy

Case Name : **In re Exide Industries Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA- 39/2020-21/B-58
Date of Judgement/Order : 09/09/2021

Batteries will be considered as parts of vessels falling under heading 8901, 8902, 8904 to 8907, only if they are used in manufacturing goods falling under Tariff Headings 8901, 8902, 8904 to 8907. We agree with the applicant's contention that the batteries supplied by them for exclusive use in goods falling under heading 8901, 8902, 8904 to 8907 will be taxable @ 5% IGST (2.5% CGST and SGST each). However it is to reiterate that the benefit of reduced CGST and SGST for such batteries is only available if the said batteries are used as parts of goods falling under heading 8901, 8902, 8904 to 8907 of the GST Tariff. The benefit of reduced GST rates would not be available in respect of subject batteries supplied for use in goods other than goods of heading 8901, 8902, 8904 to 8907 of the GST Tariff.

we find that, batteries are essential requirements in manufacture of submarines and are classified under heading 85 of the GST Tariff and are parts of submarines. Since the subject goods are meant for use in manufacture of submarines and are supplied for purpose of use or application in manufacture of goods that are classifiable under Tariff headings 8901, 8902, 8904, 8905, 8906, 8907, the said goods can be considered as parts of a submarine. Entry at Sr. No. 252 covers goods which merit classification under "Any Chapter" of the GST Tariff wherein the description in Sr. No. 252, is "Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907". Accordingly, in the present matter, the Subject Goods will be covered under Sr. No.252.

During the course of the hearing held on 27.08.2021, the applicant informed this Bench that, the subject product, Viz. batteries, were not being supplied by them for use in and manufacture of vessels falling under Heading 8903 of the GST Tariff. Applicant has also submitted an end user certificate provided by the Indian Navy wherein it has been certified that the batteries, spares and interconnecting links supplied by the Applicant are intended for bonafide use towards warship applications of Indian Navy of Indian Armed Forces.

In view of above, we conclude that, the supply of batteries by the Applicant exclusively and directly to the Indian Navy for use in the manufacture of submarines will be classified under Sr. No. 252 of **Notification No. 1/2017- C.T. (Rate), dated 28-6-2017**

## 5. GST on managerial & leadership services provided by Registered/Corporate Office to Group Companies

Case Name : **In Re B. G. Shirke Construction Technology Pvt. Ltd. (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA- 42/2019-20/21-22/B-56
Date of Judgement/Order : 09/09/2021

**Question 1 Whether the managerial and leadership services provided by the Registered/Corporate Office to its Group Companies can be considered as 'supply of service', in terms of Section 7 of CGST Act, 2017 ?**

**Answer:-** Answered in the affirmative.

**Question 2 Whether the lump sum amount charged by the Registered/Corporate Office on its Group Companies would be liable to GST under Section 8 of CGST Act. 2017?**

**Answer:-** Answered in the affirmative.

**Question 3. If the aforesaid activities are treated as "supply of service" between distinct and related persons and GST thereon is held to be payable, whether the Applicant can continue to charge certain lump sum amount, as has been done in the past, in terms of second Proviso to Rule 28 of CGST Rules, 2017, as most of the recipients of such services are eligible for full credit, barring one or two related persons, who would comply with the provisions of Section 17 of CGST Act, 2017, at their respective ends?**

**Answer:-** Answered in the affirmative.

**Question 4. If the aforesaid method of charging certain lump sum amount is not permissible, whether the Applicant can adopt the valuation in terms of the provisions of Rule 31 of CGST Rules, 2017, by arriving at a proportional ratio, based on the total expenses incurred by Registered/ Corporate Office for supplying the aforesaid services and turnover of each of the distinct and related persons?**

**Answer:-** Not answered in view of the discussions made above.

**Questions 5 If the aforesaid method of valuation under Rule 31 of CGST Rules is also not permissible, whether the Applicant can adopt valuation in terms of Rule 30 of CGST Rules, 2017, by allocating related expenses at the Registered/Corporate Office in a reasonable proportion to the distinct and related persons considering turnover of each of them and adding ten percent, which would be at par with 110% of cost of provision of such services?**

**Answer:-** Not answered in view of the discussions made above.

**Question 6. If any of the aforesaid method of valuation suggested by the Applicant is not acceptable, what alternative feasible workable method of valuation that can be suggested by the Advance Ruling Authority considering the nature of industry in which the Applicant is engaged in.**

**Answer:-** Not answered in view of the discussions made above.

**Question 7. Whether input tax credit of GST paid by the Applicant is admissible to each of the distinct and related person, in a case where their supply of goods or service or both are taxable under GST law?**

**Answer:-** Not answered in view of the discussions made above.

## 6. GST exempt on services relating to conduct of examination for Educational Boards

Case Name : **In re Management & Computer Consultants (GST AAR West Bengal)**

Appeal Number : Order No. 08/WBAAR/2021-22
Date of Judgement/Order : 13/09/2021

**Whether services related to pre-examination, conducting of examination and post -examination provided to Educational Boards, Council and Universities shall be treated as exempted supply.**

West Bengal State Council of Technical & Vocational Education and Skill Development, a statutory body, offers courses under various sections like Engineering and Technology, Agriculture, Business and Commerce etc. and also conducts examinations for admission to different vocational education courses and therefore the function of the council is similar to other education boards.

We now take the issue to decide whether the activities undertaken by the applicant against work orders issued to him shall be treated as services relating to conduct of examination or not. The process of conducting examination includes pre-examination works, the examination itself and post-examination works. It has already been stated that the applicant has undertaken activities like pre and post examination data processing job relating to B.A./B.Sc. Examination, data processing job for online submission of PPR/FSI Forms relating to B.A./B.Sc. Examinees, upgradation of existing software towards development of pre & post examination system through automation of existing registration process of UG &B PG Courses etc. The said activities, as we opine, can be treated as services relating to conduct of examination.

For reasons as discussed above, we are of the view that supply of services details of which are submitted by the applicant in course of hearing shall get covered under entry serial number 66 of the ***Notification 12/2017-Central Tax (Rate) dated 28/06/2017*** as amended and shall therefore be exempted from payment of tax under the GST Act.

## 7. No GST exemption on works contract services to GHMC

Case Name : **In re Transmission Corporation of Telangana Limited (GST AAR Tealangana)**
Appeal Number : Advance Ruling TSAAR Order No. 09/2021
Date of Judgement/Order : 14/09/2021

1. Eligibility to exemption from tax on the supply of works contract services by the applicant to Greater Hyderabad Municipal Corporation (GHMC).

**Taxable @18%**

2. Tax liability with respect to works contract services procured by the applicant from a 3rd party for supplying same services to GHMC.

**Taxable @18%**

3. Eligibility to exemption from tax on supply of works contract services by the applicant to I & CAD department.

**Exempt to the extent of grants are received against supplies by applicant**

4. Tax liability with respect to works contract services procured by the applicant from a 3rd party for supplying same services to I & CAD department.

**Taxable @18%**

5. Tax liability for supply of works contract service by the applicant to south central railway.

**Taxable @18%**

6. Tax liability for procuring works contract services by the applicant from a 3rd party in order to supply the same to south central railway.

**Taxable @18%**

## 8. Supply of services even by unincorporated association to its members for consideration is supply under GST

Case Name : **In re Gujarat Hira Bourse (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/52/2021
Date of Judgement/Order : 15/09/2021

Supply of services even by unincorporated association to its members for consideration is supply under GST Scheme of law, as enacted by Competent legislature. Thus GHB reliance on Service tax era case law is misplaced in the subject matter. Even if we want to delve into the provision Section 7(1)(aa) CGST Act, which reads as: the activities or transactions, by a person, other than an individual, to its members or constituents or vice cersa, for cash, deferred payment or other valuable consideration is Supply. So what we find is, with this new insertion of clause (aa), the Pre Budget 2021 status of section 7(1) and post budget status of Section 7(1) CGST Act has not undergone change, but the said provision of law has been fortified and clarified even further.

## 9. Cotton Stored by CCI in Warehouses taxable @ 18% GST

Case Name : **In re Kakkirala Ramesh (GST AAR Tealangana)**
Appeal Number : Advance Ruling No. TSAAR Order No. 10/2021
Date of Judgement/Order : 20/09/2021

**Appellant** has sought an advance ruling on whether the Godown Rent collected from the Cotton Corporation of India **(CCI)** is exempted as per the ***Notification 21/2019 – Central Tax (Rate) (NN. 21/2019)*** dated September 30, 2019 read with the ***Circular No.16/16/2017-GST dated November 15, 2017 .***

The Honorable Telangana State Authority of Advance Ruling **("AAR")** noted that the CCI has purchased raw cotton from farmers in the primary market and then processed it in ginning mills on a job work basis. CCI has paid tax on ginning and pressing to the ginning mills as it cannot claim exemption under Entry 24 of the modified ***Notification***

***No. 11/2017 – Central Tax (Rate)*** **dated October 13, 2017** (**NN 11/2017)**. This processing is not meant for the primary market and hence It cannot be treated as raw cotton. Therefore it cannot be claimed that the cotton stored by CCI in the warehouses of the applicant falls under Entry 24B of NN 21/2019.

***"The warehousing services rendered by the applicant to CCI do not fall under Entry 24B NN 21/2019 and hence are taxable at the rate of 9% under CGST and SGST each,"*** the AAR said.

## 10. Crumb rubber/granule is classifiable under Heading 4004

Case Name : **In re Green Rubber Crumb Private Ltd. (GST AAR Maharashtra)**
Appeal Number : GST-ARA, Application No. 70/2019-20/B-62
Date of Judgement/Order : 22/09/2021

The applicant is producing crumb rubber/granules from used/waste tyres and has submitted during the course of the hearing that, the waste/used tyres are not usable because they are worn our tyres due to wear and tear. In view of the above discussions, we find that the used/ waste tyres, made of rubber are nothing but rubber and rubber goods not usable as such because of cutting up, wear or other reasons' from which the subject goods are produced. Thus the impugned goods are squarely covered under the Heading 40.04 of the GST Tariff Act, 2017.

Relevant provision of the GST Tariff is reproduced as under: –

| Tariff Item | Description of goods | Unit | CGST | SGST/UTGST | IGST |
|---|---|---|---|---|---|
| 4004 00 00 | Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom | Kgs | 5% IGST/2.5% CGST /2.5% SGST or UTGST : 4004 00 00: Waste, parings and scrap of rubber (other than hard rubber) 18% I GST/9% CGST 19% SGST or UTGST : 4004 00 00: Powders and granules obtained from waste, parings and scrap of rubber (other than hard rubber) 2.5/9% 2.5/9% 5/18% | | |

From the above table, it is clearly seen that Powders and granules obtained from waste, parings and scrap of rubber (other than hard rubber), in this case used tyres, are covered under Tariff Heading 4004 00 00 and attract 18% IGST or 9% each of CGST/SGST or UTGST.

In view of the above, we hold that the subject product namely; crumb rubber/granules falls under Heading 4004 of the GST Tariff thus attracting GST @ 18%.

## 11. GST registration not mandated if supplies not liable to tax or exempt

Case Name : **In re Mekorot Development & Enterprise Ltd (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA- 71/2019-20/B-60
Date of Judgement/Order : 22/09/2021

As per Section 23 (1) (a) of the **Central Goods and Services Tax Act, 2017**, any person engaged exclusively in the supplying of goods or services or both that are not liable to tax or wholly exempt from tax under this act or under the **IGST Act, 2017** is not liable for registration.

Thus the applicant would be liable to obtain GST registration only if it supplies taxable good or services or both, in view of Section 22(1) mentioned above and in view of Section 23 (1) (a), no registration is required to be obtained by the applicant when it exclusively supplies goods or services or both that arc not liable to tax or wholly exempt from tax under the CGST Act, 2017 or under the IGST Act, 2017.

The applicant has submitted that it may not be mandated to take GST registration based on the contract with MJP, since the services rendered are Exempt service.

