

GST UPDATE

(December, 2021)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. CBIC extends tenure of NAPA & amends Form GST DRC-03

CBIC vide Notification No. 37/2021–Central Tax extends tenure of National Anti-Profiteering Authority (NAPA) to 5 years and amended FORM GST DRC-03.

Tenure of the National Anti-Profiteering Authority has been extended to five years;

Rule 137 of CGST Rules 2017 amended w.e.f 30th November 2021.

A new cause of payment has been added in Form DRC-03 for payment of tax ascertained through Form GST DRC-01A

“Intimation of tax ascertained through FORM GST DRC- 01A” inserted in heading as well as column 3 of Form DRC- 03.

The Government vide the said notification has extended the tenure of National Anti-Profiteering Authority (NAPA) to 5 years and has also amended FORM GST DRC03. Pertinently, with the amendment of Rule 137 of CGST Rules 2017 the tenure of the National Anti-Profiteering Authority has been extended to five years, the amendment comes into effect from 30 November 2021. Further, vide the said notification, a new cause of payment has been added in Form DRC-03 for payment of tax ascertained through Form GST DRC-01A.

[Notification No. 37/2021–Central Tax dated 1st December, 2021]

2. Mandatory Aadhar authentication for GST Refund & Revocation application

CBIC has vide notification No. 35/2021-Central Tax has notified rules related to Mandatory Aadhar authentication for GST Refund application and GST for GST Registration Revocation application. Now CBIC has vide Notification No. 38/2021–Central Tax | Dated: 21st December, 2021 made these rules applicable w.e.f 1st Jan 2022.

- The Government vide the abovementioned notification has notified certain specific sub-rules of Rule 2 Central Goods and Services Tax (Eighth Amendment) Rules, 2021, introduced vide GST (Goods and Services Tax) Notification No. 35/2021–Central Tax dated 24th September 2021. The major amendments to come into effect are mentioned as follows:
- Rule 10B of CGST Rules stands amended from 1st January 2022, the said rule provides for mandatory Aadhaar authentication for a registered person in order to make him/her eligible for:
 - Filing of Revocation Application as per Rule 23
 - Refund Filing application as per rule 89
 - Refund as per rule 96 on IGST paid exports

- Rule 23 has been revised in order to incorporate compulsory Aadhaar authentication for filing of revocation applications.
- Rule 89 has been amended in order to make Aadhaar authentication mandatory for furnishing the refund application.
- Rule 96 has been amended in order to incorporate compulsory Aadhaar authentication for receiving a refund in case of duty paid exports.

[Notification No. 38/2021–Central Tax dated 21st December, 2021]

3. GST: Govt notifies sections 108, 109 & 113 to 122 of Finance Act, 2021 wef 01.01.2022

Government notifies provisions of sections 108, 109 and 113 to 122 of Finance Act, 2021 (FA, 2021) wef 1st day of January, 2022 vide Notification No. 39/2021–Central Tax | Dated: 21st December, 2021.

[Notification No. 39/2021–Central Tax dated 21st December, 2021]

4. Due date for Form GSTR-9C, GSTR-9 extended to 28.02.2022 for FY 2020-21

Due date for furnishing annual return in FORM GSTR-9 & self-certified reconciliation statement in FORM GSTR-9C for the financial year 2020-21 has been extended from 31.12.2021 to 28.02.2022 vide Notification No. 40/2021 – Central Tax | Dated: 29th December, 2021.

In Addition to that CBIC has notified amendments in GST Forms and CGST Rules-

a. CBIC has amended following CGST Rules

- i. GST rule 36 – Documentary requirements and conditions for claiming input tax credit –Rule 36(4) amended w.e.f 1st January 2022 -No Input Tax Credit unless details are populated in GSTR 2B. Furnishing of details of invoice/credit note in GSTR-1 or through IFF by the supplier is now mandatory to take credit. A self-policing mechanism for claiming validated ITC.
- ii. GST Rule 80-Annual return – Rule 80 amended -The due date for Annual Return-GSTR 9 and Self certified reconciliation statement in form GSTR- 9C of F.Y. 20-21 extended to 28th February 2022.
- iii. GST Rule 95-Refund of tax to certain persons – Rule 95 amended w.e.f 1st April 2021; Following proviso inserted- Provided that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10.

iv. GST Rule 142-Notice and order for demand of amounts payable under the Act – Rule 142 amended w.e.f 1st January 2022 -If Goods are seized in transit, then payment to be made within 7 days (earlier 14 days) of issue of notice under section 129(3) to conclude further proceedings

v. GST Rule 159-Provisional attachment of property

b. CBIC has Inserted following New Rules

i. Rule 144A- Recovery of penalty by the sale of goods or conveyance detained or seized in transit inserted

c. CBIC has Substituted following Existing Rule

i. Rule 154– Disposal of proceeds of sale of goods or conveyance and movable or immovable property.

d. Substituted Existing Forms

i. FORM GST DRC-10 – Notice for Auction under section 79 (1) (b) or section 129(6) of the Act

ii. FORM GST DRC-22 –Provisional attachment of property under section 83

e. Amended Following Forms-

i. FORM GST DRC – 11-Notice to successful bidder

ii. FORM GST DRC – 12-Sale Certificate

iii. FORM GST DRC – 23-Restoration of provisionally attached property / bank account under section 83

iv. FORM GST APL-01-Appeal to Appellate Authority

f. Inserted following New Form

i. FORM GST DRC – 22A – Application for filing objection against provisional attachment of property.

[Notification No. 40/2021 – Central Tax dated 29th December, 2021]

(II) 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.37/2021 – Central Tax

New Delhi, 01st December, 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 (Ninth 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, —

(i) in rule 137, with effect from the 30th day of November 2021, for the words “four years”, the words “five years” shall be substituted.

(ii) in **FORM GST DRC-03**, —

(a) in the heading, after the words “or statement”, the words, letters and figures “or intimation of tax ascertained through **FORM GST DRC-01A**” shall be inserted;

(b) against item 3, in column (3), for the word and letters “Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others (specify)”, the words, letters, figures and brackets “Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through **FORM GST DRC-01A**, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)” shall be substituted;

(c) against item 5, in column (1), after the word and figures “within 30 days of its issue”, the words, letters, figures and brackets “, scrutiny, intimation of tax ascertained through Form GST DRC-01A, audit, inspection or investigation, others (specify)” shall be inserted;

(d) for the table, under serial number 7, for the table, the following table shall be substituted, namely:-

“Sr. No.	Tax Period	Act	Place of supply (POS)	Tax/ Cess	Interest	Penalty, if applicable	Fee	Others	Total	Ledger utilised (Cash / Credit)	Debit entry no.	Date of debit entry
1	2	3	4	5	6	7	8	9	10	11	12	13
												..

[F. No.CBIC-20006/32/2021-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. 35/2021 - Central Tax, dated the 24th September, 2021 *vide* number G.S.R. 659(E), dated the 24th September, 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. 38/2021 – Central Tax

New Delhi, the 21st December, 2021

G.S.R.....(E).— In pursuance of sub-rule (2) of rule 1 of the Central Goods and Services Tax (Eighth Amendment) Rules, 2021, No. 35/2021 – Central Tax, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 659(E), dated the 24th September, 2021, the Central Government, hereby notifies the 1st day of January, 2022, as the date from which the provisions of sub-rule (2), sub-rule (3), clause (i) of sub-rule (6) and sub-rule (7) of rule 2 of the said rules, shall come into force.

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

(Rajeev Ranjan)

Under Secretary to the Government of India

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

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

Notification No. 39/2021 – Central Tax

New Delhi, the 21st December, 2021

S.O.(E).— In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2021 (13 of 2021), the Central Government hereby appoints the 1st day of January, 2022, as the date on which the provisions of sections 108, 109 and 113 to 122 of the said Act shall come into force.

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

(Rajeev Ranjan)

Under Secretary to the Government of India

[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. 40/2021 – Central Tax

New Delhi, the 29th December, 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 (Tenth 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, —

(i) in rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: -

“(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and

(b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60.”;

(ii) in rule 80,—

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

“(1A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-eighth day of February, 2022.”;

(b) after sub-rule (3), the following sub-rule shall be inserted, namely:-

“(3A) Notwithstanding anything contained in sub-rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022.”;

(iii) in rule 95, in sub-rule (3), after clause (c), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2021, namely:-

“**Provided** that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**.”;

(iv) in rule 142, with effect from the 1st day of January, 2022,—

(a) in sub-rule (3), for the words and letters, “fourteen days of detention or seizure of the goods and conveyance”, the words, brackets and figures, “seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3)” shall be substituted;

(b) in sub-rule (5), for the words, “tax, interest and penalty payable by the person chargeable with tax”, the words, “tax, interest and penalty, as the case may be, payable by the person concerned” shall be substituted;

(v) after rule 144, the following rule shall be inserted with effect from the 1st day of January, 2022, namely:-

“**Recovery of penalty by sale of goods or conveyance detained or seized in transit.- 144A.** (1) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) of section 129 within fifteen days from the date of receipt of the copy of the order passed under sub-section (3) of the said section 129, the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

- (2) The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC-10** clearly indicating the goods or conveyance to be sold and the purpose of sale:
Provided that where the person transporting said goods or the owner of such goods pays the amount of penalty under sub-section (1) of section 129, including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period mentioned in sub-rule (1) but before the issuance of notice under this sub-rule, the proper officer shall cancel the process of auction and release such goods or conveyance.
- (3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):
Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.
- (4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.
- (5) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction:
Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.
- (6) On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in **FORM GST DRC-12**.
- (7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.
- (8) Where an appeal has been filed by the person under the provisions of sub-section (1) read with sub-section (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed:

Provided that this sub-rule shall not be applicable in respect of goods of perishable or hazardous nature.”;

(vi) for rule 154, the following rule shall be substituted with effect from the 1st day of January, 2022, namely:—

“Disposal of proceeds of sale of goods or conveyance and movable or immovable property.—

154. (1) The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under sub-section (3) of section 129 shall,-

(a) first, be appropriated against the administrative cost of the recovery process;

(b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under sub-section (3) of section 129, as the case may be;

(c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and

(d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

(2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund;

(vii) in rule 159, with effect from the 1st day of January, 2022,—

(a) in sub-rule (2)-

(A) after the words “copy of the order of attachment”, the words, letters and figures “in **FORM GST DRC-22**” shall be inserted;

(B) after the words “Commissioner to that effect.”, the words and figures, “and a copy of such order shall also be sent to the person whose property is being attached under section 83” shall be inserted;

(b) in sub-rule (3)-

(A) for the words “and if the taxable person”, the word “and if the person, whose property has been attached,” shall be substituted;

(B) for the words “by the taxable person”, the words, “by such person” shall be substituted;

(c) in sub-rule (4), for the words “the taxable person” occurring at both the places, the words “such person” shall be substituted;

(d) in sub-rule (5), for the words brackets and figure “, within seven days of the attachment under sub-rule (1), file an objection”, the words, letters and figures “file an objection in **FORM GST DRC-22A**” shall be substituted;

(viii) for “**FORM GST DRC-10**”, the following form shall be substituted, with effect from the 1st day of January, 2022, namely:–

“FORM GST DRC – 10

[See rule 144(2)&144A]

Notice for Auction under section 79 (1) (b) or section 129(6) of the Act

Demand order no.:

Date:

Period:

Whereas an order has been made by me for sale of the attached or distrained goods specified in the Schedule below for recovery of Rs..... and interest thereon and admissible expenditure incurred on the recovery process in accordance with the provisions of section 79.

Or

Whereas the goods or conveyance detained or seized under Section 129 are liable for sale or disposal in accordance with the provisions of sub-section (6) of Section 129 for recovery of penalty of Rs..... payable under sub-section (3) of section 129 and the expenses incurred in safe custody and handling of such goods or conveyance and other administrative expenses

The sale will be by public auction and the goods and/or conveyance shall be put up for sale in the lots specified in the Schedule. The sale will be of the right, title and interests of the defaulter. And the liabilities and claims attached to the said properties, so far as they have been ascertained, are those specified in the Schedule against each lot.

The auction will be held on at.... AM/PM.

The price of each lot shall be paid at the time of sale or as per the directions of the proper officer/ specified officer and in default of payment, the goods and/or conveyance shall be again put up for auction and resold.