We agree with the applicant that it is not mandated to take GST registration based on the contract with MJP, since the services rendered are Exempt service. However, there is nothing forthcoming in the application made by the applicant that they are only rendering services to MJP, under the impugned contract, which has been held to be exempt under the provisions of Notification 12/2017 mentioned above and not supplying any other taxable goods or services or both. However, other than the exempt services supplied under the impugned contract with MJP, if the applicant is engaged in supply of any taxable supply of goods or services or both, then the provisions of Section 22 of the CGST Act would come into play and it would be liable to obtain registration on attaining/crossing the threshold limit mentioned under Section 22 of the CGST Act, 2017.

## 12. Supply of 'Tertiary Treated water' to NMC is 'taxable supply'

Case Name : **In re Nagpur Waste Water Management Pvt Ltd (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA- 76/2020-21/B-63
Date of Judgement/Order : 24/09/2021

**Question 1: –** Whether the Royalty paid or payable by the applicant to Nagpur Municipal Corporation (NMC) for supplying '**Tertiary Treated Water'** to Mahagenco, by treating the Sewage Water supplied by NMC is liable to tax under the GST Law?

**Answer: –** Answered in the affirmative.

**Question 2:-** If yes, whether the tax is to be paid by NMC under forward charge or same is to be paid by the applicant under reverse charge?

**Answer: –** The taxes are to be paid by the applicant under reverse charge basis (RCM). NMC is not liable to pay taxes on the subject transaction as discussed in present order.

**Question 3:-** If tax is to be paid, then whether the applicant would be entitled for Input Tax Credit?

**Answer:-** ITC would be available to the applicant subject to fulfillment of the conditions mentioned under sections 16 to 21 of CGST/MGST ACT, 2017 .

## 13. Aluminium Composite Panel/Sheet is covered under HSN Code 7606

Case Name : **In re Aludecor Lamination Private Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-78/2019-20/B-67
Date of Judgement/Order : 30/09/2021

**Question a.** Whether the Aluminium Composite Panel/sheet is covered under: HSN Code 3920 or HSN Code 7606 or HSN Code 7610?

**Answer:-** In view of the above discussions, the Aluminium Composite Panel/Sheet is covered under HSN Code 7606.

**Question b.** And what is the rate of tax on the same under SGST Act and CGST Act respectively. ?

**Answer:-** The rate of tax on Aluminium Composite Panel/Sheet 18% (9% each under CGST and SGST)

## 14. Supply of cooking gas via pipeline with Maintenance Service is Composite Supply

Case Name : **In re Masterly Kolkata Facility Maintenance Pvt Ltd. (GST AAR West Bengal)**
Appeal Number : Order No. 12/WBAAR/2021-22
Date of Judgement/Order : 30/09/2021

**Whether supply of cooking gas through pipeline as provided by the applicant should be classified as supply of goods or supply of services.**

It is submitted by the applicant that the apartment owners are at liberty either to get the supply of cooking gas through the applicant or they may procure on their own. However, the applicant has not furnished any document in support of such submission. It is, therefore, not clear to us whether an apartment owner has to enter into a separate agreement/contract with the applicant for procuring pipeline gas supply. The applicant has not furnished any documents before us regarding terms and conditions towards supply of gas through pipeline and whether the applicant has to follow any guidelines issued by the appropriate authority for supply of gas through pipeline.

We therefore observe that in the instant case, the applicant is providing facility and property management services to each and every apartment owner of the project. This service includes maintenance and repair services related to supply of cooking gas through pipeline and is also applicable to the apartment owner who is not availing the pipeline gas supply. So, when an apartment owner intends to get supply of cooking gas through pipeline, she/he will be provided the same along with the services for which she/he has already been paying to the applicant. So, supply of cooking gas through pipeline is inextricably linked with facility and property management services as provided by the applicant.

It therefore follows that in spite of issuance of separate invoices as "GAS CHARGES BILL" for consumption of gas, supply of gas through pipeline is found to be naturally bundled with facility and property management services and are supplied in conjunction with each other. The instant supply, therefore, shall be treated as "composite supply" as defined under clause (30) of section 2 of the GST Act where the principal supply is facility and management services.

## 15. GST on Supply of unconnected goods at nominal price against purchase of hosiery goods

Case Name : **In re Kanahiya Realty Private Limited (GST AAR West Bengal)**
Appeal Number : Order No. 11/WBAAR/2021-22
Date of Judgement/Order : 30/09/2021

(i) Supply of goods at nominal price to retailers against purchase of specified units of hosiery goods pursuant to a promotional scheme would qualify as individual supplies taxable at the rates applicable to each of such goods as per section 9 of the GST Act.

(ii) Credit of the input tax paid on the items being sold at nominal prices would be available to the applicant.

## 16. GST: AAR explains when definition of 'affordable residential apartment' not applies

Case Name : **In re Pioneer Associates (GST AAR West Bengal)**
Appeal Number : Order No. 10/WBAAR/2021-22
Date of Judgement/Order : 30/09/2021

**Whether the definition of 'affordable residential apartment' is applicable in respect of flats (having carpet area of 60 sqm and value up to Rs. 45 lacs) of an ongoing projects and tax can be collected @ 8% on all advances received after 01.04.2019.**

The definition of "affordable residential apartment" is not applicable in respect of flats having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount

charged is not more than forty five lakhs rupees, in an ongoing project in respect of which the promoter has exercised option to pay tax at old GST rates.

Where a promoter exercises option in Annexure-IV to pay tax at the rate as specified for item (ie) or (if) against serial number 3 of the **Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019** , there is no scope to pay tax at a reduced rate of 1% or 5% (effective rate), as the case may.

## 17. Manpower services: GST payable on entire billing amount inclusive of EPF & ESI etc.

Case Name : **In re Exservicemen Resettlement Society (GST AAR West Bengal)**
Appeal Number : Order No. 09/WBAAR/2021-22
Date of Judgement/Order : 30/09/2021

### GST is payable on complete billing amount including employer portion of EPF & ESI Amount

West Bengal Authority for Advance Ruling has held that GST is payable on the entire billing amount, including the Employer's contribution of Employees Provident Fund (**EPF**) or Employee State Insurance (**ESI**), if any, falling within the complete billing amount.

### Facts:

Ex-servicemen Resettlement Society (**"Applicant"**) is a registered society providing security services and scavenging services (Karma Bandhus) to different Medical Colleges & Hospitals.

As per labor laws of the Government of West Bengal, the Applicant claims Minimum Wage + Employer Portion of 13% EPF plus 3.25% ESI and charges tax at the rate of 18% leviable under the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) on gross bill amount in every month for providing said services to the Government Hospitals.

The Audit Authority (Indian Audit and Accounts Department, West Bengal) in course of audit of Bankura Sammilani Medical College and Hospitals has raised the objection of excess payment of GST upon the observation that 'GST' must be payable only on Management Fees/Services Charges.

The Applicant has sought the advance ruling on whether employer portion of EPF and ESI amount of the bill are exempted for paying GST.

### Issues:

1. Whether GST to be payable on Management Fee/Administrative charges only or otherwise complete billing amount?

2. Whether employer portion of EPF & ESI amount of the bill are exempted for paying GST?

**Held:**

The West Bengal Authority for Advance Ruling in the matter of ***Order no. 09/WBAAR/ 2021-22 dated 30/09/2021*** held as under:

- That sub-section (2) of Section 15 of the CGST Act clearly specifies the elements that will form a part of value of supply, sub-section (3) of Section 15 of the CGST Act excludes the elements that are not to be included in the value of supply.
- The EPF and ESI contributions by the Employer do not fall within the exclusions defined under sub-section (3) of Section 15 ibid.
- Therefore, no room is left to deduct any amount like management fee, employer portion of EPF and ESI for the purpose of determination of value of supply under Section 15 of the CGST Act meaning thereby in the instant case, tax is leviable under Section 9 of the CGST Act on the entire billing amount.
- Hence, ESI and EPF contributions of the Employer, if any, enumerated in the billing amount are not exempted from GST. The entire billing amount shall be deemed to be the value of supply.

**Relevant provisions:**

**Section 15 of the CGST Act:**

"*15. Value of taxable supply.*

*(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

*(2) The value of supply shall include—*

*(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

*(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

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

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

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

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

*(3) The value of the supply shall not include any discount which is given—*

*(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*

*(b) after the supply has been effected, if—*

*(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*

*(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply*."

# (VIII) COURT ORDERS/ JUDGEMENTS

## 1. Sale not become intra-State when Assembly of Parts was within state which were brought from other states

Case Name : **Larsen & Toubro Ltd. Vs State of Orissa (Orissa High Court)**
Appeal Number : STREV No.469 of 2008
Date of Judgement/Order : 01/09/2021

As far as the present case is concerned, merely because the component parts were brought from different places outside Orissa and assembled in Orissa, it cannot be said that it was an intra-State sale and that a colourable device was deployed to avoid paying sales tax under the OST Act. This is contrary to the facts. The documents placed on record clearly show that components either manufactured in the Petitioner's own facilities outside Orissa or brought from outside Orissa were transported to Orissa for erection, testing and commissioning of the 100 TPD Rotary Kiln.

There was no occasion for the Tribunal to have gone into a lengthy discussion whether it amounted to a works contract when the focus ought to have been on whether it was an intra-State sale as contended by the State. The goods were indeed supplied in course of inter-State rate, and received by TRL in Orissa. The movement of the goods originated from outside the State. This was not an intra-Sate sale by any stretch of imagination.

Consequently, the Court is unable to agree with the conclusion reached by the authorities at all levels, i.e., STO, ACST and the Tribunal and accordingly all their orders in this regard are hereby set aside. Question No.1 is answered in the negative by holding that the Full Bench of the Tribunal erred in treating the transactions as intra-State sales despite those transactions having been exigible under Section 6(2) of the CST Act.

## 2. GST: Scope of Section 6(2)(b) & Section 70 is different & distinct

Case Name : **Kuppan Gounder P. G. Natarajan Vs Directorate General of GST Intelligence (Madras High Court)**
Appeal Number : W.A. No. 2003 of 2021
Date of Judgement/Order : 01/09/2021

Appellant submitted that the State authority has conducted the search and seizure operations and summons had been issued, order of provisional attachment had been passed and in such situation, the respondent cannot initiate any action and issue summons under Section 70 of the CGST Act and the summons is barred as per the provisions of Section 6(2)(b) of the CGST Act.

We need to take note of the word "inquiry" occurring in Section 70 of the **CGST Act** and the proper officer has power to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in any inquiry, in the same manner, as provided in the case of a Civil Court. The bar

contained under Section 6(2)(b) of the CGST Act is with regard to any proceedings initiated by a proper officer on a subject matter, on the same subject-matter, the proper officer under the Central Act cannot initiate any action referred.

In our considered view, the scope of Section 6(2)(b) and Section 70 is different and distinct, as the former deals with any "proceedings on a subject matter/same subject matter" whereas, Section 70 deals with power to summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the respondent to invoke the power under Section 70 of the CGST Act.

## 3. Right to avail Transitional Credit not affected due to amendment prescribing ITC time limit

Case Name : **Micromax Informatics Ltd Vs Union of India (Delhi High Court)**
Appeal Number : W.P.(C) 8026/2021
Date of Judgement/Order : 02/09/2021

Micromax Informatics Ltd **(Petitioner)** who is seeking the benefit of Transitional Credit has filed the current petition by challenging the retrospective amendment brought forth vide **Notification No. 43/2020 – Central Tax dated May 16, 2020** which notified changes made vide Section 128 of the Finance Act, 2020 in the Section 140 of the Central Goods and Services Tax Act, 2017 **(CGST Act)** by prescribing time limit for taking the Input Tax Credit **(ITC).**

Section 140 of the CGST Act mentions provisions relating to Transitional Arrangements from Central Value Added Tax **("CENVAT")** regime to the current regime of Goods and Services Tax **("GST")** to avail ITC. A detailed judgment in ***WP(C) No. 196/2019 dated May 5, 2020,*** the petition of which was filed by the Petitioner in the current petition held Rule 117 of **Central Goods and Services Tax Rules, 2017** (**"CGST Rules"**) which prescribes a time limit of 90 days to avail ITC which can be extended further for a period not exceeding 90 days- is directory in nature. A Special Leave Petition ***SLP (C) No.7425-7428/2020*** against this judgment is pending before the Hon'ble Supreme Court on the ground of the judgment being negated by the amendment in Section 140 of the CGST Act.

The Petitioner relies on the judgment of ***SKH Sheet Metals Components vs. UOI [2020 (38) GSTL 592]*** wherein the Hon'ble Delhi High Court held that neither the CGST Act nor CGST Rules provides any consequence in case of non-compliance of Section 140 f the CGST Act as well as Rule 117 of the CGST Rules. Since there is no indication to that effect, the provisions are to be seen as directory and not mandatory.

The Hon'ble Delhi High Court in the current matter acknowledged the judgment of ***SKH Sheet Metals Components (supra)*** provided in support of the arguments by Petitioner by holding that this judgment covers the issue in hand.

Held, the amendment of Section 140 of the CGST Act does not affect the right of Petitioner to claim transitional credit and it would be unnecessary to deal with the Constitutional challenge to it. Further, noted the Petitioner is at the liberty to apply for

Transitional Credit subject to the further order from the Hon'ble Supreme Court in ***SLP (C) No.7425-7428/2020 (supra)***.

## 4. Gauhati HC ruling on refund of accumulated ITC in case of inverted duty

Case Name : **BMG Informatics Pvt Ltd Vs Union of India (Gauhati High Cour)**
Appeal Number : Case No. : WP(C)/3878/2021
Date of Judgement/Order : 02/09/2021

In an important decision given by Justice A.M Bujor Barua of the Gauhati High Court in the case of W.P (C) 3880/2021 3878/2021 3675/2021 4120/2021 (BMG Informatics Pvt. Ltd. vs. Union of India) the Court as held that the circular no. CBEC-20/01/06/2019-GST dated 31.03.2020 issued by the Ministry of Finance, Department of Revenue, Government of India whereby it was held that the refund of accumulated ITC under clause (ii) of sub section (3) of section 54 of the CGST Act would not be applicable in cases where input and output supplies are same was in clear conflict with the provisions of section 54 of the Act and thereby same has to be ignored. Court has held that the refund of inverted duty shall be available when the duty on inward supply is higher than on outward supply and while determining the rate of duty on outward supply the partial exemption granted under section 11 of the Act has to be taken into consideration. Arguing counsel was Sr. Advocate Dr.Ashok Saraf, Guwahati for the petitioners.

## 5. TNVAT payable On Sale of Electronically Made Indian Musical Instruments

Case Name : **Radel Electronics Pvt. Ltd. Vs Government of Tamil Nadu (Madras High Court)**
Appeal Number : W.P.Nos.16595 to 16598 of 2008
Date of Judgement/Order : 03/09/2021

State has not intended to grant exemption in respect of large scale manufacturers of electrically made Indian Musical Instruments. Such Indian Musical Instruments, which all are using the electronic technologies, then it is to be classified as electronic instruments, which would squarely fall under 14(iv) of Part D of the First Schedule of TNGST Act,

This apart, when tax liability is fixed for electronic instruments, it is to be construed that Indian Musical Instruments electrically manufactured is to be classified as electronic instruments.

At the outset, whether it is Indian Musical Instruments or any other instruments, if it is an electronic instrument, then the same would fall under the further classification of "electrical instruments" and cannot be construed as traditionally manufactured Indian Musical Instruments, for which exemption was granted with the specific intention to grant the relief to poor artisans, who all are engaged in the manufacturing of these

instruments from generation to generation and living in penurious circumstances in the State.

Tax exemption is a concession. Thus, exemption from payment of tax can never be claimed as a matter of right. Exemptions are to be granted strictly in consonance with the provisions of the Act. Thus, purposive and contextual interpretation of exemption provisions are imminent for the purpose of extending the benefit of exemption. The Government is vested with the power to grant exemption and such exemptions are to be granted in judicious manner. Power of exemption is conferred in order to minimise the inequality and to mitigate the unjust circumstances and to ensure that the Constitutional principles are achieved to the extent possible. Thus, exemptions granted under any Statute is to be measured with reference to the Constitutional principles and its perspectives. Excessive or erroneous exercise of power of exemption undoubtedly would lead to unconstitutionality. The State is duty bound to ensure that exemptions are granted to mitigate the unjust circumstances and to remove the injustice in a particular issue. Thus, exemptions cannot be granted in a routine manner, so as to facilitate the large scale manufacturers to gain profits in an unjust manner. The Legislative intention of conferring power of exemption to the Government is to enforce the Constitutional principles of social justice equality in status amongst the citizen, including the economic status, which all are to be achieved. The power of exemption is to be utilised for the up-liftment of the depressed, oppressed and the poor class of people and not for the purpose of granting benefit to the large profit making organisations. Thus, any abuse or excessive grant of exemption is to be construed as opposed to public policy under the Constitutional philosophy.

The very Government Notification dated12.2006 in G.O.Ms.No.193 would reveal that it is also relatable to Indian Musical Instruments and what are all the instruments, which all are falling under the category are enumerated for the purpose of removing the doubts for levying tax.

For all these reasons the writ petitions are devoid of merits and stand dismissed.

## 6. SC explains when HC can entertain writ petition under Article 226

Case Name : **Assistant Commissioner of State Tax and Others Vs Commercial Steel Limited (Supreme Court)**
Appeal Number : Civil Appeal No 5121 of 2021
Date of Judgement/Order : 03/09/2021

In this case respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

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

In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed.

## 7. Bombay High Court allowed Manual Filing of TRANS-1 FORM

Case Name : **Gayatri Agro Agencies Vs Union of India and Ors. (Bombay High Court)**
Appeal Number : Writ Petition No. 5878 of 2020
Date of Judgement/Order : 07/09/2021

Para 13 We permit the petitioner to tender the revised form GST TRAN-1, online as well as by tendering a copy manually to respondent No.4 within two (2) weeks' time. We are permitting the petitioner to submit the revised form manually, in view of the judgment delivered by the Division Bench of the Punjab and Haryana High Court in **Adfert Technologies Pvt. Ltd. Vs. Union of India 2019 SCC Online P & H 5701** and the judgment delivered by the learned Division Bench of the Gujarat High Court in **Siddharth Enterprises Vs. The Nodal Officer, 2019 (29) G.S.T.L. 664.** Needless to state, respondent No.4 would decide the revised form filed by the petitioner online / manually in accordance with the procedure as is prescribed.

## 8. Karnataka High Court quashes Provisional Attachment of Bank Accounts under GST

Case Name : **Sterne India Pvt. Ltd. Vs Union of India (Karnataka High Court)**
Appeal Number : Writ Petition No. 12875 of 2020 (T-RES)
Date of Judgement/Order : 08/09/2021

Karnataka High Court quashes Provisional Attachment of Bank Accounts under GST In the matter of **Sterne India Pvt. Ltd. Vs Union of India and others, Writ Petition no. 12875/2020 vide its judgment dated** 08.09.2021. Advocate for the Petitioner was Sh. Dharmendra Kumar Rana.

**GST Sections/Rules:** Section 74 **CGST Act, 2017 ,** Section 83 CGST Act, 2017, Section 107 CGST Act, 2017 and Rule 159(5) of **CGST Rules, 2017**

**Fact of the case in a brief:**

The petitioner, Sterne India Pvt. Ltd. is stated to be a Company registered under the Karnataka Goods and Service Tax Act, 2017 and engaged in the Business to Business (B2B) e-commerce trading in 'white goods' including mobile handsets. It is made out in the petition that the respondent was conducting a certain investigation in respect of M/s. Pal Overseas, a registered entity under the GST Act and also as regards other entities relating to the alleged issuance of bogus/fake invoices without a supply of goods and were seeking to claim Input Tax Credit of Goods and Service Tax. It is stated that the petitioner was purchasing the mobile handsets from these suppliers and was selling them to its customers. The Respondent No. 2 on 02.09.2020 conducted a search at the head office of the petitioner. The Respondent no. 2 attached the bank account of the petitioner in exercise of power under section 83 of the Central Goods & Service Tax Act, 2017.

The counsel for the petitioner submitted that the said factum of provisional attachment of the bank account was learned by the petitioner only from their banker. It is further submitted that the necessary representation came to be made by the petitioner in terms of Rule 159(5) of the CGST Rules seeking the release of attachment and de-freezing of bank accounts, but such request was neither considered nor any order was passed as required under the applicable Rules.

Judgment referred: **Radha Krishan Industries V State of Himachal Pradesh and others reported in (2021)** SCC Online SC 334

**Decision of the Hon'ble Court:** Quashed Provisional Attachment of Bank Accounts by making the following observations:

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"31. In the present case, it must be noticed that the taxable entity to which the proceedings were taken out is an entity other than the petitioner and in the context of which search has been conducted with respect to the petitioner. Admittedly, no proceedings have been initiated under Section 74 of CGST Act as against the petitioner till date. What must also be noticed is that though the statement of objections of the respondent Authority seeks to make out a case that the proceedings under Section 74 of CGST Act are sought to be instituted and in the context of which the provisional attachment under Section 83 of CGST Act is resorted to, the impending proceedings under Section 74 of the CGST Act cannot be a ground to exercise power under Section 83 for the provisional attachment. If the only ground made out in the statement objections and the very order of attachment at Annexure-A is the proceedings under Section 74 of the CGST Act, even if there are other proceedings that may be considered to be pending against the petitioner as long as the proceedings under Section 74 are not initiated by issuing a show-cause notice, the order of attachment purportedly relating to the proceedings under Section 74 cannot be upheld. The respondent Authority cannot be permitted to contend that any other proceedings contemplated under Section 83 of CGST Act have been initiated, as it is made out in the provisional order of attachment enclosed at Annexure-A that proceedings have been initiated under Section 74 of the CGST Act. Any exercise of

power as may be permitted statutorily which has an adverse consequence on the petitioner, would have to be strictly construed.

32. Insofar as the contention of learned counsel for the Revenue that reasonable belief under Section 83 of CGST Act can be stated to have been fulfilled in light of the non-adherence to the statement stated to have been made before the Authorities committing to reverse the Input Tax Credit and pay the amount cannot be accepted, as opinion of the Commissioner as contemplated under Section 83 of CGST Act is that the provisional attachment of property, including the bank account is necessary for protecting the interests of Government Revenue. Such opinion must be reflected in some proceedings, which proceedings are also not placed before this Court.

33. In light of wide discretion granted to the Commissioner for formation of an opinion, greater the power and wider the discretion, the same is to be exercised with greater circumspection. If power is sought to be exercised, it has to be on the basis of substantive material, which is absent in the present case. The contention of learned counsel for the Revenue regarding the statements made by the representative of petitioner Company forming necessary basis for formation of an opinion of the Commissioner cannot be accepted, as the formation of the Commissioner's opinion must be reflected in some proceedings and no such proceedings are placed before this court.

34. Also taking note of the law laid down in the case of Radha Krishan Industries (supra), no case is made out for upholding the provisional order of attachment.

35. The statement of learned counsel for the petitioner to the effect that, if any order is passed under Section 74 of CGST Act, in light of the requirement while considering grant of stay under Section 107 of CGST Act, the petitioner is obligated to pay 10% of the disputed tax amount and would be made good when the order under Section 74 of CGST Act is passed, is placed on record. Learned counsel for the petitioner further submits that the petitioner would co-operate with the respondent Authorities in the investigation.

36. In light of the discussion as above, the point for consideration is answered in the affirmative. Accordingly the petition is allowed and the order at Annexure-A dated 21.09.2020 is set aside. It is open to the respondent No.2 in light of the order passed, to issue necessary communication to the respondent Bank forthwith to lift the attachment, more so, in light of the period of one year as contemplated under Section 83(2) of the CGST Act coming to an end on 21.09.2021."