Schedule

Serial No.	Description of goods or conveyance	Quantity
1	2	3

Place:

Signature

Date:

Name

Designation: ”

(ix) in **FORM GST DRC-11**, with effect from the 1st day of January, 2022, -

(a) for the words, figures, letter and brackets “See rule 144(5) & 147(12)”, the words, figures and brackets “See rule 144(5),144A and 147(12)” shall be substituted;

(b) for the word “goods”, the words “goods or conveyance” shall be substituted;

(x) in **FORM GST DRC-12**, with effect from the 1st day of January, 2022-

(a) for the words, figures, brackets and letter “See rule 144(5) & 147(12)”, the words, figures and brackets “See rule 144(5),144A and 147(12)” shall be substituted;

(b) for the word “goods”, wherever it occurs, the words “goods or conveyance” shall be substituted;

(c) after the words, figures, brackets and letters “provisions of section 79(1)(b)/(d)”, the words, figures and brackets “or section 129(6)” shall be inserted;

(xi) for **FORM GST DRC-22**, the following form shall be substituted, with effect from the 1st day of January, 2022, namely:-

“FORM GST DRC -22

[See rule 159(1)]

Reference No.:

Date:

To

.....Name

_____Address

(Bank/ Post Office/Financial Institution/Immovable property registering authority/
Regional Transport Authority/Other Relevant Authority)

Provisional attachment of property under section 83

It is to inform that M/s ----- (name) having principal
place of business at -----

----- (address) bearing registration number as -----
(GSTIN/ID), PAN is a registered taxable person under the
<<SGST/CGST>> Act.

or

It is to inform that Sh.....(name) resident
of.....(address) bearing PANand/or Aadhaar
No. is a person specified under sub-section (1A) of
Section 122 .

Proceedings have been launched against the aforesaid person under
section << ----->> of the said Act to
determine the tax or any other amount due from the said person. As per

information available with the department, it has come to my notice that the said person has a -

<<saving / current / FD/RD / depository >>account in your << bank/post office/financial institution>> having account no. << A/c no. >>;

or

property located at << property ID & location>>.

or

Vehicle No. <<description>>

or

Others (please specify) <<description>>

In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act, I ----- (name), ----- (designation), hereby provisionally attach the aforesaid account / property.

No debit shall be allowed to be made from the said account or any other account operated by the aforesaid person on the same PAN without the prior permission of this department.

or

The property mentioned above shall not be allowed to be disposed of without the prior permission of this department.

Signature

Name

Designation

Copy to (person)”

(xii) in **FORM GST DRC-23**, with effect from the 1st day of January, 2022,–

(a) after “/Immovable property registering authority”, the following shall be inserted, namely:–

“/ Regional Transport Authority/Other Relevant Authority”;

(b) for the words “proceedings pending against the defaulting person which warrants the”, occurring at both the places, the words, “requirement of” shall be substituted;

(xiii) in **FORM APL-01**, in entry number 15, for the table under clause(a), the following table shall be substituted, with effect from the 1st day of January, 2022, namely:-

Particulars		Central tax	State/ UT tax	Integrated tax	Cess	Total amount	
						< total >	
(a) Admitted amount	Tax/ Cess					< total >	
	Interest					< total >	
	Penalty					<total >	
	Fees					< total >	
	Other charges					< total >	< total >
(b) Pre-deposit (10% of disputed tax /cess but not exceeding Rs. 25 crore each in respect of CGST, SGST or cess, or not exceeding	Tax/ Cess					< total >	

Rs. 50 crore in respect of IGST and Rs. 25 crore in respect of cess)							
(c) Pre-deposit in case of sub-section (3) of section 129	Penalty					< total >”;	

(xiv) after **FORM GST DRC-22**, the following form shall be inserted with effect from the 1st day of January, 2022, namely:-

“FORM GST DRC – 22A
[See rule 159(5)]

Reference No.:

Date:

ARN No. of Order in FORM GST DRC-22:

To
The Pr. Commissioner/Commissioner
.....(Jurisdiction)

Application for filing objection against provisional attachment of property

Whereas, an order in FORM GST DRC-22 has been issued for provisional attachment of the following property under the provisions of section 83 of the Act vide ARN No.....

Ref ID	
--------	--

Property provisionally attached	<< property id & location>>
Account provisionally attached	<< saving/current/FD/RD/depository account no>>
Vehicle provisionally attached	<<Vehicle details>>
Any other property	<<details >>

2. In accordance with the provisions of Rule 159(5) of the CGST Rules , 2017, I hereby submit my objection on the basis of following facts and circumstances.

.

<<.....>>

<<...Documents to be uploaded...>>

Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Name-

GSTIN (in case of registered person)-

PAN and/or Aadhaar No. (in case of others)-

Place –

Date –

Signature of Authorized Signatory”.

[F. No. CBIC-20013/7/2021-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. 37/2021 - Central Tax, dated the 1st December, 2021 *vide* number G.S.R. 683(E), dated the 1st December, 2021.

(III) 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. 18/2021-Central Tax (Rate)

New Delhi, the 28th December, 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) against S. No. 2, for the entry in column (2), the entry “0303, 0304, 0305, 0306, 0307, 0308, 0309” shall be substituted;
 - (ii) against S. No. 9, for the entry in column (3), the entry “Yoghurt; Cream, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavored or containing added fruit, nuts or cocoa” shall be substituted;
 - (iii) against S. No. 14, for the entry in column (3), the entry “Insects and other edible products of animal origin, not elsewhere specified or included” shall be substituted;
 - (iv) against S. No. 87, for the entry in column (3), the entry “Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.” shall be substituted;
 - (v) against S. No. 107, for the entry in column (3), the entry “Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable or microbial fats or oils, other than those of heading 2304 or 2305 other than cottonseed oil cake” shall be substituted;
 - (vi) against S. No. 127, for the entry in column (3), the entry "Dolomite, whether or not calcined or sintered, including dolomite roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape; 2518 10 dolomite, Not calcined or sintered", shall be substituted;
 - (vii) for S. No. 186A and the corresponding entries relating thereto, the following S. Nos. and the corresponding entries shall be substituted, namely: -

“186A	3816	Dolomite ramming mix
186B	3826	Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel”;

(viii) against S. No. 232, for the entry in column (2), the entry “8419 12” shall be substituted;

(ix) For S. No. 244 and the corresponding entries relating thereto, the following Sl. No. and entries shall be substituted, namely: -

“244	8802 or 8806	Other aircraft (for example, helicopters, aeroplanes) except the items covered in Sl. No. 383 in Schedule III, other than for personal use”;
------	-----------------	--

(x) against S. No. 245, for the entry in column (2), the entry “8807”, and for the entry in column (3), the entry “Parts of goods of heading 8802 or 8806 (except parts of items covered in Sl. No. 383 in Schedule III)”, shall be substituted;

(xi) against S. No. 258, for the entry in column (2), the entry “9405”, shall be substituted;

b. in Schedule II – 6%, -

(i) against S. No. 15, for the entry in column (3), the entry “Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (*Corylus* spp.), Chestnuts (*Castanea* spp.), Pistachios, Macadamia nuts, Kola nuts (*Cola* spp.), Pine nuts [other than dried areca nuts]” shall be substituted;

(ii) against S. No. 25, for the entry in column (3), the entry “Animal or microbial fats and animal or microbial oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.” shall be substituted;

(iii) against S. No. 26, for the entry in column (3), the entry “Edible mixtures or preparations of animal fats or microbial fats or animal oils or microbial oils or of fractions of different animal fats or microbial fats or animal oils or microbial oils of this Chapter, other than edible fats or oils or their fractions of heading 1516” shall be substituted;

(iv) against S. No. 27, for the entry in column (3), the entry “Animal or microbial fats and animal or microbial oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal, vegetable or microbial fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified of included” shall be substituted;

(v) against S. No. 28, for the entry in column (3), the entry “Sausages and similar products, of meat, meat offal, blood or insects; food preparations based on these products” shall be substituted;

(vi) against S. No. 29, for the entry in column (3), the entry “Other prepared or preserved meat, meat offal, blood or insects” shall be substituted;

- (vii) against S. No. 41, for the entry in column (3), the entry “Fruit or nut juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.” shall be substituted;
- (viii) after S. No. 41 and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“41A	2009 89 90	Tender coconut water put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any such actionable claim or enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE]”;
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- (ix) S. No. 49 and the entries relating thereto shall be omitted;
- (x) against S. No. 144, for the entry in column (3), the entry “Carpets and other textile floor coverings (including Turf), tufted, whether or not made up” shall be substituted;
- (xi) against S. No. 185A, for the entry in column (2), the entry “7419 80 30” shall be substituted;
- (xii) against S. No. 225, for the entry in column (2), the entry “9405” shall be substituted;
- (xiii) against S. No. 236, for the entry in column (3), the entry “Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles; collages, mosaics and similar decorative plaques” shall be substituted;

c. in Schedule III – 9%, -

- (i) for S. Nos. 26A to 26L and the corresponding entries relating thereto, the following S. Nos. and the corresponding entries shall be substituted, namely: -

“26A	2404 12 00	Products containing nicotine and intended for inhalation without combustion
26B	2404 91 00, 2404 92 00, 2404 99 00	Products for oral application or transdermal application or for application otherwise than orally or transdermally, containing nicotine and intended to assist tobacco use cessation
26C	2515 12 20, 2515 12 90	Marble and travertine, other than blocks
26D	2516 12 00	Granite, other than blocks
26E	2601	Iron ores and concentrates, including roasted iron pyrites
26F	2602	Manganese ores and concentrates, including

		ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.
26G	2603	Copper ores and concentrates
26H	2604	Nickel ores and concentrates
26I	2605	Cobalt ores and concentrates
26J	2606	Aluminium ores and concentrates
26K	2607	Lead ores and concentrates
26L	2608	Zinc ores and concentrates
26M	2609	Tin ores and concentrates
26N	2610	Chromium ores and concentrates”;

- (ii) S. No. 41 and the entries relating thereto shall be omitted;
- (iii) against S. No. 72, for the entry in column (3), the entry “Safety Fuses; Detonating Cords; Percussion or Detonating Caps; Igniters; Electric Detonators”, shall be substituted;
- (iv) after S. No. 98 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“98A	3827	Mixtures containing halogenated derivatives of Methane, Ethane or Propane, not elsewhere specified or included”;
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- (v) against S. No. 190A, for the entry in column (3), the entry “Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps and light sources, cathode ray tube or the like”, shall be substituted;
- (vi) against S. No. 195, for the entry in column (3), the entry “Glass fibres (including glass wool) and articles thereof (for example, yarn, rovings, woven fabrics)”, shall be substituted;
- (vii) against S. No. 317B, for the entry in column (3), the entry “Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; Gas-tight biological safety cabinets, whether or not fitted with filters [other than bicycle pumps, other hand pumps and parts of air or vacuum pumps and compressors of bicycle pumps]”, shall be substituted;
- (viii) against S. No. 320, for the entry in column (2), the entry “8419 [other than 8419 12]”, shall be substituted;
- (ix) against S. No. 330, for the entry in column (3), the entry “Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable or microbial fats or oils”, shall be substituted;
- (x) against S. No. 352, for the entry in column (3), the entry "Machine-Tools (Including Presses) For Working Metal by Forging, Hammering or Die

Forging (Excluding Rolling Mills); Machine-Tools (Including Presses, Slitting Lines and Cut-To-Length Lines) For Working Metal by Bending, Folding, Straightening, Flattening, Shearing, Punching, Notching or Nibbling (Excluding Draw-Benches); Presses for Working Metal or Metal Carbides, Not Specified Above", shall be substituted;

- (xi) after S. No. 369B and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“369C	8485	Machines for Additive Manufacturing”;
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- (xii) after S. No. 382 and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“382A	8524	Flat Panel Display Modules, Whether or Not Incorporating Touch-Sensitive Screens”;
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- (xiii) For S. No. 383 and the corresponding entries relating thereto, the following Sl. No. and entries shall be substituted, namely: -

“383	8525 or 8806	Closed-circuit television (CCTV), transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders including goods in the form of unmanned aircraft falling under 8806 [other than two-way radio (Walkie talkie) used by defence, police and paramilitary forces, etc.]”;
------	-----------------	--