## 9. Assertions can't be verified in absence of documents like shipping bills for GST refund

Case Name : **UPS Inverter.Com & Anr. Vs Union of India & Anr. (Delhi High Court)**
Appeal Number : W.P. (C) No. 4284/2021
Date of Judgement/Order : 09/09/2021

***UPS INVERTER.COM* (Petitioner)** filed petition for the grant of refund of IGST paid on goods exported by the Petitioner during the Transitional Period.

Factually, the Petitioners is the exporter of inverters, transformers, and allied products and in the course of their business, between the transitional period of the pre and post GST Regime, they had made various exports falling under Tariff Item 8504 of the **Notification No. 13/2016-Cus. (N.T.) ("Customs Non-Tariff Notification")** dated October 31, 2016 (as amended by **Notification No. 41/2017-Cus.(N.T.) ("Customs Non-Tariff Notification")** (Drawback Schedule) on the payment of Integrated Goods and Services Tax (IGST). The Drawback schedule prescribed identical rates of Duty Drawback under Column 'A' as well as Column 'B' for the said tariff Order.

Since there were no guidelines from the GST or Customs department in respect of procedure to be followed in such cases, the Petitioner had claimed drawback under Column 'A' instead of under Column 'B'. Then, by **Circular No. 37/2018-Customs dated October 09, 2018** the Tax authority **(Respondents)** have denied the refund of IGST on the ground that the exporters having filed the declarations voluntarily are deemed to have consciously relinquished their IGST/ITC claims

The Petitioners states that the issue raised in the present petition is squarely covered by the judgment of Delhi High Court in ***TMA International Pvt. Ltd. & Ors. v. Union of India & Anr*.** Wherein it was held that if the Petitioner have claimed and received only the customs duty portion of the drawback and element of IGST (earlier Central Excise Duty and Service Tax) was not included in the drawback rate, granting of IGST refund would not result in double neutralization of input taxes. The Respondents have also never intended to deny a refund of IGST paid on export in cases where only custom components were claimed as drawbacks.

On the other hand, the Respondents submitted that the present petition does not implement the jurisdictional authority that who has to verify the claim of the Petitioner. He further submits that the Petitioner have also not enclosed the relevant documents in the form of shipping bills for which the refund is claimed. He submits that in absence of these documents, the assertions made by the petitioner cannot be verified.

The Hon'ble Delhi High Court relied upon its own judgment in the case ***TMA International Pvt. Ltd. & Ors. v. Union of India & Anr***

Directed:

- The Respondents to carry out verification exercise of the claim made by the Petitioner within 12 weeks from today and submit a report to the Court.
- The Petitioner shall be at liberty to file the relevant documents as may be called for by the jurisdictional authority in support of its claim.
- In case the Respondents find the claim of the Petitioner to be correct, the refund shall be processed by the Respondents without awaiting further orders from this Court in accordance with the law.

## 10. Madras HC stays GST exemption on RWA contributions

Case Name : **Union of India Vs TVH Lumbini Square Owners Association (Madras High Court)**
Appeal Number : W. A. Nos. 2318 and 2321 of 2021 and C.M.P.Nos.14700 and 14708 of 2021
Date of Judgement/Order : 09/09/2021

1. Madras High Court stays single-Judge ruling on GST exemption for RWA contributions upto ₹ 7,500. No exemption is applicable when the monthly contribution exceeds ₹ 7,500, the Centre told the Court.

2. The Court said that there is a legal issue that needs to be decided since the single-judge had also quashed the circular issued by the Revenue Department in the matter, which needs verification.

3. "Since the circular has wider ramification, that portion of the order passed in the writ petitions, shall remain stayed until further orders," the Division Bench further ordered.

4. The Court admitted the appeal on September 9 and posted the matter for further hearing on December 9, 2021.

## 11. GST registration cancellation for work from Home; Pass reasoned & Speaking order: HC

Case Name : **International Value Retail Private Limited Vs. Union of India & Ors (Calcutta High Court)**
Appeal Number : WPA 11147 of 2020
Date of Judgement/Order : 10/09/2021

**Quashed GST registration cancellation order and directed Department to consider the case afresh**

***T***he current petition has been filed by International Value Retail Private Limited **(Petitioner)** challenging the Show Cause Notice **(SCN)** and final Adjudication Order of Rejection dated September 29, 2020 (**Impugned order**) which rejected the application of the Petitioner for revocation of cancellation of its Goods and Services Tax **(GST)** registration.

The Impugned order is being challenged on the ground that the same is perverse and also there has been non consideration of relevant documents of the Petitioner regarding the Petitioner's principal place of business and it was only due to the extraordinary circumstances of Covid-19, it was for a temporary period that the Petitioner was not carrying his business from officially registered premises but was carrying business operations from home.

The Hon'ble Calcutta High Court quashed the Impugned order by directing the Department to consider the case of the Petitioner afresh. Further, it directed the Department to dispose the Petitioner's application for revocation of cancellation of its

GST Registration in accordance with law and giving the Petitioner a hearing opportunity within four weeks from the date of communication of the current order.

Also ordered the Department to consider the documents placed by the Petitioner in support of the contentions put forth during the time of fresh hearing. Observed that this Hon'ble High Court is not inclined to make any comment with regards to carrying of Petitioner's business from the new premises since it is not the subject matter of the current writ petition.

## 12. GST: HC releases vehicle & Goods confiscated on mere suspicion

Case Name : **A.P. Refinery Pvt. Ltd Vs State of Uttarakhand And Others (Uttarakhand High Court)**
Appeal Number : Writ Petition (M/S) No. 1014 of 2021
Date of Judgement/Order : 10/09/2021

**Conclusion:** The Court ordered the release of Vehicle, mango kernel oil, mahua oil, rice bran oil confiscated under section 130 of CGST Act, 2017 as mere suspicion was not sufficient to invoke the provision of the confiscation.

**Held:** In the present case, assessee-company was transporting Rice Bran Oil from its factory located in Punjab to a dealer , namely M/s S in the State of Uttarakhand. It was transporting the said consignment of Rice Bran Oil through three trucks bearing Registration Nos. In order to transport the consignment, assessee raised three e-Invoices. According to assessee, the moment the e-Invoices were generated on the portal of the department, the transaction immediately got reflected, and accounted for with the department. Moreover, assessee generated e-Way bills from the e-Way portal of the department. These e-Way bills contained cross-references to the e-Invoices which were to expire on 30.03.2021. Since the e-Way bills had expired within three days, the Assistant Commissioner (GST-State), issued three separate orders for physical verification/inspection of the consignment. Upon physical verification, the description on the e-Invoices was found to be matching with the physical goods verified in the vehicle, namely fixed vegetable oils of vegetable grade i.e. mango kernel oil, mahua oil, and rice bran oil. Despite the fact that there was no discrepancy, still the officers ordered the detention of the goods, and of the trucks for further proceedings. According to the department, the show-cause notices were issued ostensibly on the ground that "the e-Way Bills had expired". It was held that mere suspicion was not sufficient to invoke the provision of the confiscation. Moreover, assessee should be given an opportunity of being heard according to the intent of the Legislature before passing the confiscation order as mentioned in sub-section (4) of Section 130. However, the department had completely failed to show that assessee was indeed, given an opportunity of being heard before the passing the orders of the confiscation in Form GST MOV-11. The confiscation orders passed under Section 130 in Form GST MOV-11, were not found to be passed in accordance with law. Therefore, the impugned orders were liable to be quashed and set aside.

## 13. SC upheld CGST rule 89(5) validity

Case Name : **Union of India & Ors. Vs VKC Footsteps India Pvt Ltd. (Supreme Court of India)**
Appeal Number : Civil Appeal No 4810 of 2021
Date of Judgement/Order : 13/09/2021

The Apex Court Sets aside the order of Gujarat HC and upheld the order of Madras HC. Although the Hon'ble Court has noted some anomalies and suggested the GST Council to look into the same.

**Background:**

**(Gujarat High Court)**

The Division Bench of the Gujarat High Court having examined the provisions of Section 54(3) and Rule 89(5) held that the latter was ultra vires. In its decision in **VKC Footsteps India Pvt. Ltd. Vs. Union of India** (supra), the Gujarat High Court held that by prescribing a formula in sub-Rule (5) of Rule 89 of the CGST Rules to execute refund of unutilized ITC accumulated on account of input services, the delegate of the legislature had acted contrary to the provisions of sub-Section (3) of Section 54 of the CGST Act which provides for a claim of refund of any unutilized ITC. The Gujarat High Court noted the definition of ITC in Section 2(62) and held that Rule 89(5) by restricting the refund only to input goods had acted ultra vires Section 54(3).

The Division Bench of the Madras High Court on the other hand while delivering its judgment in **Tvl. Transtonnelstory Afcons Joint Venture** (supra) declined to follow the view of the Gujarat High Court noting that the proviso to Section 54(3) and, more significantly, its implications do not appear to have been taken into consideration in VKC Footsteps India Pvt. Ltd. (supra) except for a brief reference.

**Held by Supreme Court**

Having considered this batch of appeals, and for the reasons which have been adduced in this judgment, we affirm the view of the Madras High Court and disapprove of the view of the Gujarat High Court. We accordingly order and direct that:

(i) The appeals 55 filed by the Union of India against the judgment of the Gujarat High Court dated 4 July 2020 in VKC Footsteps India Pvt. Ltd. (supra) and connected cases are allowed and the judgment shall be set aside;

(ii) The appeals 56 filed by the assessees against the judgment of the Madras High Court in Tvl. Transtonnelstroy Afcons Joint Venture (supra) and connected cases dated 21 September 2020 shall stand dismissed. As a consequence, the writ petition filed by the assessees shall also stand dismissed. There shall no order as to costs; and

(iii) The observations in paragraphs 104 to 111 shall be considered by the GST Council to enable it to take a considered view in accordance with law.

## 14. Rule 86A provides for Interim restriction of attachment, bi-parte hearing order should be passed to make it permanent

Case Name : **Sahil Enterprises Vs Union of India (Tripura High Court)**
Appeal Number : IA No.1/2021 with WP(C) No.531/2021
Date of Judgement/Order : 14/09/2021

In ***M/s Sahil Enterprises. v. Union of India. [IA No.1/2021 with WP(C) No.531/2021 dated September 14, 2021]***, M/s Sahil Enterprises **(Petitioner)** has filed the current application seeking interim relief for removing the provisional attachment which was ordered by the Commissioner of Central Goods and Services Tax, under Rule 86A of **Central Goods and Service Tax Rules, 2017 (CGST Rules)** vide Order dated May 21, 2020.

The Petitioner contends that as per Rule 86A of the CGST Rules, attachment of a ledger account can be made only for a period of one year and no more. Such order in the case of Petitioner was ordered on May 21, 2020 which has exceeded the time limit as per the provision.

The Respondent opposing the application contended that the Petitioner claimed tax credit without actually depositing the tax with the Government Revenue. To safeguard the interest of the Revenue, the Commissioner resorted to exercising powers under Rule 86A of the CGST Rules.

The Hon'ble Tripura High Court analyzing Rule 86A observed that the restrictions which can be imposed for use of amount in Electronic Credit ledger can only be by way of temporary measure which should not exceed a period of one year. This decision to impose such restriction is an interim measure and cannot thus take the shape of a permanent arrangement.

Further noted, if the Department wants to permanently disallow credit of accumulated amount in the ledger of a dealer, it must adjudicate the issue and pass an order after bi- parte hearing. There are two things which noteworthy to mention in Rule 86A(3) of the CGST Rules- *"first, there is no scope of extension of this time and secondly, upon expiry of a period of one year the effect of the restriction seizing to take effect would be automatic."*

Held, the Department cannot continue to subject the Petitioner's electronic credit ledger to the restrictions which were imposed on May 21, 2020. Further, the same is to be released and it would make the Petitioner to utilize the amount credited in the said ledger for the purpose of payment of its taxes in accordance with law.

## 15. HC allows release of good on furnishing of Bank Guarantee & surety bond

Case Name : **Maruti Castings, Proprietor Nand Kumar Sharma Vs Union of India (Rajasthan High Court)**
Appeal Number : S.B. Civil Writ Petition No. 6019/2021
Date of Judgement/Order : 14/09/2021

Prima facie it cannot be said that in case of a registered person action only under Section 35(6) read with **Section 73 or 74** of the Act can be taken and that Section 67 of the Act cannot be invoked, if the circumstances as indicated therein exist.

The word 'secreted' is not defined under the Act, however, the same can be understood to mean anything which is concealed and in those circumstances even if the documents are not kept at the designated places where the same ought to be kept in terms of the Act and the Rules, and in case circumstances exist where the absence of the documents is with an intention to conceal them from the officers, the same can be termed as secreted, therefore, as observed hereinbefore, the plea raised in this regard, based on the circumstances which have come on record, is essentially premature.

Consequently, at this stage, prima facie it cannot be said that the seizure is illegal for the purpose of coming to the conclusion that provisions of Section 67(6) of the Act would have no application.

The plea raised regarding lack of jurisdiction also apparently cannot be countenanced while dealing with the application seeking vacation/modification of the interim order.

Admittedly, the petitioner himself applied under Section 67(6) of the Act seeking release of the seized goods vide Annex.10, based on which the order dated 11/5/2021 (Annex.15) was issued and as such passing of the order 11/5/2021 by the respondents also cannot be faulted.

In view of the above discussion, the application filed by the respondents under Article 226(3) of the Constitution is allowed. The order dated 21/5/2021 is modified to the extent that besides the surety bond of the equivalent amount of value of goods by the petitioner, it would be required of the petitioner to furnish security in the form of bank guarantee in terms of Section 67 (6) of the Act and Rule 140 of the Rules for release of the seized goods.

## 16. Deficiency in the GST portal has to be covered up manually and can't be a excuse for not amending BOE

Case Name : **Sinochem India Company Pvt. Ltd. Vs Union of India & Ors. (Bombay High Court)**
Appeal Number : Writ Petition (L) No. 13894 of 2021
Date of Judgement/Order : 15/09/2021

In Sinochem India Company Pvt. Ltd. v. Union of India & Ors. [Writ Petition (L) No. 13894 of 2021] **and in *Hindustan Unilever Ltd. v. The Union of India & Ors, [Writ Petition (L) No. 8163 of 2021]* involve a common question of fact and law and have been heard together, the common conflict herein is regarding amendment of Bill of Entry ("BOE"), seeking amendment in GSTIN and the address in the BOE.**

The Department submitted that once the goods are 'out of charge', any application for amendment cannot be entertained in exercise of power conferred by Section 149 of the Customs Act, 1962 (**"the Customs Act"**).

The Hon'ble Bombay High Court relied upon the decision in the case of ***Dimension Data India Private Ltd. v. Commissioner of Customs and Anr. [Writ Petition (L) No. 249 of 2020 dated January 18, 2021 ]*** which correctly interprets Section 149 ibid and wherein it was held that amendment to the Bill of Entry is clearly permissible even in a situation where the goods are cleared.

Further, held that the **Sinochem India Company Pvt. Ltd. and Hindustan Unilever Ltd. ("the Petitioners")** had prayed for amendment of documents only, which is squarely covered under Section 149 of the Customs Act, any deficiency in the system cannot be used by the Department as a shield so as to deny relief to a party, if indeed the system does not permit, the deficiency has to be covered up manually until improvements are effected in the system for such amendment. The grounds for not allowing amendments are clearly untenable and hence, judicial interdiction for securing justice in the present cases is considered necessary.

Petition disposed of by directing the Department to consider the applications for amendment of the documents of the respective Petitioners in accordance with law, upon granting the authorized representative of the Petitioners an opportunity of hearing, as early as possible but not later than four weeks of receipt of a copy of this order.

## 17. Allahabad HC allows taxpayers to submit/revised TRAN 1/2 forms

Case Name : **Ratek Pheon Friction Technologies Private Limited Vs Principal Commissioner (Allahabad High Court)**
Appeal Number : Writ Tax No. 477 of 2021
Date of Judgement/Order : 15/09/2021

HC held that Clear intent of the legislature is to grant benefit of CENVAT and ITC under the pre-existing laws, as may have been carried forward on the appointed date 01.07.2017. In such circumstances, if the GST Portal had worked seamlessly, all petitioners would have submitted/revised/re-revised electronically, their Forms GST TRAN-1 and/or TRAN-2 within the time granted. In that situation, all petitioners would clearly be entitled to avail ITC under the CGST Act and the UPGST Act, without any objection by the State/revenue authorities. Taxing statute and equity considerations are not natural allies. At the same time, in the context of a purely procedural requirement and transition provision, we cannot act unmindful of that consequence – if the respondents had offered a functional system, the State could not have deprived the petitioners of transition credit of CENVAT and ITC (under the repealed laws).

Thus, we have no hesitation in observing that a reasonable opportunity ought to have been granted to all "registered persons"/taxpayers to submit/revise/re-revise electronically their Form GST TRAN-1/TRAN-2.

For the reasons given above, we allow all the writ petitions with the following directions:

(i) All petitioners before this Court may first file physical Form GST TRAN-1/TRAN-2 before their respective jurisdictional authority, within a period of four weeks from today.

(ii) That jurisdictional authority shall then make a report in writing on the same, as to compliances contemplated under Section 140 of the CGST Act and Rule 117 of the CGST Rules.

(iii) In case, no objection be taken, a report to submit/revise/re-revise the Form GST TRAN-1/TRAN-2 electronically, would be made by the concerned jurisdictional authority, within a period of two weeks.

(iv) In the event of any objection arising, one limited opportunity may be given to that petitioner to correct or revise or re-revise the physical Form GST TRAN-1/TRAN-2. That exercise may be completed within a period of three weeks and the report be submitted accordingly.

(v) Upon completion of that exercise, the jurisdictional authority shall forward his report along with said physical GST TRAN-1/TRAN-2 to the GST Network, within a further period of one week, with a copy of that communication to the petitioner concerned, through Email or other approved mode. No form submitted in compliance of this order would be rejected/declined as filed outside time.

**(vi)** The GST Network shall thereupon either itself upload the GST TRAN-1/TRAN-2, within two weeks of receipt of such communication or allow that petitioner opportunity to upload those details, within a reasonable time.

## 18. Reopen GST Portal to Enable Form TRAN-1 Filing or Accept Manually: HC

Case Name : **Sunny Motors Vs CBIC (Orissa High Court)**
Appeal Number : W.P.(C) No.9348 of 2020
Date of Judgement/Order : 16/09/2021

**Legitimate carry forward of ITC cannot be denied for non-filing of TRAN-1 – directed Department to permit filing of TRAN-1 till November 01, 2021.**

Current petition has been filed to direct the Department to accept the Goods and Services Tax **(GST)** TRAN-1 form under Rule 117 of the **Central Goods and Services Tax Rules, 2017 (CGST Rules)** and allow the Input Tax Credit **(ITC)** claimed by M/s. Sunny Motors **(the Petitioner).**

The Petitioner was unable to upload the GST TRAN-1 Form because of some *"unavoidable and unforeseen circumstances"* within the stipulated time, i.e., December 27, 2017. Due to which, a representation dated June 12, 2019 was made by the Petitioner praying that he be permitted to file the GST TRAN-1 Form manually pursuant to an *Order W.P.(C) No.9269 of 2018 dated April 3, 2018* passed by the Hon'ble Orissa High Court. The Department vide a letter dated July 8, 2020 wrote to the Petitioner to submit his invoices in original along with proof of payment of Central Excise Duty to which the Petitioner replied that all documents had already been submitted and that TRAN-1 Form should be accepted. The Petitioner not having heard from the Department since has filed the current petition.

The Hon'ble Orissa High Court relied on the judgment of ***Aagman Services Private Limited v. Union of India [W.P. (C) No.1329 of 2019 dated November 21,***

***2019]*** which permitted the Petitioner in that case to submit his TRAN-1 Form either electronically or manually. Also relied on ***Adfert Technologies Pvt. Ltd. v. Union of India and others , [(2020) 73 GSTR 267]*** wherein it was observed that extension of date for submitting the declaration electronically on account of technical difficulties on the common portal is permissible under Rule 117(1A) of CGST Rules. ***The Adfert Technologies Judgmen***t (supra) further provided *"no body shall be denied to carry forward legitimate claim of ITC on the ground of non-filing of TRAN-1 by 27th December, 2017.*"

Taking note and placing reliance on the above mentioned judgments, the court directed the Department to either open the portal to allow the Petitioner to file TRAN-1 Form electronically on or before November 1, 2021 or to accept the form from the Petitioner manually before that date.

## 19. Gauhati HC Directs GST Commissioner to accept application for fixation of a special rate submitted after 30th September

Case Name : **Ahinsha Chemicals Ltd Vs Union of India (Gauhati High Court)**
Appeal Number : Case No. : WP(C)/4525/2021
Date of Judgement/Order : 20/09/2021

In the instant case, it is the case of the petitioner that the requirement of requesting for fixation of a special rate in respect of the value addition to the manufactured goods had arisen only after the final judgment of the Supreme Court on 22.04.2020, inasmuch, as long as the matter was pending before the Supreme Court and the interim order dated 07.12.2015 was in operation requiring a refund of 50% of the amount involved, no occasion had arisen for the assessee to claim for the fixation of a special rate in respect of the value addition to the manufactured goods. The dominant purpose of the two notifications i.e. amended notification No.32/99-CE dated 18.07.1999 and the **notification No. 31/2008-CE dated 10.06.2008** is the bestowing of a legal right to the assessee to opt for the fixation of a special rate in respect of the value addition to a manufactured goods. The requirement that such applications are to be made not later than 30th day of September of the given financial year is a provision for streamlining the procedure for making such application and to avoid the situation where the process of making such applications would be a never ending matter.

Without going into the aspect whether the requirement to submit such application within 30th September of the given financial year is a mandatory requirement or a directory requirement, what we take note of is that such a provision has been incorporated to streamline the process for submission of the application seeking for the fixation of a special rate to the value addition to manufactured goods.

We have to take note of that as long as there was a judgment of the Division Bench in WA No.243/2009 in favour of the petitioner interfering with the modification for exemption of excise duty and the matter thereafter was pending before the Supreme Court on an appeal with an interim order dated 07.12.2015 requiring a refund of the 50% of the amount of excise duty, the occasion had not arisen for the assessee to go

further and seek for a fixation of a special rate in respect of the value addition to the manufactured goods and even if there would have been a determination of such special rate, the same would have remained ineffective and un-implementable till the Supreme Court had finally decided the issue which was done as per the judgment dated 22.04.2020 in Civil Appeal No.2256-2263 of 2020, and further the relevance of such determination would again depend on the outcome of the appeal that was pending before the Supreme Court. We have taken note of that immediately after the judgment dated 22.04.2020 in Civil Appeal No.2256-2263 of 2020, when the occasion had again arisen for the petitioner assessee to seek for fixation of a special rate in respect of the value addition to the manufactured goods for the purpose of payment of the excise duty, the application for such request was made within a period of five month, which is on 28.09.2020. From such point of view, it cannot be wholly said that the petitioner would now be prevented from claiming their legal right for fixation of a special rate to the value addition to the manufactured goods merely because such application was not made within 30th September of that given financial year to which the claim for fixation of the said rate pertains to.

In the peculiar facts and circumstances of the present case, where the necessity for making of a request for fixation of the special rate for the value addition to the manufactured goods may not have occasioned earlier, we deem it appropriate that the Principal Commissioner of GST, Guwahati decides the application of the petitioner dated 28.09.2020 on its own merit as regards the claim for fixation of a special rate to the value addition to the manufactured goods of the given financial year. We also take note of that in the earlier order dated 03.03.2021 in WP(C) No.617/2021, it was an agreed stand of the respondent GST Department that the application of the petitioner requesting for fixation of a special rate on the value addition to the manufactured goods would be considered and the possibility that the application would be rejected on the ground of it having not been submitted prior to 30th September of that given financial year was not raised when the said order was passed by the Court.