- (xiv) against S. No. 390, for the entry in column (3), the entry “Electrical Filament or discharge lamps including sealed beam lamp units and ultra-violet or infra-red lamps; arc lamps [other than Light-Emitting Diode (LED) Light Sources]”, shall be substituted;
- (xv) against S. No. 392, for the entry in column (3), the entry “Semiconductor Devices (for example, Diodes, Transistors, Semiconductor Based Transducers); Photosensitive Semiconductor devices; Light-Emitting Diodes (LED), whether or not assembled with other Light-Emitting Diodes (LED); Mounted Piezo-Electric crystals”, shall be substituted;
- (xvi) against S. No. 398, for the entry in column (2), the entry “8548 or 8549”, shall be substituted;
- (xvii) against S. No. 411H, for the entry in column (3), the entry "Lasers, other than Laser Diodes; other Optical Appliances and Instruments, not specified or included elsewhere in this Chapter", shall be substituted;
- (xviii) against S. No. 413A, for the entry in column (3), the entry "Apparatus based on the use of X-rays or of alpha, beta, gamma or other ionizing radiations [other than those for medical, surgical, dental or veterinary uses], including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, 28 examinations or treatment tables, chairs and the like", shall be substituted;

- (xix) against S. No. 438A, for the entry in column (3), the entry "Luminaires and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included [other than kerosene pressure lantern and parts thereof including gas mantles; hurricane lanterns, kerosene lamp, petromax, glass chimney, and parts thereof; LED lights or fixtures including LED lamps; LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board)]", shall be substituted;
- (xx) against S. No. 441A, for the entry in column (3), the entry "Travelling Circuses and Travelling Menageries; Amusement Park Rides and Water Part Amusements; Fairground Amusements, including Shooting Galleries; Travelling Theatres", shall be substituted;
- (xxi) against S. No. 449B, for the entry in column (3), the entry "Vacuum flasks and other vacuum vessels, Complete; parts thereof other than glass inner", shall be substituted;

d. in Schedule IV – 14%, -

- (i) after S. No. 15 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -

“15A	2404 11 00	Products containing tobacco or reconstituted tobacco and intended for inhalation without combustion
15B	2404 19 00	Products containing tobacco or nicotine substitutes and intended for inhalation without combustion”;

- (ii) against S. No. 176, for the entry in column (2), the entry “8802 or 8806” shall be substituted;

2. This notification shall come into force on the 1st day of January, 2022.

[F. No. CBIC-190354/281/2021-TRU Section-CBEC]

(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 last amended by Notification No. 14/2021-Central Tax(Rate) dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number GSR 816(E), dated the 18th November, 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. 19/2021-Central Tax (Rate)

New Delhi, the 28th December, 2021

G.S.R. (E).- In exercise of the powers conferred by sub-sections (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, -

- (i) against S. No. 22, for the entry in column (2), the entry “0303, 0304, 0305, 0306, 0307, 0308, 0309” shall be substituted;
- (ii) against S. No. 43B, in column (3), for the entry, the entry “Vegetables provisionally preserved, but unsuitable in that state for immediate consumption” shall be substituted;
- (iii) against S. No. 49, in column (3), for the entry, the entry “Other nuts, fresh such as Almonds, Hazelnuts or filberts (*Corylus* spp.), walnuts, Chestnuts (*Castanea* spp.), Pistachios, Macadamia nuts, Kola nuts (*Cola* spp.), Areca nuts, Pine nuts, fresh, whether or not shelled or peeled” shall be substituted;
- (iv) after S. No. 97 and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“97A	2009 89 90	Tender coconut water other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any such actionable claim or enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE I]”;
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- (v) S. No. 101 and the entries relating thereto shall be omitted;

(vi) against S. No. 141, for the entry in column (2), the entry “8807” shall be substituted;

2. This notification shall come into force on the 1st day of January, 2022.

[F. No. CBIC-190354/281/2021-TRU Section-CBEC]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: - The principal notification 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 and last amended *vide* Notification No. 9/2021-Central Tax (Rate) dated the 30th September, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number GSR 694(E), dated the 30th September, 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. 20/2021-Central Tax (Rate)

New Delhi, the 28th December, 2021

G.S.R. (E).- In exercise of the powers conferred by sub-sections (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 amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2018-Central Tax (Rate), dated the 26th July, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 695(E), dated the 26th July, 2018, namely :-

In the said notification, in the TABLE, -

- (i) against S. No. 4, for the entry in column (2), the entry “4414” shall be substituted;
 - (ii) against S. No. 29, for the entry in column (2), the entry “7419 80” shall be substituted;
2. This notification shall come into force on the 1st day of January, 2022.

[F. No. CBIC-190354/281/2021-TRU Section-CBEC]

(Rajeev Ranjan)

Under Secretary to the Government of India

[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.21/2021-Central Tax (Rate)

New Delhi, the 31st December, 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, and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue), No.14/2021-Central Tax (Rate), dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 816(E), dated the 18th November, 2021, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.01/2017- 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%, serial number 225 and the entries relating thereto shall be omitted;
- b. in Schedule II – 6%, after serial number 171 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

“171A1	64	Footwear of sale value not exceeding Rs.1000 per pair.”
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2. This notification shall come into force on the 1st day of January, 2022.

[F.No. 354/79/2021-TRU]

(Gaurav Singh)
Deputy 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 *vide* notification No. 18/2021 – Central Tax (Rate), dated the 28th December, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 892(E), dated the 28th December, 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. 22/2021- Central Tax (Rate)

New Delhi, 31st December, 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, and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2021 – Central Tax(Rate), dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 807(E), dated the 18th November, 2021, hereby makes the following 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, in the TABLE, against serial number 3,-

- 1) in column (3), in the heading “Description of Service”, in items (iii),(vi),(ix) and (x), for the words “Union territory, a local authority, a Governmental Authority or a Government Entity” the words “Union territory or a local authority” shall be substituted;
- 2) in column (3), in the heading “Description of Service”, in item (vii), for the words “Union territory, local authority, a Governmental Authority or a Government Entity” the words “Union territory or a local authority” shall be substituted;
- 3) in column (5), in the heading “Condition”, the entries against items (iii),(vi),(vii),(ix) and (x), shall be omitted.

2. This notification shall come into force with effect from the 1st day of January, 2022.

[F. No.354/79/2021-TRU]

(Gaurav Singh)

Deputy 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 last amended by notification No. 06/2021 - Central Tax (Rate), dated the 30th September, 2021 vide number G.S.R. 687(E), dated the 30th September, 2021.

(IV) IGST 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. 18/2021-Integrated Tax (Rate)

New Delhi, the 28th December, 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) 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) against S. No. 2, for the entry in column (2), the entry “0303, 0304, 0305, 0306, 0307, 0308, 0309” shall be substituted;
- (ii) against S. No. 9, for the entry in column (3), the entry “Yoghurt; Cream, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavored or containing added fruit, nuts or cocoa” shall be substituted;
- (iii) against S. No. 14, for the entry in column (3), the entry “Insects and other edible products of animal origin, not elsewhere specified or included” shall be substituted;
- (iv) against S. No. 87, for the entry in column (3), the entry “Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.” shall be substituted;
- (v) against S. No. 107, for the entry in column (3), the entry “Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable or microbial fats or oils, other than those of heading 2304 or 2305 other than cottonseed oil cake” shall be substituted;
- (vi) against S. No. 127, for the entry in column (3), the entry "Dolomite, whether or not calcined or sintered, including dolomite roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape; 2518 10 dolomite, Not calcined or sintered", shall be substituted;

- (vii) for S. No. 186A and the corresponding entries relating thereto, the following S. Nos. and the corresponding entries shall be substituted, namely: -

“186A	3816	Dolomite ramming mix
186B	3826	Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel”;

- (viii) against S. No. 232, for the entry in column (2), the entry “8419 12” shall be substituted;
- (ix) For S. No. 244 and the corresponding entries relating thereto, the following Sl. No. and entries shall be substituted, namely: -

“244	8802 or 8806	Other aircraft (for example, helicopters, aeroplanes) except the items covered in Sl. No. 383 in Schedule III, other than for personal use”;
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- (x) against S. No. 245, for the entry in column (2), the entry “8807”, and for the entry in column (3), the entry “Parts of goods of heading 8802 or 8806 (except parts of items covered in Sl. No. 383 in Schedule III)”, shall be substituted;
- (xi) against S. No. 258, for the entry in column (2), the entry “9405”, shall be substituted;

b. in Schedule II – 12%, -

- (i) against S. No. 15, for the entry in column (3), the entry “Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (*Corylus* spp.), Chestnuts (*Castanea* spp.), Pistachios, Macadamia nuts, Kola nuts (*Cola* spp.), Pine nuts [other than dried areca nuts]” shall be substituted;
- (ii) against S. No. 25, for the entry in column (3), the entry “Animal or microbial fats and animal or microbial oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.” shall be substituted;
- (iii) against S. No. 26, for the entry in column (3), the entry “Edible mixtures or preparations of animal fats or microbial fats or animal oils or microbial oils or of fractions of different animal fats or microbial fats or animal oils or microbial oils of this Chapter, other than edible fats or oils or their fractions of heading 1516” shall be substituted;
- (iv) against S. No. 27, for the entry in column (3), the entry “Animal or microbial fats and animal or microbial oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal, vegetable or microbial fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified of included” shall be substituted;

- (v) against S. No. 28, for the entry in column (3), the entry “Sausages and similar products, of meat, meat offal, blood or insects; food preparations based on these products” shall be substituted;
- (vi) against S. No. 29, for the entry in column (3), the entry “Other prepared or preserved meat, meat offal, blood or insects” shall be substituted;
- (vii) against S. No. 41, for the entry in column (3), the entry “Fruit or nut juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.” shall be substituted;
- (viii) after S. No. 41 and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“41A	2009 89 90	Tender coconut water put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any such actionable claim or enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE]”;
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- (ix) S. No. 49 and the entries relating thereto shall be omitted;
- (x) against S. No. 144, for the entry in column (3), the entry “Carpets and other textile floor coverings (including Turf), tufted, whether or not made up” shall be substituted;
- (xi) against S. No. 185A, for the entry in column (2), the entry “7419 80 30” shall be substituted;
- (xii) against S. No. 225, for the entry in column (2), the entry “9405” shall be substituted;
- (xiii) against S. No. 236, for the entry in column (3), the entry “Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles; collages, mosaics and similar decorative plaques” shall be substituted;

c. in Schedule III – 18%, -

- (i) for S. Nos. 26A to 26L and the corresponding entries relating thereto, the following S. Nos. and the corresponding entries shall be substituted, namely: -

“26A	2404 12 00	Products containing nicotine and intended for inhalation without combustion
26B	2404 91 00, 2404 92 00, 2404 99 00	Products for oral application or transdermal application or for application otherwise than orally or transdermally, containing nicotine and intended to assist tobacco use cessation
26C	2515 12 20,	Marble and travertine, other than blocks

	2515 12 90	
26D	2516 12 00	Granite, other than blocks
26E	2601	Iron ores and concentrates, including roasted iron pyrites
26F	2602	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.
26G	2603	Copper ores and concentrates
26H	2604	Nickel ores and concentrates
26I	2605	Cobalt ores and concentrates
26J	2606	Aluminium ores and concentrates
26K	2607	Lead ores and concentrates
26L	2608	Zinc ores and concentrates
26M	2609	Tin ores and concentrates
26N	2610	Chromium ores and concentrates”;

- (ii) S. No. 41 and the entries relating thereto shall be omitted;
- (iii) against S. No. 72, for the entry in column (3), the entry “Safety Fuses; Detonating Cords; Percussion or Detonating Caps; Igniters; Electric Detonators”, shall be substituted;
- (iv) after S. No. 98 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“98A	3827	Mixtures containing halogenated derivatives of Methane, Ethane or Propane, not elsewhere specified or included”;
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- (v) against S. No. 190A, for the entry in column (3), the entry “Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps and light sources, cathode ray tube or the like”, shall be substituted;
- (vi) against S. No. 195, for the entry in column (3), the entry “Glass fibres (including glass wool) and articles thereof (for example, yarn, rovings, woven fabrics)”, shall be substituted;
- (vii) against S. No. 317B, for the entry in column (3), the entry “Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; Gas-tight biological safety cabinets, whether or not fitted with filters [other than bicycle pumps, other hand pumps and parts of air or vacuum pumps and compressors of bicycle pumps]”, shall be substituted;
- (viii) against S. No. 320, for the entry in column (2), the entry “8419 [other than 8419 12]”, shall be substituted;
- (ix) against S. No. 330, for the entry in column (3), the entry “Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation

or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable or microbial fats or oils”, shall be substituted;