If any such apprehension would have been expressed, the matter possibly would have been decided in the earlier writ petition itself. From such point of view also, on the principle of constructive res-judicata, the ground for rejecting such application for the reason that it was not submitted within 30th September of the given financial year would perhaps be not available for the respondent authorities for rejecting the application.

In the circumstance, we direct the Principal Commissioner, GST, Guwahati to consider the application of the petitioner dated 28.09.2020 seeking for fixation of a special rate to the value addition to the manufactured goods of the given financial year and decide the same as per law.

## 20. Requirements of issue of FORM GST DRC-01 & DRC-01A is not a mere Procedural Requirement

Case Name : **Shri Tyres Vs State Tax Officer (Madras High Court)**
Appeal Number : W.P. No. 19756 of 2021
Date of Judgement/Order : 21/09/2021

Learned counsel for writ petitioner raised two points and they are as follows:

(a) No personal hearing has been granted and

(b) The procedure prescribed for making the impugned order has not been followed i.e., impugned order was not preceded by Forms GST DRC-01 and GST DRC-01A.

The requirements of issue of FORM GST DRC-01 and FORM GST DRC-01A have been statutorily ingrained in the rules made under the CG&ST Act i.e., Rule 142 of the CG&ST Rules, 2017.

A careful perusal of Section 73 of the CG&ST Act in conjunction with Rule 142 makes it clear that non adherence to Rule 142 had caused prejudice to the writ petitioner qua impugned order and therefore it is a rule which necessarily needs to be adhered to,if prejudice is to be eliminated in the case on hand. In other words, it is not a mere procedural requirement but on the facts and circumstances of this case, it becomes clear that it tantamount to trampling the rights of writ petitioner.

## 21. Rejection of tender justified for not having GST registration when goods under Tender liable to GST

Case Name : **ASR Hospitals (India) Pvt. Ltd. Vs State of Andhra Pradesh (Andhra Pradesh High Court)**
Appeal Number : W.P. No. 17415 of 2021
Date of Judgement/Order : 22/09/2021

The first allegation of arbitrariness is the disqualification of the Petitioner. Instruction No. 4 of 'Instructions to bidder' in the tender document required the bidders to submit copy of the certificate of registration of GST, EPF, ESI with the appropriate authority valid as on the date of submission of tender documents. It is the admitted case of all sides that the petitioner did not submit certificate of registration under the GST Act. The defence of the petitioner is that the Central Government had issued a notification exempting various services, including the primary activity of the petitioner from payment of tax under the GST Act. The petitioner's case is that in view of such an exemption from payment of tax, the petitioner need not register under the GST Act and as such does not have to possess a registration certificate under the GST Act to participate in the tenders called by the 2nd respondent.

A person is exempted from the requirement of registration if he is engaged in supplying only those goods and services which are exempt from registration and does not supply any other goods or services. If such a person deals in any other goods or services, he will not be eligible for such exemption.

Sri Chittem Venkata Reddy, the learned counsel appearing for the 2nd respondent submits that the successful tenderer would be required, as per Section IV of the Tender Documents, to supply medicines and other goods, which are not exempted under the GST Act, in the process of maintaining SNCUs, and for that reason the 2nd Respondent had required all bidders to submit GST registration certificates. It is clear that in such a situation, the Petitioner would have to supply drugs and goods which

are not exempt from levy of GST and the petitioner would require to be registered, under the GST Act. In the absence of such a registration certificate, the action of the 2nd Respondent in rejecting the technical bid of the Petitioner cannot be termed to be arbitrary.

## 22. Bail granted to person allegedly Selling Coal without issuing GST Invoices

Case Name : **Vikas Bansal Vs UOI (Gauhati High Court)**
Appeal Number : Bail Application No. 2381 of 2021
Date of Judgement/Order : 23/09/2021

It is found that in his statement, recorded under Section 70 of the CGST Act, the petitioner has subscribed to the statement of aforesaid Amit Kumar made before the Senior Intelligence Officer of the CGST. It has also come out from his statement that whatever coal he had purchased from Coal Importers of Gujarat and Punjab were sold within the State of Punjab and Haryana to various small manufacturers without issuing GST invoices and such transactions were not reflected in the books of accounts although a part of such sale of coal in Punjab and Haryana was done under proper GST. The purchase documents covering the goods supplied/sold in Punjab and Haryana without issuance of GST invoices were used for generating fake GST invoices issued in the name of M/s Bansal Associates, Guwahati and to various other customers directly which includes Sri Amit Kumar also without supply of any

It has also come out from the materials on record that the State GST, Assam conducted a raid at the declared business premises of M/s Bansal Associates in Guwahati on 19.08.2021 and seized all documents, including computers, mobile, etc. He had also informed the State GST, Assam that his firm M/s Bansal Associates is already under investigation by DGGI, Guwahati Zonal Unit. The CGST authority, on verification of the materials collected against the petitioner during the course of investigation, found that the petitioner had evaded GST of Rs. 15,05,99,941/-. The 2151 e-way bills issued were also found to be bogus and the vehicles declared in those e-way bills involving tax of Rs. 7 crores had never carried any goods from Gujarat/Haryana/Ludhiana to Guwahati as claimed.

Offence in the instant case being an economic offence should be looked into from a different perspective although at the same time Court should not lose sight of the fact in respect of the right of the petitioner to get bail and court has to balance between both these aspects. At the same time, in the light of the above judgments, rendered by the Hon’ble Supreme Court, this Court also needs to look into the severity of the punishment. This Court also cannot lose sight of the fact that the petitioner has already been in custody for 30 (thirty) days till date and that there is no instance in the record to indicate that further custodial detention of the petitioner is essential for the purpose of further investigation of the case.

In the instant case, taking into account the alleged amount of evasion of tax, the case falls under Section 132(1)(i) of the AGST Act and the punishment prescribed for such an offence may extend to imprisonment for 5 (five) years and with fine.

As per the materials on record, there is no indication that the petitioner, if granted bail, is likely to evade the trial or there is an apprehension of his tampering with the witnesses. On the other hand, this Court has also taken note of the fact that he being a resident of the State of Assam, there is every possibility of securing his presence at the time of trial. The maximum punishment which can be imposed in this case is imprisonment for 5 (five) years and fine, and as such, the severity of punishment which conviction will entail has also been taken into consideration, as mandated by Jagan Mohan Reddy (supra).

In view of the discussions above, in the considered view of this Court, the accused-petitioner deserves to be granted bail.

Accordingly, the accused-petitioner, named above, be released on bail in connection with the abovementioned case on furnishing bail bond of Rs. 1,00,000/- (one lakh) with two suitable sureties of the like amount, to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati.

## 23. Provisional attachment of Bank Accounts – lack of application of mind

Case Name : **Monopoly Innovations Pvt. Ltd. Vs Union of India & Ors. (Bombay High Court)**
Appeal Number : Write Petition No. 5473 of 2021
Date of Judgement/Order : 24/09/2021

1. The petitioner is a private limited company duly registered under the provisions of the Companies Act, 1956. It is a registered unit under the Micro, Small and Medium Enterprise Development Act, 2006 and, inter alia, engaged in the business of production of chemicals and allied products. It is also registered with the Goods and Services Tax Department.

2. The details of the range of products in which the petitioner deals and which falls under various GST rate slabs is detailed in paragraph 4.2 of the writ petition. According to the petitioner, it has paid GST, as applicable, and filed returns, as and when required under section 39 of the **Central Goods and Services Tax Act, 2017** (hereinafter "the CGST Act", for short).

3. The writ petition, in its original form, laid a challenge to letters dated February 10, 2021 and March 15, 2021, both issued by the Deputy Commissioner (Anti Evasion) CGST, St & CEx, Raigad Commissionerate.

4. By the letter dated February 10, 2021, it was alleged that the petitioner had classified the chemical products referred to therein under CTH 15162099 and tax liability discharged is @ 5%; however, on verification, it was noticed that the said chemical products are no longer to be classified under Chapter 15162099 and should have been classified under CTH 2916, attracting GST @ 18%. On the ground that there has been misclassification of the goods, the petitioner was conveyed of its liability to pay differential duty estimated at Rs.18,30,87,423/-. Direction followed for payment of the differential duty at the earliest.

5. The subsequent letter dated March 15, 2021 is in the nature of a reminder calling upon the petitioner to pay the differential duty of Rs.18,30,87,423/- immediately.

6. Upon hearing the writ petition at the admission stage, a coordinate Bench of this Court by its order dated March 30, 2021 issued notice to the respondents, returnable in four weeks. During the pendency of the writ petition, two separate orders dated April 27, 2021 were passed by the Commissioner, CGST & Central Excise, Raigad Commissionerate, seeking to provisionally attach the property of the petitioner under section 83 of the CGST Act. The petitioner's bankers, HDFC Bank and ICICI Bank, were directed not to allow debit to be made from the accounts maintained with such banks or any other account operated by the petitioner without prior permission of the department.

7. When the writ petition was listed on May 6, 2021, counsel appearing for the petitioner submitted that objection to the orders provisionally attaching the bank accounts would be filed before the Commissioner under Rule 159 (5) of the CGST Rules. Accordingly, it was observed by the Bench that the Commissioner may take a decision thereon within a period of two weeks from the date of submission of objection. Hearing was, accordingly, adjourned till June 29, 2021.

8. Availing the leave granted by the Bench, the petitioner objected to the orders of provisional attachment by its representations dated May 7 and 17, 2021 and sought for revocation thereof on diverse grounds indicated therein. After hearing the authorized representative of the petitioner, the Commissioner has passed an order dated May 21, 2021 whereby the objection raised to the orders of provisional attachment has been overruled and the prayer for revoking the said orders rejected. It is such order of May 21, 2021 that has been challenged by the petitioner by amending its writ petition pursuant to leave granted on June 8, 2021.

9. We have heard Mr. Raichandani, learned advocate for the petitioner and Mr. Mishra, learned advocate for the respondents at some length.

10. Based on our appreciation of the arguments advanced by Mr. Raichandani and Mr. Mishra and on perusal of the order impugned dated May 21, 2021, we are of the opinion that the prayer of the petitioner for revoking the orders of provisional attachment ought to be considered de novo by the Commissioner. This is for the reason that although the Commissioner has written a detailed order spread over 9 (nine) pages as to why the provisional attachment ought to continue, it suffers from the infirmity of lack of application of mind as well as breach of principles of natural justice. We propose to elaborate hereafter why we perceive the order to suffer from such infirmity.

11. Paragraph 3 of the order records that the petitioner's authorized representative, in course of a meeting with the Commissioner, had promised to pay the differential duty but on the contrary, without effecting payment, opted to approach this Court by instituting this writ petition only with the intention of delaying the deposit. This assertion has been categorically denied by Mr. Raichandani. In the absence of any evidence of what transpired in the meeting, we do not consider reference to the fact of the petitioner agreeing to deposit the differential duty to be of any relevance for the purpose of considering the prayer for lifting of the orders of provisional attachment.

12. The discussion and findings start from paragraph 7 onwards of the impugned order.

13. The case of the respondents essentially is that the petitioner has made a misclassification of the chemical products referred to therein, viz. i). Methyl Palmitate; ii). Methyl Ester of Soya Oil; and iii). Methyl Lenolanate (hereafter "the said chemical products", for short) by not classifying the same under Chapter 2915/2916 attracting GST @ 18%. Although the Commissioner has indicated in paragraph 2 of the order that the petitioner's authorized representative was briefed about the reasons as to why the said chemical products should be classified under Chapter 2915/2916 instead of 1516, we have not noticed any discussion in this regard in the impugned order. Reiteration that the petitioner's representative was briefed about the reasons is found in paragraph 7(vi) of the order too; however, again, there are no reasons assigned in support of the version of the Commissioner.