- (x) against S. No. 352, for the entry in column (3), the entry "Machine-Tools (Including Presses) For Working Metal by Forging, Hammering or Die Forging (Excluding Rolling Mills); Machine-Tools (Including Presses, Slitting Lines and Cut-To-Length Lines) For Working Metal by Bending, Folding, Straightening, Flattening, Shearing, Punching, Notching or Nibbling (Excluding Draw-Benches); Presses for Working Metal or Metal Carbides, Not Specified Above", shall be substituted;
- (xi) after S. No. 369B and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“369C	8485	Machines for Additive Manufacturing”;
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- (xii) after S. No. 382 and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“382A	8524	Flat Panel Display Modules, Whether or Not Incorporating Touch-Sensitive Screens”;
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- (xiii) For S. No. 383 and the corresponding entries relating thereto, the following Sl. No. and entries shall be substituted, namely: -

“383	8525 or 8806	Closed-circuit television (CCTV), transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders including goods in the form of unmanned aircraft falling under 8806 [other than two-way radio (Walkie talkie) used by defence, police and paramilitary forces, etc.]”;
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- (xiv) against S. No. 390, for the entry in column (3), the entry “Electrical Filament or discharge lamps including sealed beam lamp units and ultra-violet or infra-red lamps; arc lamps [other than Light-Emitting Diode (LED) Light Sources]”, shall be substituted;
- (xv) against S. No. 392, for the entry in column (3), the entry “Semiconductor Devices (for example, Diodes, Transistors, Semiconductor Based Transducers); Photosensitive Semiconductor devices; Light-Emitting Diodes (LED), whether or not assembled with other Light-Emitting Diodes (LED); Mounted Piezo-Electric crystals”, shall be substituted;
- (xvi) against S. No. 398, for the entry in column (2), the entry “8548 or 8549”, shall be substituted;
- (xvii) against S. No. 411H, for the entry in column (3), the entry "Lasers, other than Laser Diodes; other Optical Appliances and Instruments, not specified or included elsewhere in this Chapter", shall be substituted;

- (xviii) against S. No. 413A, for the entry in column (3), the entry "Apparatus based on the use of X-rays or of alpha, beta, gamma or other ionizing radiations [other than those for medical, surgical, dental or veterinary uses], including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, 28 examinations or treatment tables, chairs and the like", shall be substituted;
- (xix) against S. No. 438A, for the entry in column (3), the entry "Luminaires and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included [other than kerosene pressure lantern and parts thereof including gas mantles; hurricane lanterns, kerosene lamp, petromax, glass chimney, and parts thereof; LED lights or fixtures including LED lamps; LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board)]", shall be substituted;
- (xx) against S. No. 441A, for the entry in column (3), the entry "Travelling Circuses and Travelling Menageries; Amusement Park Rides and Water Part Amusements; Fairground Amusements, including Shooting Galleries; Travelling Theatres", shall be substituted;
- (xxi) against S. No. 449B, for the entry in column (3), the entry "Vacuum flasks and other vacuum vessels, Complete; parts thereof other than glass inners", shall be substituted;

d. in Schedule IV – 28%, -

- (i) after S. No. 15 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -

“15A	2404 11 00	Products containing tobacco or reconstituted tobacco and intended for inhalation without combustion
15B	2404 19 00	Products containing tobacco or nicotine substitutes and intended for inhalation without combustion”;

- (ii) against S. No. 176, for the entry in column (2), the entry “8802 or 8806” shall be substituted;

2. This notification shall come into force on the 1st day of January, 2022.

[F. No. CBIC-190354/281/2021-TRU Section-CBEC]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: - The principal notification No.1/2017-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. 666(E), dated the 28th June, 2017, and was last amended by notification

No. 14/2021 – Integrated Tax (Rate), dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 817(E)., dated the 18th November, 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. 19/2021-Integrated Tax (Rate)

New Delhi, the 28th December, 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, -

- (i) against S. No. 22, for the entry in column (2), the entry “0303, 0304, 0305, 0306, 0307, 0308, 0309” shall be substituted;
- (ii) against S. No. 43B, in column (3), for the entry, the entry “Vegetables provisionally preserved, but unsuitable in that state for immediate consumption” shall be substituted;
- (iii) against S. No. 49, in column (3), for the entry, the entry “Other nuts, fresh such as Almonds, Hazelnuts or filberts (*Corylus* spp.), walnuts, Chestnuts (*Castanea* spp.), Pistachios, Macadamia nuts, Kola nuts (*Cola* spp.), Areca nuts, Pine nuts, fresh, whether or not shelled or peeled” shall be substituted;
- (iv) after S. No. 97 and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“97A	2009 89 90	Tender coconut water other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any such actionable claim or enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE I]”;
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- (v) S. No. 101 and the entries relating thereto shall be omitted;

(vi) against S. No. 141, for the entry in column (2), the entry “8807” shall be substituted;

2. This notification shall come into force on the 1st day of January, 2022.

[F. No. CBIC-190354/281/2021-TRU Section-CBEC]

(Rajeev Ranjan)

Under Secretary 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. 9/2021-Integrated Tax (Rate) dated the 30th September, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 30th September, 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. 20/2021-Integrated Tax (Rate)

New Delhi, the 28th December, 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 being satisfied that it is necessary in the public interest so to do, 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. 22/2018-Integrated Tax (Rate), dated the 26th July, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 699(E), dated the 26th July, 2018, namely :-

In the said notification, in the TABLE, -

- (i) against S. No. 4, for the entry in column (2), the entry “4414” shall be substituted;
- (ii) against S. No. 29, for the entry in column (2), the entry “7419 80” shall be substituted;

2. This notification shall come into force on the 1st day of January, 2022.

[F. No. CBIC-190354/281/2021-TRU Section-CBEC]

(Rajeev Ranjan)

Under Secretary to the Government of India

[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. 21/2021-Integrated Tax (Rate)

New Delhi, the 31st December, 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) 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, and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue), No.14/2021-Integrated Tax (Rate), dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 817(E), dated the 18th November, 2021, 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%, serial number 225 and the entries relating thereto shall be omitted;
- b. in Schedule II – 12%, after serial number 171 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

“171A1	64	Footwear of sale value not exceeding Rs.1000 per pair.”
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2. This notification shall come into force on the 1st day of January, 2022.

[F.No.354/79/2021-TRU]

(Gaurav Singh)
Deputy Secretary to the Government of India

Note: - The principal notification No.1/2017-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. 666(E), dated the 28th June, 2017, and was last amended *vide* notification No. 18/2021 – Integrated Tax (Rate), dated the 28th December, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 893(E), dated the 28th December, 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. 22/2021- Integrated Tax (Rate)

New Delhi, 31st December, 2021.

G.S.R.....(E).- In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 5, subsection (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 being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2021 – Integrated Tax (Rate), dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 808(E), dated the 18th November, 2021, hereby makes the following 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, against serial number 3,-

- 1) in column (3), in the heading “Description of Service”, in items (iii),(vi),(ix) and (x), for the words and symbols “Union territory, a local authority, a Governmental Authority or a Government Entity” the words and symbols “Union territory or a local authority” shall be substituted;
- 2) in column (3), in the heading “Description of Service”, in item (vii), for the words and symbols “Union territory, local authority, a Governmental Authority or a Government Entity” the words and symbols “Union territory or a local authority” shall be substituted;
- 3) in column (5), in the heading “Condition”, the entries against items (iii),(vi),(vii),(ix) and (x), shall be omitted.

2. This notification shall come into force with effect from the 1st day of January, 2022.

[F. No.354/79/2021-TRU]

(Gaurav Singh)

Deputy Secretary to the Government of India

Note: -The principal notification No. 08/2017 - Integrated Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 683 (E), dated the 28th June, 2017 and last amended by notification No. 06/2021-Integrated Tax (Rate), dated the 30th September, 2021 vide number G.S.R. 689 (E), dated the 30th September, 2021.

(V) CGST CIRCULARS

Circular No. 167 / 23 /2021 - GST

CBIC-190354/207/2021-TRU Section-CBEC

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

North Block, New Delhi,

Dated the 17th December, 2021

To,

**The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)**

Madam/Sir,

**Sub: GST on service supplied by restaurants through e-commerce operators
-reg.**

The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify 'Restaurant Service' under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator. In this regard notification No. 17/2021 dated 18.11.2021 has been issued.

2 Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

Sl No	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1 st

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Sl No	Issue	Clarification
		<p>January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5).</p> <p>On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.</p>
2.	<p>Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?</p>	<p>As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.</p>
3.	<p>Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?</p>	<p>Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.</p>
4.	<p>What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?</p>	<p>It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such</p>

Circular No. 167 / 23 /2021 - GST

Sl No	Issue	Clarification
		services in his aggregate turnover.
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	<p>ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.</p> <p>It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)</p>
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods or services other than	ECO is required to pay GST on services notified under section 9(5), besides the

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Sl No	Issue	Clarification
	‘restaurant service’ through ECOs be taxed at 5% without ITC?	<p>services/other supplies made on his own account.</p> <p>On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies.</p> <p>Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.</p>
9.	Would ‘restaurant service’ and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	<p>Considering that liability to pay GST on supplies other than ‘restaurant service’ through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.</p>
10.	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	<p>The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.</p>
11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	<p>A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B.</p> <p>The ECO may, on services notified under</p>

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Sl No	Issue	Clarification
		<p>section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being.</p> <p>Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose.</p> <p>Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.</p>

3. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,

Anna Sosa Thomas
Technical Officer (TRU)
Email: anna.thomas@gov.in

Circular No. 168/24/2021 - GST

F.No. CBIC – 20021/04/2021– GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 30th December, 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: Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli.

New GSTINs with UT Code 26 were created for the taxpayers of erstwhile UT of Daman and Diu w.e.f 1st August, 2020 on merger of the UT of Dadra & Nagar Haveli and UT of Daman & Diu. During the transition, the taxpayers have transferred their ITC balance from their electronic credit ledger of the old GSTIN (by reversing the balance amount available in electronic credit ledger through the last return in FORM GSTR 3B filed for the old GSTIN prior to merger) to the new GSTIN (by availing the ITC for the said amount in the first return in FORM GSTR 3B filed for the new GSTIN) as per procedure specified under Notification No. 10/2020-CT dated 21.03.2020.

2 Representations have now been received from the field formations and trade/industry that due to transfer of ITC from old GSTIN to new GSTIN, the taxpayers are unable to apply for refund on account of zero-rated supplies and inverted rated structure for the period prior to merger in respect of old GSTIN as they have no ITC available in the electronic credit ledger of the old GSTIN for debiting the amount from electronic credit ledger for claiming refund of unutilised ITC. Such taxpayers are also unable to apply for such refund claim from the new GSTIN because all the invoices bear the old GSTIN and the system has certain validations which do not allow the refund application to be filed from the new GSTIN for the period prior to the merger.

3 The matter has been examined 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 Central Goods and Services Tax Act, 2017, hereby prescribes the

following procedure in respect of the taxpayers, registered in the erstwhile UT of Daman & Diu and who are unable to file refund claim, due to merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu, to enable such taxpayers to file **refund claim for the period prior to merger:**

- i. The application for refund shall be filed under 'Any other' category on the GST portal using their **new GSTIN**. In the Remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilised ITC on account of export of goods/services, in remarks column, he shall enter '*Refund of unutilised ITC on account of export of goods/services without payment of tax for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli*'. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.
 - ii. At this stage, the applicant is not required to make any debit from the electronic credit ledger.
 - iii. On receipt of the claim, the proper officer shall calculate the admissible refund amount as per law. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.
 - iv. For the categories of refund where debit of ITC is not required, the applicant may apply for refund under the category "Any other" mentioning the reasons in the Remarks column. Such application shall also be accompanied by all the supporting documents which are otherwise required to be submitted along with the refund claim.
4. No refund claim, requiring debit from the electronic credit ledger or where the refund would result in re-credit of the amount sanctioned in the electronic credit ledger, shall be filed using old GSTIN.
5. It is requested that suitable trade notices may be issued to publicize the contents of this circular. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner

(V) ADVANCE RULINGS

1. Mahindra Splendour CHS liable to pay GST on contribution received from members

Case Name : In re Mahindra Splendour CHS Ltd (GST AAR Maharashtra)

Appeal Number : No. GST-ARA-38/2020-21/B-103

Date of Judgement/Order : 01/12/2021

Question 1:- Whether the applicant is liable to pay GST on the contribution received from its members?

Answer: – Answered in the affirmative.

Question 2:- If yes, whether the applicant can avail the benefit of exemption under entry no. 77 of Notification No. 12/2017-CTR dated 28.06.2017 for the value upto Rs.7, 500/- per month per member and in case the said monthly contribution exceeds Rs. 7,500/- per month, then the GST is leviable only on differential value in excess of Rs. 7,500/-?

Answer: – In view of the discussions made above, in case the said monthly contribution exceeds Rs. 7,500/- per month, then the GST is leviable on the entire value of the monthly contribution collected.

Question 3:- Whether the applicant is liable to pay GST on amount collected from its members towards the following accounts as per the Bye laws:-

- a. Sinking Fund
- b. Building Repair Fund
- c. Election and Education

Answer:- Fund GST is applicable as discussed above.

Question 4:- Whether the supplies otherwise exempted from tax or charged at Nil rate shall be included in value in computing threshold amount of Rs.7, 500/- per month per member under entry no.77of Notification No. 12/2017-CTR dated 28.06.2017, for determining the tax liability?

Answer:- Thus, charges, collected by the society on account of property tax, electricity charges and other statutory levies would only be excluded while calculating the threshold limit of Rs. 7,500/-.

Question 5:- Whether contribution collected to defray expenses for supply of following types of water are covered under entry 99 of notification 2/2017-ctr i.e. under HSN Code 2201 and attracts NIL rate of tax?

- a. For Potable water received from MCGM u/s 169 of Mumbai Municipal Corporation Act 1888, which is supplied/distributed to the flats of the Members through an elaborate storage and pumping system.
- b. Flush Water (Non Potable water) generated from Sewage treatment plant installed in the Society premises and supplied to all the flats for use in toilet flushing.

Answer:- The provisions of entry 99 of notification 2/2017-ctr is not applicable in the instant case.

Question 6:- Whether input tax credit can be claimed on the expenses incurred for heavy repairs and maintenance of the society building premises and which are not capitalized in books of accounts?

Answer: – In view of the discussions made above, ITC on the expenses incurred for heavy repairs and maintenance of the society building will not be available to the extent of capitalisation as mentioned in Explanation of Section 17(5) of the CGST Act, 2017.

2. GST on Selling of space for advertisement in print & Other media

Case Name : In re Time Education Kolkata Private Limited (GST AAR Telangana)
Appeal Number : Advance Ruling Tsaar Order No. 28/2021
Date of Judgement/Order : 06/12/2021

Selling of space for advertisement in print media (SAC 998362) is taxable at the rate of 2.5% under CGST & SGST respectively. As against this the service for 'Sale of other advertising space or time' is enumerated as 998366 in the SAC given in the annexure to the notification. This is not specifically mentioned in the serial no. 21 of the above notification. Clearly this service will fall under item (ii) of serial no. 21 i.e., other professional, technical & business services taxable at the rate of 9% under CGST & SGST respectively.

The Notification makes a clear distinction between sale of mere advertisement space and 'Other advertisement space', which is having a separate SAC code i.e., 998366. The applicant is supplying (2) different services and each is attracting different tariffs under this notification. Therefore the question of deducing a composite supply from the combination of drafting a design and incorporating a space does not arise. Hence where only space for advertisement and print media is supplied (SAC 998362) the rate of tax applicable is 2.5% under CGST & SGST respectively and where they are supplying ornate space it shall be treated as other advertisement space falling under item (ii) of serial no. 21 and accordingly will attract tax @9% under CGST & SGST respectively.

3. AAR explains when 5% GST can be charged on supply of marine engines

Case Name : In re ocean blue boating Private Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. No. GST-ARA- 32/2021-22/B-105
Date of Judgement/Order : 06/12/2021

Question 1:- Whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 without considering its general tax rate as per the entry of schedule I, Sl. No. 252 of Notification No. 1/2017-Central Tax (Rate), Dated 28-06-2017, on the basis of its ultimate used as part of fishing vessel of heading 8902.

Answer:- Marine engine of heading 8407 and heading 8408, and parts thereof of heading 8409 will be covered under Sr. No. 252 of Notification No. 1/2017-Central Tax

(Rate), Dated 28-06-2017, when used in fishing vessels falling under HSN 8902 of the GST Tariff, as in the subject case. Goods which do not conform to “parts of marine engines” will not be covered under the said Sr. No. 252 of Notification No. 1/2017-Central Tax (Rate), Dated 28-06-2017

Question 2: Whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 when it is supplied for use of defense purpose, patrolling purpose, flood relief and rescue operations being part of heading 8901, 8904, 8905, 8906, 8907.

Answer: – GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 covered under Sr. No. 252 of Notification No. 1/2017-Central Tax (Rate), Dated 28-06-2017 only when it is supplied for use in ships/vessels covered under headings 8901, 8902, 8904, 8905, 8906, 8907 of the GST Tariff, which may be used for defense purpose, patrolling purpose, flood relief and rescue operations. However, Goods which do not conform to “parts of marine engines” will not be covered under the said Sr. No. 252 of Notification No. 1/2017-Central Tax (Rate), Dated 28-06-2017

4. No GST payable on accommodation service provided below INR 1000

Case Name : In re Healersark Resources Private Limited (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 75/2021

Date of Judgement/Order : 06/12/2021

GST not payable on accommodation services if per day declared tariff is below Rs. 1000

The AAR, Karnataka in the matter of M/s. Healersark Resources Private Limited [Advance Ruling No. KAR ADRG 75/2021 dated December 6, 2021] held that, assessee providing boarding and lodging facilities and raising 2 separate invoices, towards hostel rent and towards hostel food respectively would neither be covered under composite supply nor mixed supply. Further, the declared tariff of a unit of accommodation service below INR 1000/- per day is exempted.

Facts:

M/s. Healersark Resources Private Limited (“the Applicant”) is in the hospitality industry and is into the business of providing boarding, food accommodation, lodging facilities and such other services to M/s. Apollo Med Skills Limited (“AMSL”), which is the project implementing agency for Deen Dayal Upadhyay Grameen Kaushalya Yojana (“DDU-GKY”), a central Government scheme, which is a placement linked skill training scheme which caters to the largest rural poor youth of the country.

As a part of the implementation of the project, AMSL is required to provide such facilities to the candidates enrolled for the training for which, AMSL has engaged the Applicant to provide boarding, lodging facilities and such other agreed services to the candidates enrolled for the training, as per the terms of SOP provided by GOI with respect to the implementation of its projects under DDU-GKY. Further, the Applicant is providing boarding, lodging facilities and such other agreed services for a consideration of INR 9000/- (within Bangalore) and INR 7500/- (outside Bangalore), per candidate per month.

Issues:

1. Whether the services provided by the Applicant to AMSL amounts to composite supply or mixed supply?
2. Whether the services provided by the Applicant are liable to GST or are exempted?

Held:

The AAR, Karnataka in Advance Ruling No. KAR ADRG 75/2021 dated December 6, 2021] held as under:

- Noted that, the Applicant is providing boarding and lodging facilities and other services and the Applicant has submitted few sample invoices towards the services provided to AMSL, which shows that the Applicant is raising 2 separate invoices, one towards hostel rent and one towards hostel food. Further, the charges are defined separately for accommodation and for food and other facilities.
- Observed that, the Applicant is raising separate invoices for the services supplied and there is no provision of bundled services by the Applicant to AMSL, therefore, the same is not covered under the definition of composite supply. Further, the Applicant is providing 2 separate services to AMSL for two different prices and not for a single price. Hence the same is not covered under mixed supply also.
- Further noted that, the Applicant is providing boarding, lodging facilities and such other agreed services for a consideration of INR 9000/- (within Bangalore) and INR 7500/- (outside Bangalore), per candidate per month i.e., less than INR 1000/- per day and the consideration received by the Applicant for providing such services, may be considered as 'declared tariff'.
- Stated that, since the declared tariff of a unit of accommodation is below INR 1000/- per day, the rate of tax for the same is NIL as per SI No. 14 of the Notification No.12/ 2017-CT (Rate) dated 28-06-2017? ("Exemption Notification").
- Held that, the accommodation service provided by the Applicant to AMSL is exempted vide Exemption Notification as the declared tariff of a unit of accommodation is below INR 1000/- per day and the service of supply of food by the Applicant is taxable @ 5% GST without input tax credit as per No. 7(ii) of notification No. 11/ 2017-Central Tax(Rate) dtd 28.06.2017 ("Services Rate Notification").

5. GST not leviable on free of cost supply during warranty period

Case Name : In re South Indian Federation of Fishermen Societies (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 74/2021

Date of Judgement/Order : 06/12/2021

i. Rate of tax on Marine Engines coming under HSN Code 8407 and its spare parts exclusively used as part of fishing vessel of heading 8902.

The marine engine and its spare parts supplied for fishing vessel (for use as part of the fishing vessel- CTH 8902) shall attract GST at the rate of 5% [2.5%-CGST + 2.5%-

KGST) as per entry at Sl.No.252 of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017. If it is supplied for use other than as parts of fishing vessels GST shall be applicable at the rate of tax on such goods under the respective Customs Tariff Heading classified.

ii. Whether GST leviable on supply of materials and labour charges incurred during the warranty period, free of cost.

The provision of material and labour during warranty period without consideration (free of cost) does not come under the purview of supply in terms of Section 7 of the CGST Act, 2017 and no GST is leviable in such free of cost replacements/ labour services.

iii. Rate of tax applicable for collection made towards supply of materials and labour charges towards repair of fishing vessels of heading 8902.

The activity of repair of fishing vessels is a composite supply involving supply of material/ spares which is ancillary to the predominant supply of services. The supply is appropriately classifiable under Heading 9987-998714 – Maintenance and repair of transport machinery and equipment and vide Sl.No. 25(ii) of the notification No. 11/2017-Central Tax dated 28.06.2017 the supply is liable to GST at the rate of 18% (9%-CGST+9%-KGST).

iv. Rate of tax on puff insulated ice boxes used by fishermen in fishing vessels for reducing spoilage and maintaining good hygiene.

The puff insulated ice boxes are appropriately classifiable under Customs Tariff Heading 3923 10 30 – Articles for the conveyance or packing of goods, made of plastics – Boxes, cases, crates and similar articles – Insulated ware. The said articles falling under Customs Tariff Head 3923 are liable to GST at the rate of 18% [9% - CGST +9%-KGST] as per entry at Sl.No.108 of Schedule HI of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017.

v. Rate of tax on marine engine coming under HSN Code 8407 supplied to Defence Department for patrol, flood relief and rescue operations.

Marine engines supplied for use as part of vessel falling under Customs Tariff Heading 8906, which are used by the Department of Defence and other agencies for patrol, relief and rescue operations, then the marine engine as part of such vessel will only attract GST at the rate of 5% [2.5% -CGST +2.5%-KGST] as per the said entry.

6. GST on supply of services relating to sale or purchase of rice

Case Name : In re Hindustan Agencies (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 73/2021

Date of Judgement/Order : 06/12/2021

i. Whether the applicant is entitled to collect GST on Supply of services which pertains to selling of agricultural produce as per APMC Act?

The applicant is liable to collect CGST @ 9% and KGST @ 9% on supply of services relating to sale or purchase of rice.

ii. Is there any special case where the applicant has to collect GST on the Service provided (Branded and unbranded)?

The applicant by canvassing for Branded and unbranded rice of millers and other traders is liable to pay CGST @ 9% and KGST @ 9% on the consideration received or receivable as commission from the rice miller or traders.

7. Rava Idli Mix merits classification under tariff heading 2106; 18% GST Payable

Case Name : In re Swastiks Masalas Pickles and Food Products Pvt. Ltd. (GST AAR Karnataka)

Appeal Number : Advance Ruling No. Advance Ruling No. KAR ADRG 76/2021

Date of Judgement/Order : 08/12/2021

i. What is the HSN Code of the product 'Rava Idli Mix'?

The product Rava Idli Mix merits classification under tariff heading 2106 and attracts 18% GST in terms of entry number 23 of schedule-III to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 .