14. The order of the Commissioner records that pursuant to initiation of investigation under section 67 read with section 74 of the CGST Act, provisional attachment of the petitioner's bank accounts has been made only with the intention to protect the large amount of revenue sought to be evaded by the petitioner on account of "willful misclassification of goods" (emphasis supplied). At paragraph 7(ii), the Commissioner recorded that in course of investigation, it has been observed that there was no business activity on behalf of the petitioner since November, 2020. However, this assertion is also disputed by Mr. Raichandani by referring to paragraph G.1 at page 13e of the writ petition. According to him, not only the officials of the respondents while visiting the petitioner's factory premises on January 23, 2021 found the same to be operational, but the petitioner has also filed monthly GST returns for the period November 1, 2020 to March 31, 2021 showing the turn over of approximately Rs.35.50 Cr. and has also paid Rs.1.84 Cr. of GST during the said period; however, despite such information being readily available to the respondents on their electronic system, the Commissioner chose to ignore the same. In course of arguments, Mr. Mishra did not seriously dispute this assertion of Mr. Raichandani but asserted, relying on the Commissioner's order and the reply affidavit, that whatever the Commissioner has observed in the order is correct. Whether or not there has been any business activity or not is a question of fact. However, if indeed, GST returns for the period November 1, 2020 to March 31, 2021 GST have been filed by the petitioner, the same is a matter of record. It was the duty of the Commissioner to record a finding on the aforesaid factual aspect upon looking into the relevant records. This exercise does not appear to have been undertaken. That apart, the Commissioner ought also to have dealt with the contention of the petitioner that the petitioner's factory premises were found to be functional on January 23, 2021.

15. At paragraph 7(iii), the Commissioner referred to noncooperation on the part of the petitioner to take the investigation to a logical conclusion. Taking serious exception to such allegation, Mr. Raichandani has submitted that the investigation was initiated on January 23, 2021 and it is incomprehensible as to why, despite recording of statements on January 25 & 28 and February 12, 2021, the investigation has not been concluded. It is further contended by him that as per request of the relevant department, samples of all the products were submitted together with relevant documents for the disputed period which would amply demonstrate complete

cooperation on the part of the petitioner. The impugned order dated May 21, 2021 concluding that the petitioner has not cooperated with the department has been criticized as totally incorrect. Insofar as the statement in the said paragraph that the petitioner was shown several evidences such as confirmation of product description by the laboratory, the contention is that not a single evidence or data, as claimed, was shown to the petitioner. On the contrary, it is asserted that by referring to authorities, the petitioner sought to persuade the Commissioner to hold in its favour, which unfortunately was ignored. The positive statements made in paragraph G.2 of the writ petition have been evasively denied by the respondents in paragraph 30 of their affidavit-in-reply. We reiterate that the evidence referred to in paragraph 7(iii) of the impugned order has not been annexed to the reply affidavit and, therefore, it is difficult to accept the version as recorded in such paragraph. Even otherwise, if at all it is a fact that the petitioner has not cooperated with the investigation, that by itself would not preclude the respondents from completing it with promptitude in accordance with law. However, this cannot constitute a valid reason for continuing the orders of provisional attachment.

16. The next reason assigned in paragraph 7(iv) is that local manufacturers engaged in the production of similar chemical products that the petitioner produces have been classified under CTH 29, attracting IGST and GST @ 18% each, for the different products. Mr. Raichandani has raised a valid point. It is contended that if other local manufacturers erroneously classify their products under a particular Chapter, there is no law that binds the petitioner by such erroneous classification. Whether the local manufacturers, referred to in paragraph 7(iv), have been classifying their products in a particular manner could not have been relevant and material for the purpose of deciding whether the petitioner has misclassified the said chemical products. It was necessary for the Commissioner to show, by reference to relevant evidence and provisions of law, what the petitioner was required to do for the purpose of classification of the said chemical products and that the petitioner had not so classified leading to loss of revenue. This would not only have provided support to the conclusions reached, but would also have provided us with the opportunity to hold that the Commissioner was on the right track. The Commissioner was not required to cite instances of other local manufacturers to insist that the petitioner ought to follow suit. This, in our opinion, is a glaring mistake in the decision-making process.

17. In course of hearing, we had made it sufficiently clear to Mr. Mishra that in certain portions of the impugned order, the Commissioner had recorded conclusions without supporting reasons. Attachment of a property being in the nature of exercise of a drastic power, the Commissioner was required to be more circumspect in recording his conclusions by reference to the applicable law rather than recording his ipse dixit. To support the impugned order, Mr. Mishra sought to draw our attention to the affidavit-in-reply. According to him, sufficient reasons have been assigned in such affidavit which the Court ought to consider. We are afraid, the attempt of the respondents to introduce fresh reasons in their affidavit-inreply is not a permissible course of action to test the validity of the impugned order, having regard to the law laid down by the Supreme Court in its decisions reported in AIR 1952 SC 16 [Commissioner of Police, Bombay vs. Gordhandas Bhanji] and AIR 1978 SC 851 [Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.]. Law has been laid down

therein with sufficient clarity that the validity of an order passed by an authority has to be judged on the basis of the reasons assigned therein, and reasons cannot be supplemented by an affidavit or otherwise when such order is challenged in a Court. We are, therefore, not in a position to sustain the findings of the Commissioner by looking at the reasons given in the affidavit-in-reply.

18. Paragraph 7(v) of the impugned order records the conclusion of the Commissioner that power under section 83 of the CGST Act has been correctly invoked. Since proceedings are pending and we do not propose to interdict exercise of power under section 83 at this stage, no further discussion on paragraph 7(v) is considered necessary.

19. We have referred to the contents of paragraph 7(vi) of the impugned order at an earlier part of this judgment. In view thereof, any further dilation is not required.

20. At paragraph 7(vii) of the impugned order, the Commissioner upon consideration of the opinion of the Institute of Chemical Technology, Mumbai (hereafter "the Institute", for short), rejected the same by observing that he did not "find the report to be proper". The comments made for rejecting the report would tend to suggest that the Commissioner has good deal of knowledge in the subject of chemical science. However, we do not claim to be experts in the said subject and, therefore, it is beyond our competence to say which of the two versions (that of the Institute and the Commissioner) is correct. At the same time, we are also not aware of the educational qualifications of the Commissioner or his expertise in chemical science. In any event, how far the report of the Institute was worth consideration should have been examined by the Commissioner by obtaining a counter expert opinion and based thereon he could have proceeded to reject the Institute's report instead of discrediting the same. The observations made by the Commissioner are not structured on any referable scientific basis and, therefore, it is all the more necessary that the prayer of the petitioner for lifting of the orders of provisional attachment deserves de novo consideration.

21. Paragraph 8 of the impugned order, in the light of the arguments advanced on behalf of the respondents, makes interesting reading. At the stage of deciding whether the orders of provisional attachment should be lifted or not, the Commissioner appears to have reached a final conclusion that "the investigations conducted so far unambiguously indicate that these goods namely ……appears to be classifiable under chapter sub-heading 29161590 attracting GST @ 18% and the differential GST liability for the period July 2017 to March 2021 is Rs.18.32 Crores".

22. We may, at this stage, record the contradictory stand taken by Mr. Mishra. While defending the action of the Commissioner in not assigning reasons for the finding arrived at by him that there has been misclassification, Mr. Mishra was heard to submit that at the stage of disposing of an objection under Rule 159(5) of the CGST Rules, it is not open for the Commissioner to express any conclusive opinion. However, such a stand taken by Mr. Mishra stands completely demolished in view of the Commissioner's own unambiguous conclusion on the basis of investigations conducted that the petitioner is liable to bear the differential duty of Rs.18.32 Cr., at this stage, when investigations are still to be concluded. Obviously, the respondents have been blowing hot and cold at the same time, which is not permissible.

23. Be that as it may, based on the aforesaid findings as in paragraphs 7 and 8 of his order, the Commissioner in paragraph 9 recorded a satisfaction that the present case was a fit case for invocation of section 83 of the CGST Act. It was found that as per the balance-sheet for the year 2019-20, the petitioner had declared the value of tangible assets or fixed assets as Rs.8.53 Cr. approximately. Since the dues were far more than the value of the immoveable property, it was decided to continue attachment of the bank accounts. Mr. Raichandani has contended that the orders of provisional attachment ought to have been lifted bearing in mind the value of the assets and also in view of the law that pre-deposit of 10% is required if an appeal were preferred against the final order. We do not think that at this stage this issue ought to be considered, in view of the order proposed.

24. The grounds on which the judicial review is available are well established. Non-consideration of relevant materials and consideration of extraneous matters together with non-access of the part affected to materials relied on in reaching conclusions, if substantiated, would provide sufficient ground for judicial review. In the present case, we find that the provisional order dated May 21, 2021 is unsustainable for the reasons discussed above.

25. Accordingly, the impugned order dated May 21, 2021 stands set aside. The Commissioner is directed to de novo consider the objection of the petitioner dated May 7 & 17, 2021 in accordance with law and in the light of the observations made above, as early as possible but not later than three weeks of receipt of copy of this order.

26. In the event, the Commissioner refuses to lift the orders of provisional attachment once again, appropriate reasons shall be assigned. Such order may be communicated without undue delay. Should the Commissioner be persuaded to hold in favour of the petitioner, it is needless to observe that follow-up steps shall be taken at the earliest to lift the orders of provisional attachment on such terms as the Commissioner may deem fit and proper.

27. The writ petition stands allowed to the extent a aforesaid. No costs.

## 24. State cannot impose VAT on Extra neutral alcohol (ENA) not fit for human consumption

Case Name : **Jain Distillery Private Limited Vs State of U.P. (Allahabad High Court)**
Appeal Number : Writ Tax No. 378 of 2021
Date of Judgement/Order : 28/09/2021

Relying on Article 246A read with Article 366 (12A) of the Constitution of India, it has been further submitted, insofar as taxes on supply of goods/commodities are concerned, upon the 101 st Constitution amendment, besides “alcoholic liquor for human consumption”, all other goods or commodities may remain under the GST regime. Therefore, in any case, UPVAT may never be imposed on ENA as it is alcohol not-for human consumption, and therefore necessarily included under the GST regime. That intent of the Constitution of India was acknowledged and statutorily incorporated, by virtue of Section 174(1)(i) of the UPGST Act. It repealed UPVAT Act,

2008 except with respect to laws-to tax goods included under Entry 54 of List II of the Seventh Schedule, to the Constitution of India i.e., with respect to the six commodities (including alcoholic liquor for human consumption), specified under that legislative entry.

Thus, of all alcohols, only “alcoholic liquor for human consumption” may be subjected to UPVAT. Correspondingly, the Parliament has substituted Section 2(d) of the Central Sales Tax Act, 1956 to include “alcoholic liquor for human consumption”, in the definition of ‘goods’ but it has purposely left out ENA and other alcoholic liquors, not for human consumption, from the ambit of taxation of ‘goods’ under that Act. For the self-same reason, the Parliament has substituted Entry 84 of List I of the Seventh Schedule, to the Constitution of India, to save to itself, the legislative competence to levy duties of excise only on the same commodities finding mention in Entry 54 of List II of the Seventh Schedule, to the Constitution of India, besides tobacco & tobacco products but except, “alcoholic liquor for human consumption”. Therefore, the impugned Notification dated 17.12.2019 is beyond the legislative competence of the State Legislature, besides being otherwise invalid, as noted above.

Last, it has been submitted, once the State had levied, charged and collected GST on ENA, at the rate of 9 percent, it cannot subject the same sale transaction (of that commodity), to further tax, on the basis of the aforesaid artificial distinction attempted to be made. In fact, if the contention of the State were to be accepted, it would make the State liable to refund the GST on ENA being excess tax suffered by that commodity, under the GST regime.