8. Club liable to pay GST on contribution from members for meeting & administrative expenses

Case Name : In re Rotary Club of Mumbai Elegant (GST AAR Maharashtra)

Appeal Number : Advance Ruling No. GST-ARA-26/2020-21/B-108 Date of Judgement/Order : 09/12/2021

Contributions from members, recovered for spending on weekly meetings, other petty administrative expenses amounts to supply

The Hon'ble AAR, Maharashtra in the matter of M/S. Rotary Club of Mumbai Elegant [Advance Ruling No. GST-ARA-26/020-21/B-108 dated December 9, 2021] held that, contributions from club members, recovered for spending on weekly meetings, other petty administrative expenses amounts to 'supply' and the activity of collecting contributions and spending towards meeting and administrative expenditures only, is business under Central Goods and Services Tax Act, 2017 (CGST Act).

Facts:

M/S. Rotary Club of Mumbai Elegant ("the Applicant") is a group of people who carry out various charitable causes and activities from donations received from members, amount collected through various other channels and accruals of the corpus fund. Donations/charity received are used exclusively for the purpose of donation/charity and no amount is utilized for administration purposes. In addition to that, sums are recovered from all the members for expending the same for the weekly and other meetings and other petty administrative expenses incurred which include the expenses for the location and refreshments and facilitation of meetings of its members held for the members to review existing activities and consider new projects for execution. In these meetings, the charitable proposals are considered, discussed & approved or rejected for taking up as a likely cause for execution. No facilities/benefits are provided such as recreation etc. by club. Furthermore, the administration and

working of the Applicant and implementation of policies are established and implemented on the concept of mutuality.

Issues:

1. Whether contributions from the members, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply and leviable to tax?
2. Whether the activity of the Applicant would be considered as 'business' as envisaged under Section 2(17) of the CGST Act?

Held:

The Hon'ble AAR, Maharashtra in Advance Ruling No. GST-ARA-26/020-21/B-108 dated December 9, 2021 held as under:

- Analysed Section 7 of the CGST Act and observed that, the Applicant and its members are distinct persons and the contribution received by the Applicant, from its members is nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality is not applicable in view of the amended Section 7 of the CGST Act and therefore, GST on the amounts received from its members would be levied.
- Noted that, as per Section 7(1)(aa) of the CGST Act, the expression "supply" includes the activities or transactions, by a person, other than an individual, to their members or constituents or vice versa, for cash, deferred payment or other valuable consideration and the meetings conducted by the Applicant including food, refreshment, etc. are nothing but activities carried out by the Applicant for its members.
- Observed that, the amendment to Section 7 of the CGST Act, clearly treats the Applicant and its member as two different persons where there is a supply of services from the Applicant to its members and thus there is a supply by the Applicant to its members and consideration is received in the form of "fees".
- Opined that, from a plain reading of the Section 2(17) of the CGST Act, it is clear that the activities of the Applicant falls under the ambit of "business".
- Held that, contributions from the members, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply.

9. GST on activity of surface coating on old/new goods received from Customer

Case Name : In re Oerlikon Balzers India Pvt. Ltd. (GST AAR Maharashtra)

Appeal Number : Advance Ruling No. GST-ARA-102/2019-20-B-107 Date of Judgement/Order : 09/12/2021

Question 1:- Whether activity of surface coating undertaken by the Applicant in the State of Maharashtra on original/new goods received from Customer is classifiable under service accounting code 9988 more specifically under code 998898 as job work activity chargeable to tax at 12% in terms of entry no. 26(id) of Notification 11/2017

Central Tax (Rate) as amended or at 18% in terms of entry no. 26(iv) of Notification no. 11/2017.

Answer:- The activity of surface coating undertaken by the Applicant on original/new goods received from Customer (tool manufacturers and not end users) is classifiable under service accounting code 9988 more specifically under code 998898 as job work activity chargeable to tax at 12% in terms of entry no. 26(id) of Notification 11/2017 Central Tax (Rate) dated 28.06.2017, as amended.

Question 2:- Whether activity of surface coating undertaken by the Applicant in the State of Maharashtra on old, worn out or used goods received from Customers is classifiable under service accounting code 9988 more specifically under code 998898 as job work activity chargeable to tax at 12% in terms of entry no. 26(id) of Notification 11/2017 Central Tax (Rate) as amended or under Service accounting code 9987 more specifically under code 998729 as repairs chargeable to tax at 18% in terms of entry no. 25(ii) of Notification no. 11/2017.

Answer:- The activity of surface coating undertaken by the Applicant on old, worn out or used goods received from Customers (end users) is classifiable under service accounting code 9987 as repairs chargeable to tax at 18% in terms of entry no. 25(ii) of Notification no. 11/2017-CTR dated 28.06.2017, as amended.

10. ITC eligible to the extent of machine foundation only

Case Name : In re Vijayneha Polymers Private limited (GST AAR Telangana)

Appeal Number : TSAAR Order No. 29/2021

Date of Judgement/Order : 09/12/2021

ITC available on GST charged by contractor supplying service of works contract to extent of machine foundation

The Hon'ble AAR Telangana in the matter of M/S. Vijayneha Polymers Pvt. Ltd. [Advance Ruling No. A.R.Com/13/202 TSAAR Order No.29/2021 dated December 9, 2021] held that, Input Tax Credit (ITC) can be availed on GST charged by contractor supplying service of works contract to extent of machine foundation as per Section 17(5)(c) of the Central Goods and Services Tax Act, 2017 (CGST Act).

Facts:

M/s. Vijayneha Polymers Pvt. Ltd. ("the Applicant") has constructed a factory building wherein they have hired works contractors for executing the construction by way of providing material where contractor provided construction services or the contractor provided both material and services. Such construction included foundation of machinery, rooms for chillers, boilers, generators and transformers, erecting of electrical poles, laying of internal roads, factory building, internal drainage, laboratory etc.,

Issue:

Whether ITC is available on GST charged by the contractor supplying service of works contract?

Held:

The Hon'ble AAR Telangana in Advance Ruling No. A.R.Com/13/202 TSAAR Order No.29/2021 dated December 9, 2021 held as under:

- Observed that, the Applicant has either purchased goods or services for construction of immovable property on his own account or engaged the works contractor for supply of construction services.
- Analysed Section 17(5) of the CGST Act and opined as under:
- ITC cannot be availed on works contract services for construction of an immovable property except for erection of plant & machinery.
- ITC can be availed on plant & machinery as defined in the explanation to Section 17 i.e., on apparatus, equipment & machinery fixed to earth by foundation or structural support; which means plant & machinery and machine foundation are eligible for ITC.
- Plant & machinery will not include building or other civil structures and pipelines laid outside factory premises.
- ITC cannot be availed on goods or services or both received by a taxpayer on his own account for construction of immovable property.
- Held that, the Applicant would be eligible for ITC to the extent of machine foundation only.

11. GST on parts of diesel marine engine or genset supplied to Indian Navy

Case Name : In re Cummins India Limited (GST AAR maharashtra)

Appeal Number : Advance Ruling No. GST- ARA- 117/2019-20/B-106

Date of Judgement/Order : 09/12/2021

Whether parts of diesel marine engine or genset supplied or to be supplied by the Applicant to the Indian Navy are chargeable to 5% IGST or 2.5% CGST + 2.5% SGST as 'parts of heading of 8902, 8904, 8905, 8906 and 8907' in terms of Sr. No. 252 of Notification No. 1/2017-Central Tax (Rate), dated 28 6-2017?

Answered in the affirmative, only if they are used in diesel marine engine or genset which are further used in ships and vessels falling under chapter headings 8902, 8904, 8905, 8906 and 8907 of the GST Tariff.

12. AAR explains GST on Residential Real Estate Project & affordable residential apartment

Case Name : In re Kayal Infra (GST AAR West Bengal)

Appeal Number : Advance Ruling Order No. 15/WBAAR/2021-22

Date of Judgement/Order : 09/12/2021

Whether the project which is currently under construction by the applicant can be treated as (i) Residential Real Estate Project (RREP) and (ii) affordable residential apartment and what shall be the rate of tax on such supply.

(i) The project referred to in the instant application which is currently under construction by the applicant is a Residential Real Estate Project (RREP) as defined

under Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 and amended vide Notification No. 03/2019-Central tax (rate) dated 29.03.2019 [corresponding West Bengal State Notification No.1135-F.T. dated 28.06.2019 as amended vide Notification No. 552-F.T. dated 29.03.2019]

(ii) The apartments in the said project qualify as affordable residential apartment as defined under the aforesaid notification.

(iii) GST rate to be charged from customers for sale of flats in the said project, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier, shall be 1.5% (0.75% CGST and 0.75% SGST), as further reduced by 1/3 rd to factor in the value of land.

13. GST payable under RCM on procurement of renting of immovable property services from Seepz

Case Name : In re Portescap India Private Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-93/2019-20/B-110 Date of Judgement/Order : 10/12/2021

Q1. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018 ?

Answer: Answered in the affirmative.

Q2. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018?

Answer: Not answered in view of discussions made above.

Q.3. If, answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to be paid under which tax head i.e., IGST or CGST and SGST?

Answer: The tax will be discharged by them under IGST head.

14. GST on sub-contract for Construction of Roads for Municipal Corporation

Case Name : In re Core Construction (Yatin Manoj Mora) (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-08/2020-21/B-109 Date of Judgement/Order : 10/12/2021

What Tax Rate to be charged by the sub-contractor to main contractor on Work Contract Services on Construction of Roads?

In respect of Sub-Contract awarded to the applicant by M/s J. P. Enterprises (main contractor), to whom Aurangabad Municipal Corporation awarded the contract for Executing Work of construction of Concrete Roads in Aurangabad City Packages P-2, the rate to be charged is 6% SGST plus 6% CGST, total 12%.

15. GST: Land filling pit is a civil structure, not a plant or machinery- ITC not eligilble

Case Name : In re Mother Earth Environ Tech Pvt. Ltd (GST AAAR Karnataka)
Appeal Number : Order No. KAR/AAAR/Appeal-10/2021-22
Date of Judgement/Order : 13/12/2021

The Appellant has been very vehement in their submission that the land filling pit is not a civil structure in as much as they have not used any cement or steel in the construction of the land filling pit. The term 'civil structure' has also not been defined in the GST law. A general understanding of the term can be derived from the definition of 'civil engineering' given in com as: "The profession of designing and executing structural works that serve the general public, such as dams, bridges, aqueducts, canals, highways, power plants, sewerage systems and other infrastructure ". Further, a 'structure' in the context of civil engineering refers to anything that is constructed or built from different inter-related parts with a fixed location on the ground. Accordingly, a civil structure would be any man-made structure which is built by applying the science of civil engineering. The materials used for construction of structure is irrelevant. A civil structure can be built with cement and steel or by means of other materials depending on the purpose of the structure and its feasibility. In the case of a landfill, the purpose is to dispose of hazardous waste and manage the leachate in order to avoid serious damage to the environment. Hence, the landfill is constructed using geo synthetic materials which serve to protect the soil and groundwater. This however, will not disqualify a landfill from being a civil structure. We are therefore of the opinion that the lower Authority was right in construing that the land filling pit is a civil structure. The definition of 'plant and machinery' as given in the Second Explanation to Section 17 clearly excludes a civil structure from being considered as a plant. By virtue of this exclusion, we hold that the Appellants are not eligible for input tax credit on the goods and services used for construction of the land filling pit.

At this juncture we would like to traverse back to the Supreme Court decision in the case of Scientific Engineering House (P) Ltd cited supra. The Honorable Supreme Court in the said case relied upon certain foreign decisions while dealing with the explanation 'Plant' and gave it a wide meaning under the provisions of Income Tax law. It was held that, plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. We would like to make it clear that there is no hesitation in concluding that the land filling pit is used by the Appellant for carrying out his business. At the same time, we are examining whether such land filling pit will be eligible for input tax credit. For this we find that goods and services received for construction of immovable property on own account has been specifically put under the blocked credit list under Section 17(5)(d) with the rider that it shall not apply to

plant or machinery. Accordingly, in the second explanation given in Section 17, while providing the meaning of the term plant and machinery, it has been clearly stated that Buildings and Civil Structures shall not be covered under the term Plant. However, while so clarifying, it has been accepted and understood that plant and machinery many a times requires support structure and/or foundation for installation and cannot work otherwise. Thus, civil structures such as foundation and supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery. However, any other civil structure has clearly been excluded from the definition of 'plant and machinery'. The land filling pit comes within the ambit of the exclusion and hence is not eligible for input tax credit.

16. CNG Dispenser falls under Chapter Heading 841311 of GST Tariff

Case Name : In re Parker Hannifin India Pvt. Ltd. (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-109/2019-20/B-112
Date of Judgement/Order : 15/12/2021

Whether the CNG Dispenser manufactured and supplied by the Applicant is correctly covered in SL. No. 422, Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28 June 2017 as amended and corresponding notifications issued under integrated GST and State GST Acts?

The product catalog submitted by the applicant of CNG Dispenser clearly indicates that the product is a complete system meant for dispensing CNG and is fitted with hoses, Electronics, tubes & fittings, regulators, valves, nozzles, filters, solenoid and actuators etc. It has been amplified in catalog that "the System is extremely safe, uses low power, dispenses accurately, uses all stainless steel tubes, fittings and connections and has a high resilience to wear and tear"

We find that Chapter Heading 8413 11 of the GST Tariff covers "Pumps for dispensing fuel or lubricants of the type used in filling stations or garages". The impugned product is designed to dispense fuel, in this case CNG, which are used in filling stations, and acts as a pump which causes CNG, a gas, to move from one place to another. Thus the impugned product can be said to be a type of pump which are used for dispensing fuel and are therefore classifiable under HSN 8413 11 91 of the GST Tariff.

Section XVI of the GST Tariff covers Chapter Heading 84 and 85 of the GST Tariff. Note 1 (m) of the Section Notes states that, articles of Chapter 90 of the GST Tariff are not covered under Section XVI i.e. Chapters 84 and 85 of the GST Tariff. Further primary function of the impugned product is to dispense CNG Fuel and has an inbuilt mechanism to constantly measure and regulate the mass of Gas being transferred to the vehicle.

As per Note 4 of Section XVI of GST Tariff, where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in

Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function. In the instant case the product performs function of a pump of type used in filling stations to dispense CNG Fuel, thus merits classification under HSN 8413 11.

Further as per WCO Harmonized Commodity Description and Coding System, Explanatory Notes to Subheadings 8413.11 and 8413.19, “these subheadings cover, for example, pumps for delivering petrol or other motor fuels and lubricants as well as pumps with a measuring device for use in food shops, laboratories and various industrial activities”.

Since we have found that the impugned product is covered under Chapter Heading 8413 11 of the GST Tariff, it is not covered under in SL. No. 422, Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28 June 2017 as amended as the impugned product cannot be classified under Chapter 90.32 of the GST Tariff.

17. GST on Part Recovery of transport facility provided to employees

Case Name : In re Integrated Decisions And Systems India Pvt Ltd (GST AAR Maharashtra)

Appeal Number : Advance Ruling No. GST-ARA- 116/2019-20/B-113

Date of Judgement/Order : 16/12/2021

Employer arranging transportation facility for their employees does not fall under the definition of business

The AAR, Maharashtra in the matter of M/S. Integrated Decisions and Systems (India) Pvt. Ltd. [Advance Ruling No. GST-ARA-116/2019-20/B-113 dated December 16, 2021] held that, arranging the transport facility for the employees is not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function.

Facts:

M/S. Integrated Decisions and Systems (India) Private Limited, (“the Applicant”), is engaged in providing software development and support services to its holding company located outside India. The Applicant provides transportation facility to its employees, for which the Applicant avails ‘renting of motor vehicles service’, ‘cab services’ through third party. The Applicant initially pays the entire amount to the third party and subsequently recovers the partial amount from the respective employees availing such facility.

Issue:

Whether the partial amount recovered from the employees for facilitating transport would be construed as supply of service by the Applicant?

Held:

The AAR, Maharashtra in Advance Ruling No. GST-ARA-116/2019-20/B-113 dated December 16, 2021 held as under:

- Analysed Section 7 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”), and noted that, the provision of transport facility to the employees by the Applicant is a welfare, security and safety measure and is not at all connected to the functioning of their business. Further, the said activity is not a factor which will take the Applicant’s business activity forward.
- Noted that, the Applicant is not supplying any transport or lease/rental of vehicle service to its employees in the instant case. Further, the transport or lease/rental of vehicle service is also not the output service of the Applicant since they are not in the business of providing transport service. Rather, this transport facility is provided to employees by the third party vendors and not by the Applicant.
- Observed that, the GST is discharged on the gross value of bills raised on the Applicant by the third party vendors and the partial amounts recovered by the Applicant in respect of use of such transport facility are a part of the amount paid to the third party vendors which has already suffered GST. Therefore, the Applicant is not providing transportation facility to its employees, in fact the Applicant is a receiver of such services.
- Held that, the Applicant, arranging the transport facility for their employees is not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function.

18. GST leviable on reimbursement of electricity and water charges and to be included in value of supply

Case Name : In re Indiana Engineering Works (Bombay) Pvt. Ltd (GST AAR Maharashtra)

Appeal Number : Advance Ruling No. GST-ARA- 120/2019-20/B-114

Date of Judgement/Order : 16/12/2021

The AAR, Maharashtra in the matter of M/s. Indiana Engineering Works (Bombay) Pvt. Ltd. [Advance Ruling No. GST-ARA-120/2019-20/B-114 dated December 16, 2021] held that, GST payable on electricity charges and water charges as per meter reading and collected from the recipients on actual reimbursement basis. Further, there is no authorization, obtained to act as pure agent and to make payment to third parties, therefore the assessee cannot be considered as a pure agent.

Facts:

M/s. Indiana Engineering Works (Bombay) P. Ltd. (“the Applicant”) is the absolute owner of “Indiana House” and has entered into a Leave and License Agreements with M/s. Capri Global Capital Ltd (“the Licensee”), the Applicant has licensed its office premises to the Licensee for use and occupation of the leased premises on an agreed license fee payable monthly with Service tax/GST, that includes access to the respective common areas. In addition to the giving of the immovable property on lease,

the Applicant is also providing utilities, such as electricity, water and internal maintenance in respect of the licensed premises and the charges are recovered from the Licensee based on the reading shown in the electricity/water meters provided by the Applicant.

The Applicant contended that, reimbursement of water charges, electricity charges, is nothing but repayment of certain expenses incurred by the Applicant on behalf of the Licensee and they do not have character of supply as defined under the Central Goods and Services Tax Act, 2017 ("CGST Act"). Further, the reimbursement of expenses received by them from the Licensee can qualify towards expenses incurred as a 'Pure Agent' and would not be considered in the value of supply for the levy of tax.

Issues:

1. Whether electricity and water charges paid by the Applicant as per meter reading and collected from the Licensee at actual on reimbursement basis are liable to GST?
2. Whether the Appellant acts as a Pure Agent?

Held:

The AAR, Maharashtra in Advance Ruling No. GST-ARA-120/2019-20/B-114 dated December 16, 2021 held as under:

- Noted that, the Applicant has agreed to lease out the premises which is an immovable property and as per entry no. 5(a) of Schedule II of the CGST Act, renting of Immovable property is a supply of services and liable to tax. The utilities such as electricity and water supply are basic amenities subject to which competent authority will not issue occupancy certificate for conducting commercial activities/ business.
- The activity of applicant is renting of immovable property and the same is considered as taxable supply of service under the CGST Act.
- Observed that, the payment of rent is fixed on monthly basis which is for the occupancy and also the use of the premises whereas, the variable amount of electricity and water charges (at actuals), paid by the Licensee, is for effective enjoyment of the rented premises without which the occupation of the premises could not be possible. Thus, the provision of essential services is mandatory on landlord and it is not mere facilitating the payment of electricity charges by the Applicant.
- Further observed that, without the provision of such utility services, like water and electricity, the Licensee cannot run its business and therefore, amounts towards such electricity/water charges by the applicant is a part of 'consideration' received in relation to renting of immovable property by the Applicant.
- Stated that, making payment of electricity charges is the responsibility of the Applicant and not of the Licensee, as the property (main electric/water meters) is owned by the Applicant and the electricity/water connection is obtained in the name of the Applicant. The applicant is not paying the electricity/water bill on behalf of the Licensee. Further, there is no authorization, obtained by the Applicant from the Licensee, to act as their pure agent and to make payment to third parties.

- Held that, the charges for electricity and water charges recovered as reimbursements, even if at actuals, have the nature of incidental expenses in relation to renting of immovable property and are includible in the value of supply and are to be considered as transaction value for the purpose of levy of GST.
- Further held that, the Applicant has failed to establish themselves as a pure agent and, therefore, the expenditure or cost incurred by the Applicant and subsequent reimbursement thereof cannot be excluded from the value of supply. Therefore, the reimbursed electricity and water charges charged to the licensee by issuing debit note or paid by the Applicant is considered monthly license fee and total value along with fixed monthly rent is to be considered as transaction value of rent for the purpose levy of tax under the CGST Act.

19. 12% IGST payable on 'diagnostic & laboratory reagents' imported & supplied

Case Name : In re Bio-Rad Laboratories India Ltd. (GST AAR Karnataka)
 Appeal Number : Advance Ruling No. KAR ADRG 78/ 2021
 Date of Judgement/Order : 17/12/2021

Whether 'diagnostic and laboratory reagents' imported and supplied by the applicant and classified under heading 3822 of the Customs Tariff Act, 1975 are covered under Entry No.80 of Schedule II to the Notification No.1/2017-Integrated Tax (Rate) dated 28-06-2017 attracting a levy of Integrated Tax at the rate of 12%?

The 'diagnostic and laboratory reagents' imported and supplied by the applicant and classified under heading 3822 of the Customs Tariff Act, 1975 are covered under Entry No. 80 of Schedule H to the Notification No.1/2017-Integrated Tax (Rate) dated 28-06-2017 attracting a levy of Integrated Tax at the rate of 12%, in terms of the clarification issued vide para No.10 of the Circular No. 163/19/ 2021-GST dated 6th October, 2021.

20. GST on setting up of Wet Limestone FGD plant and operation & maintenance

Case Name : In re Shapoorji Pallonji and Company Pvt. Ltd. (GST AAR Karnataka)
 Appeal Number : Advance Ruling No. KAR/ADRG/77/2021
 Date of Judgement/Order : 17/12/2021

i. Whether the combined service of setting up of Wet Limestone FGD plant and operation and maintenance be considered as a composite supply?
 The combined service of setting up of Wet Limestone FGD plant and operation & maintenance of the said plant can't be considered as a composite supply.

ii. If answer to question (a) above is yes then, whether the supply provided by the applicant is a composite supply of works contract as per Section 2(30) and Section 2(119) of CGST Act, 2017 and what would be the principal supply?
 The question (ii) above is answered in negative and hence this question is redundant.

iii. If the supply is considered as a composite supply of works contract services, whether the said supply to be provided by the applicant would fall under the entry No.3(iv)(e) of the Notification No.11/2017-Central Tax (Rate) dated 28-06-2017, as amended time to time?

The impugned supply is not considered as a composite supply and hence this question is also redundant.

iv. What would be the applicable GST rate and SAC/HSN?

The setting up of FGD plant merits classification under SAC 995429 and attracts GST at the rate of 12%, in terms of entry No.3(iv)(e) of the Notification No.11/2017-Central Tax (Rate) dated 28-06-2017. Further the Operation & Maintenance of the FGD plant merit classification under SAC 9985, as “Business Support” service and attracts GST at the rate of 18%, in terms of entry No.23(iii) of the Notification No.11/2017-Central Tax (Rate) dated 28-06-2017

21. Availment of common input supplies on behalf of other unit/units registered as distinct person will qualify as supply of services

Case Name : In re Cummins India Limited (GST AAAR Maharashtra)

Appeal Number : Advance Ruling No. MAH/AAAR/AM-RM/01/2021-22

Date of Judgement/Order : 21/12/2021

Partially modify the ruling passed by the Maharashtra Advance Ruling Authority Vide Order No GST-ARA-66/2018-19 B-162 dated 19.12.2018, and answer the questions, raised by the Appellant in their Appeal filed before us, as under:

1. Whether availment of common input supplies on behalf of other unit/units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST?