Extra Neutral Alcohol (ENA) is nothing but Rectified Spirit that has undergone certain physical changes, by adopting physical means like redistillation and rectification to remove impurities. Through that process, it becomes purer and is therefore known as ENA. If at all, it is rendered more unfit for human consumption on account of the purity of its alcohol content being enhanced. To manufacture alcohol for human consumption, further processes including addition and mixing of colouring and flavouring agents (compounding), as well as dilution with water must be applied. The concoction is then left for maturation, to be bottled and used as an ‘intoxicating liquor’ or ‘potable liquor’ known as Indian Made Foreign Liquor (IMFL) etc. All throughout, such processes, the chemical composition of Ethyl alcohol or Ethanol remains the same, yet ENA as such can never be called or classified as “alcoholic liquor for human consumption”.

It is declared, the State lost its legislative competence to enact laws, to impose tax on sales of ENA, upon the enactment of the 101st Constitution Amendment. Consequently, and upon considering Section 174(1)(i) of UPGST Act, 2017, the impugned Notification dated 17.12.2019, insofar as it seeks to impose UPVAT on ENA, Rectified Spirit and SDS, is ultra vires, both on account of lack of (i) legislative competence and (ii) valid delegation. It is therefore quashed. Consequentially, all assessment Orders/Notices dated 30.06.2021, 21.06.2021, 08.06.2021, 15.06.2021, 11.06.2021, 07.07.2021, the (administrative) Circulars/letters dated 10.06.2021 and 11.06.2021, impugned in these writ petitions, holding otherwise are also quashed.

## 25. State cannot impose tax on sales of ENA, post enactment of 101st Constitution Amendment

Case Name : **Jain Distillery Private Limite Vs State Of U.P. (Allahabad High Court)**
Appeal Number : Writ Tax No. 378 of 2021
Date of Judgement/Order : 28/09/2021

High Court held the State lost its legislative competence to enact laws, to impose tax on sales of ENA, upon the enactment of the 101st Constitution Amendment. Consequently, and upon considering Section 174(1)(i) of UPGST Act, 2017, the impugned Notification dated 17.12.2019, insofar as it seeks to impose UPVAT on ENA, Rectified Spirit and SDS, is *ultra vires,* both on account of lack of (i) legislative competence and (ii) valid delegation. It is therefore quashed. Consequentially, all assessment Orders/Notices dated 30.06.2021, 21.06.2021, 08.06.2021, 15.06.2021, 11.06.2021, 07.07.2021, the (administrative) Circulars/letters dated 10.06.2021 and 11.06.2021, impugned in these writ petitions, holding otherwise are also quashed.

It is further directed, subject to applicability of the rule against unjust enrichment, any amount that may have been deposited by the petitioners (except petitioners claiming under this order, in Writ Tax 355 of 2020), by way of UPVAT on ENA on or after 01.07.2017, may be refunded to them, within a period of one month from today.

## 26. HC issues notice on plea challenging GST On Services by Advocates Association to Its Members

Case Name : **Kerala High Court Advocate Association Vs Assistant Commissioner (Kerala High Court)**
Appeal Number : W.P.(C) No. 20304 of 2021
Date of Judgement/Order : 28/09/2021

**Kerala HC issued notice to Govt. in writ challenging GST on goods and services provided by Association to its members**

Kerala High Court Advocates' Association **(Petitioner)** filed a Writ Petition challenging GST on goods and services provided by the Petitioner to its own members.

The Members of the Petitioner Association are Advocates enrolled on the rolls maintained by the Bar Council of India ordinarily practicing in the Honorable High Court of Kerala. The Petitioner Association had been acting as an agent for its members in the matter of distribution of various essential items to its own members and for providing various essential facilities to its own members.

The Petitioner constructed a building for the chamber complex of lawyers' and they have been occupied by members only, this venture was done long before the coming into force of the **Central Goods and Services Tax Act, 2017 ("CGST Act")** as well as Kerala State Goods and Services Tax Act, 2017 **("KGST Act")**.

The building was named as KHCAA Golden Jubilee Chamber Complex. A portion of the complex is used as a canteen for members, organic shop for members, given on a licensed basis. Banks run by outside agencies for the convenience and service of the Members of the Association also occupy a small portion of the Complex on a license basis. The income derived from the licensed premises is also used for the benefit of the members only. Hence the said income is not liable to be taxed under the CGST/KGST Acts as the proceeds therefrom are used for the benefits of the welfare of the members.

The primary contention of the Petitioner was that such a levy of GST would attract the 'doctrine of mutuality' as there could be no supply of goods from it to its members. Furthermore, the Petitioners argued that from the legal and factual perspective the Petitioner is a lawyers' combination for assisting themselves in exclusively conducting cases before the Honorable High Court of Kerala. It cannot be termed as a taxable entity under the CGST/ KSGST Act.

After taking cognizance of all the facts and evidences, the Honorable Kerala High Court observed that Petitioners made out a prima facie case, which merits admission and on the basis of this observation the Court issued a Notice to the State Government on the plea of the Petitioner challenging the GST levied on the goods and services provided to its own members.

## 27. HC grant Bail to person accused of issuing Fake Invoices & availing bogus ITC

Case Name : **Manoj Bansal Vs Director General of GST Intelligence (DGGI) (Punjab and Haryana High Court)**
Appeal Number : CRM-M-2869-2021
Date of Judgement/Order : 28/09/2021

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of regular bail in Complaint Case No.IV(6) DGGI/RRU/INV/22/2018-19 filed under Section 132(1) (b) and (c) of the **Central Goods and Service Tax Act, 2017** (for short 'the CGST Act').

Briefly stated, the allegations against the petitioner, relevant for disposal of the present petition are that M/s Nikita Industries Pvt. Ltd., Sonepat is a manufacturer of Pure Lead Ingots and is registered with the GST Department. The petitioner is the Director in-charge of the said manufacturing Company and is thereby responsible for the conduct of the business of the same. M/s Nikita Industries Pvt. Ltd. was alleged of having availed a hefty amount of Input Tax Credit on the basis of invoices issued by their suppliers, without any actual movement of goods. The said suppliers constitute 31 firms, as have been named in the present complaint. Upon investigation, it came to surface that the said supplier firms were not even in existence at their registered premises. It was also uncovered during investigation that some of the transporters through whom goods were shown to have been conveyed, were also found to be non-existent and the transportation receipts of some transporters were recovered from the

premises of M/s Nikita Industries Pvt. Ltd. M/s Nikita Industries Pvt. Ltd. is alleged of having availed Input Tax Credit amounting to Rs.15.44 crores on the basis of invoices issued by such non-existent/fake firms without movement of goods, alleged to have been transported by such fake/non-existent transporters, and on the basis of corresponding transport receipts being included in their record for claiming the said benefit. M/s Nikita Industries Pvt. Ltd. was thereby alleged to have committed offences under Section 132 (1)(b) and (c) punishable under Section 132 (1)(l)(i) of the CGST Act.

This matter had come up for hearing on 16.03.2021, when a Co-ordinate Bench of this Court had passed a detailed order *vide* which interim bail was granted to the petitioner. The Co-ordinate Bench had taken note of the arguments raised by the learned Senior counsel for the petitioner including the argument to the effect that no notice under Section 73 or 74 of the CGST Act had been issued to the petitioner-company and to the effect that the prosecution could only be launched after determination of tax liability and the petitioner could be made liable to pay tax with penalty only after the said pre-condition of adjudication of tax liability was fulfilled. The argument to the effect that there is contravention of Section 69 of the CGST Act was also taken into consideration. Learned Senior counsel for the petitioner had also argued that the search of the factory premises had been started on 27.03.2018 and the petitioner had consistently co-operated and subsequently on 07.12.2020, he was arrested and that the complaint had already been filed before the learned Judicial Magistrate Ist Class, Patiala and, thus, the custodial interrogation of the petitioner was not required and even the investigation was complete against the petitioner. The argument that the petitioner did not have any criminal antecedents and had clear credentials was also noticed. The judgments relied upon by the learned Senior counsel for the petitioner were also taken into consideration.

The argument of the Senior Standing counsel for the respondent-Department to the effect that the present petitioner had been creating fake invoices and wrongfully availing input tax credit, had been noticed and even the judgments relied upon by the learned Senior Standing counsel for the respondent-Department were noticed. Taking into consideration the facts and circumstances of the case as well as the arguments advanced by the parties, the Co-rdinate Bench of this Court had granted interim bail to the petitioner herein. The concluding part of the order dated 16.03.2021 is reproduced hereinbelow:-

*“36. In the meanwhile, keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner in the present case, also the fact that investigation qua the petitioner is complete and complaint against the petitioner has already been filed but notice under Section 74 of the CGST Act is yet to be issued and determination of his tax liability is yet to be made and that the case is mainly based on documentary evidence, there is no material to justify the apprehension of the petitioner fleeing from justice or tampering with evidence or intimidating witnesses coupled with the fact that trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19, the petitioner is ordered to be released on interim regular bail till the next date of hearing on furnishing of personal and surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.*

*37. However, interim bail is granted to the petitioner subject to the conditions (i) that the petitioner shall furnish bank guarantee for amount of Rs.1 crore to the concerned authority for payment of tax liability as undertaken; (ii) that the petitioner shall not leave the country without permission of the trial Court; and (iii) that the petitioner shall give an undertaking that the petitioner/M/s Nikita Industries Pvt. Ltd. shall not alienate immovable properties owned by him/the Company to anyone in any manner till final disposal of the complaint.*

*38. A copy of this order be supplied to learned Senior Standing Counsel and Additional Director General, Gurugam Zonal Unit, Gurugram for requisite compliance."*

Learned Senior counsel for the petitioner has submitted that in pursuance of the above-said order, the petitioner has furnished a bank guarantee for the amount of Rs.1 crore to the concerned Authority for payment of tax liability and has also complied with the other conditions.

Mr. Satya Pal Jain, learned Additional Solicitor General along with Mr. Sourabh Goel, Senior Standing counsel for the respondent-Department has submitted that as per the above-said order in para 31, there were certain directions given requiring the respondent-Department to file an additional affidavit with respect to the fact as to what action had been taken for registration of FIR in respect of offences punishable under the IPC against the persons who had got the alleged non-existent firms registered with the GST Department, on the aspect as to what steps have been taken for assessment of tax liability and recovery of tax from the present petitioner and other firms, as to what steps are proposed to be taken for preventing evasion of tax by fraudulent claims of input tax credit and finally as to what steps have been taken to prevent the registration of such non-existent firms. It is submitted that in pursuance of the said directions, a detailed affidavit has been filed by Sh. Neeraj Prasad, Additional Director, Directorate General of Goods and Service Tax Intelligence, Rohtak. The said affidavit is taken on record. It is further submitted that as far as registration of FIR is concerned, since the CGST Act is a complete Act in itself, thus, the procedure as mentioned under the CGST Act is being followed and applied even with respect to criminal offences committed. On the aspect of assessment of tax liability and recovery of the determined tax liability from the present petitioner, it has been stated that the notice under Section 74 of the CGST Act has already been issued on 16.04.2021. Even with respect to the other aspects the steps taken have been detailed in the affidavit that has been filed. This Court feels that the detailed affidavit satisfies the requirements issued as per the last order passed by the Coordinate Bench of this Court.

On a pointed query raised by this Court, learned Senior counsel for the respondent-Department has submitted that the conditions which had been imposed on the petitioner in the order dated 16.03.2021 have been complied with by the petitioner.

This Court has heard the learned counsel for the parties.

Keeping in view the above-said facts and circumstances, moreso, the fact that the petitioner has complied with the conditions as imposed in the detailed order dated 16.03.2021 *vide* which interim bail was granted to the petitioner and also the fact that the petitioner had been in custody from 07.12.2020 till 16.03.2021 and that the challan has already been filed before the Judicial Magistrate Ist Class and the proceedings

under Section 74 of the CGST Act have also been initiated and the case is primarily based on documentary evidence, thus, no purpose would be served in sending the petitioner back into custody.

Accordingly, the present petition is allowed and the order dated 16.03.2021 is made absolute.

However, the petitioner would continue to be bound by the conditions which have been imposed in para 37 of the order dated 16.03.2021.

It is made clear that nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.