Yes, availment of common input supplies from the third-party service vendors/suppliers on behalf of the Branch Offices/Units, registered as distinct persons will qualify as supply of services in accordance with the provision of Section 7(1)(a) of the CGST Act, 2017. However, the cost of the said common input services availed on behalf of Branch Offices/Units and allocated to the Branch Offices/Units by the Head Office will not attract the levy of GST as the said costs have been incurred by the Head Office in the capacity of a pure agent of the Branch Offices/Units, and as such, the said cost incurred by the Head Office shall be excluded from the value of supply of the facilitation services.

2.If GST is leviable, whether assessable value can be determined by arriving at nominal value?

The assessable value of the services provided by the Head Office to the branch offices/units can be determined as per the the second proviso to clause(c) of Rule 28 of the CGST Rules, 2017, which provides that value of the tax invoice will be deemed as the open market value of the services.

3. Once GST is levied and ITC thereof is availed by recipient unit, whether the Applicant is required to register itself distribution of ITC on common input supplies?

Since, the Head Office is not entitled to avail and utilize the credit of tax paid to the third-party service vendors for the common input services received by it on behalf of the Branch Offices/Units as the said common input services received by the Appellant's Head Office are being used or consumed by the Branch Offices/Units in the course or furtherance of their businesses, and not by the Head Office. Therefore, the Appellant is bound to take the ISD registration as mandated by section 24(viii) of the CGST Act, 2017, and comply with all the provisions made in this regard, if it intends to distribute the credit of tax paid on the common input services received by it, on behalf of the branch offices units, to the branch offices/units.

22. Dried and Polished Turmeric are not exempted from GST

Case Name : In re Nitin Bapusaheb Patil (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-108/2019-20/B-115
Date of Judgement/Order : 22/12/2021

Question No.1 Whether the Turmeric (Turmeric in Whole form – not in powder form) is covered under the definition of 'Agriculture Produce' and exempted from GST? If not, what is the HSN code of Turmeric and the rate of GST on the Turmeric?

Answer:- Dried and Polished Turmeric as in the instant case, is not covered under the definition of 'Agriculture Produce' and is not exempted from GST. The HSN code of the impugned product is 0910 30 20 and the rate of GST is 5% (2.5% each of CGST and SGST)

Question No. 2 Whether services rendered by Applicant as a Commission Agent in APMC, Sangli are liable to GST in terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017.?

Answer:- The impugned services rendered by the applicant are taxable under GST and not exempt terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017.

Question No.3 Whether the applicants required to be registered under the CGST Act, 2017 for his activities specified under Annexure-I? If yes, under which section of the GST Act, he is required to be registered?

Answer:- . The applicant is required to be registered under the relevant provisions of the CGST Act, 2017 for his impugned activities.

23. Supply of vouchers by Appellant is a supply of goods: AAAR

Case Name : In re Premier Sales Promotion Pvt Ltd (GST AAAR Karnataka)
Appeal Number : Advance Ruling Order No. KAR/AAAR /11/2021
Date of Judgement/Order : 22/12/2021

The Appellant has contended that the vouchers are akin to lottery tickets and the Supreme Court in the case of Sunrise Associates has held that lottery tickets are

actionable claims. They have also argued that the reliance placed by the lower Authority on the Apex Court's decision in the case of H.Anraj to hold that vouchers are not actionable claims, is incorrect as the same has been overruled by the Constitution Bench of the Supreme Court in the case of Sunrise Associates. We have gone through to the decision of the Supreme Court in the case of Sunrise Associates. The decision in Sunrise examined the dealers' contention that a lottery ticket was only a slip of paper or memoranda evidencing the right of the holder to share in the prize or the distributable funds and was merely a convenient mode for ascertaining the identity of the winner. The Court held that in Anraj the lottery ticket was held to be 'goods' – not as a physical article but as a slip of paper or memorandum evidencing (a) the right to participate in the draw, and (b) the right to claim a prize contingent upon the purchaser being successful in the draw. Further, for the purpose of levy of sales tax, lottery ticket could be regarded as 'goods' properly so called insofar as it entitled its holder to take part in the draw. In other words, lottery ticket, to the extent it evidenced the right to claim the prize, was not 'goods' but an actionable claim and, therefore, expressly excluded from the definition of 'goods' under the sales tax laws. A transfer of it was consequently not a sale. The lottery ticket per se had no innate value. The Supreme Court held that the Delhi High Court (lower court in Sunrise case) was, therefore, plainly in error in interpreting and following Anraj. We find that the plea of the Appellants that the vouchers are akin to lottery tickets is not tenable. While the lottery tickets have no innate value, it is not so in the case of vouchers. The vouchers have a definitive value and are traded for a consideration. The value of the voucher is the extent to which a beneficiary can claim possession of goods and/or services from the specified suppliers. Therefore, while we agree that the reliance placed by the lower Authority on the H.Anraj case to hold that the vouchers are not actionable claims, is not correct, we are still not convinced to hold otherwise. In our opinion, since vouchers are not the same as lottery tickets, the Supreme Court ruling in the case of Sunrise Associates will not help the Appellant and we hold that the vouchers are not actionable claims.

Having concluded that the vouchers traded by the Appellant are goods and not actionable claims, we hold that the supply of vouchers by the Appellant is a supply of goods in terms of Section 7 of the CGST Act. We are in complete agreement with the ruling given by the lower Authority on the aspect of value of the vouchers for the purpose of GST, the rate of tax and the time of supply of the vouchers by the Appellant. Since the Appellant is not the issuer of the voucher, the provisions of time of supply under Section 12(4) will not apply and the time of supply will be governed by the provisions of Section 12(5) of the CGST Act.

24. GST @ 12% chargeable on supplying, operating, and maintaining air-conditioned electrically operated buses with ITC

Case Name : In re MH Ecolife E-Mobility Pvt. Ltd. (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-60/2020-21/B-116
Date of Judgement/Order : 22/12/2021

The Maharashtra Authority of Advance Ruling (AAR) in Re: MH Ecolife E-Mobility Pvt. Ltd. (Advance Ruling No. 60/2020-21/B-116 dated December 22, 2021) held that

services by way of supplying, operating, and maintaining air-conditioned electrically operated buses would be chargeable @ 12% with Input Tax Credit (ITC) and @ 5% without ITC.

Facts:

MH Ecolife E-Mobility Pvt. Ltd., Maharashtra (Applicant) and Navi Mumbai Transport Undertaking (NMMT) have entered into an Operator Agreement dated February 25, 2020 (Agreement) wherein the Applicant was responsible for the following:

- Procure and supply air-conditioned electric buses to NMMT on gross contract basis to be plied on routes identified by NMMT.
- Ownership of the buses was vested with the Applicant.
- Operating and maintaining the buses by employing drivers and other staff necessary for the operation and maintenance of buses.
- Incurring all the expenses for operating the buses including expenses on repairs and maintenance, procurement of spare parts, charging of batteries etc.
- The Applicant shall be paid an amount on the basis of kilometers logged by the buses.
- The fuel used to run the buses is electricity with help of Lithium Ion batteries fitted in the buses.

And, NMMT or a third party appointed by NMMT, was responsible to collect appropriate fare from the passengers.

Issues:

- Whether services provided by way of supplying, operating, and maintaining air-conditioned electrically operated buses are taxable and subject to GST?
- Whether ITC can be availed of tax paid on the procurement of input supplies used in supplying services?
- What will be the appropriate Service Accounting Code (“SAC”) for classifying the services?

Held:

The Maharashtra AAR in Advance Ruling No. 60/2020-21/B-116 dated December 22, 2021 held as under:

- Noted that the issue involved in the present case is similar to case of M/s. M P Enterprises & Associates Limited [Advance Ruling No. GST-ARA 37/2020-21/B-16, dated June 14, 2021] the only difference is that in the subject case, the fuel supplied by the Applicant is in the form of electricity, instead of diesel which was used as fuel in the above referred case.
- The consideration charged by the Applicant under the Agreement is inclusive of all the charges including the cost of lithium ion batteries, and thus it can be said that the cost of fuel is included in the consideration charged.
- In the case of transportation of passengers, the recipient of service would be the passenger whereas in the case of renting of any motor vehicle, the recipient would not be the passenger. In the subject case, the consideration for supply of service is charged from NMMT and not the passenger. Therefore, it is clear that the recipient of service is NMMT. Hence, the subject activity, amounts to

'renting of motor vehicle' and shall qualify as a taxable activity under the provisions of the GST Laws.

- Accordingly, the service of operating AC buses by the Applicant for NMMT would be subject to GST @12% under Tariff Heading 9966 i.e., "renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient" inserted by way of Notification No.31/2017- Central Tax (Rate) dated October 13, 2017 (Amending Notification No. 11/2017- Central Tax (Rate) dated June 28, 2017) chargeable @ 12% with ITC and @ 5% without ITC.

25. Issue of Utilisation of ITC of credit lying in one GSTIN against other not fall in scope of AAR

Case Name : In re Amis Engineers (GST AAR Telangana)

Appeal Number : TSAAR Order No. 31/2021

Date of Judgement/Order : 24/12/2021

The applicant has averred that they have 2 different registration under CGST/SGST Acts for the same business person.

That this state of things came into being at the time of migration from the earlier tax regime to GST regime.

That they have stopped business in one GSTIN and continuing in the other only. However certain credits are lying unutilized in the GSTIN where they have stopped business and would like to carry the credits into the active GSTIN. Therefore they have approached the AAR regarding the matter.

It is observed by the AAR that the question raised by the applicant does not fall within the scope of Section 97 of Chapter XVII of the CGST Act, 2017. Therefore the application is not admitted.

26. No IGST payable on high sea sales

Case Name : In re AIE Fiber Resource and Trading (India) Private Limited (AAR Telangana)

Appeal Number : Advance Ruling No. TSAAR Order No. 30/2021

Date of Judgement/Order : 24/12/2021

GST on Supply of imported goods to Indian customers from FTWZ

The Telangana Authority of Advance Ruling (AAR) in Re: M/s AIE Fiber Resource and Trading (India) Private Limited. [Advance Ruling No. /07/2019 TSAAR Order No. 30/2021 dated December 24, 2021] held that no IGST is payable on supply of imported goods on High Sea Sales basis to Indian customers and proportionate reversal of input tax credit (ITC) is not required.

Facts:

M/s AIE Fiber Resource and Trading (India) Private Limited, Hyderabad (“the Applicant”) is intending to supply imported goods to Indian customers on High Sea Sale (“HSS”) basis from Free Trade Warehousing Zone (“FTWZ”). The Applicant sells the imported goods before goods cross the customs frontier of India i.e., prior to clearance of goods from the customs to pre-identified customers.

The Applicant directs the FTWZ warehouse keeper to deliver the goods to a customer chosen by the Applicant.

Issues:

- Whether the Applicant’s activity of supplying the goods before clearance for home consumption is liable to IGST or not under Integrated Goods and Services Tax Act, 2017 (“the IGST Act”). If not, then whether proportionate ITC required to be reversed.
- Further, whether the Applicant is required to take registration at the FTWZ facilities.

Held:

The AAR, Telangana in [Advance Ruling No. /07/2019 TSAAR Order No. 30/2021 dated December 24, 2021] held as under:

- The transaction proposed to be made by applicant are covered in entry no 8 of Schedule III of Central Goods and Services Tax Act, 2017 (“the CGST Act”), i.e. “supply of goods by consignee to any other person, by endorsement of document of title of the goods, before the clearance for home consumption” which is not taxable under the CGST Act w.e.f. February, 01, 2019.
- According to the explanation to Section 17(3) of CGST Act inserted vide CGST (Amendment) Act 2018, w.e.f. February 01, 2019 all transaction falling under Schedule III except entry no 5 will not be considered as value of exempted supply for purpose of reversal of ITC of common input services. Hence, no need of reversal of ITC.
- Under Section 10(1)(a) of the IGST Act the place of supply shall be the location of goods at the time of which the movement of goods terminates for the delivery to the recipient – the Applicant i.e. supplier in this case is situated at Hyderabad, Telangana state whereas the goods are delivered in other states. That is the supplier of the goods and the place of supply of goods are in two different states. Therefore, it is an inter-state supply. Hence the Applicant need not obtain any registration in the other state in order to effect such inter-state transactions.

27. 5% GST Payable on Soya husk: AAR Madhya Pradesh

Case Name : In re Adani Wilmar Limited (GST AAR Madhya Pradesh)

Appeal Number : Advance Ruling order No. 20/2021

Date of Judgement/Order : 27/12/2021

Soya husk resulting from the extraction of Soyabean oil, being principal input/ingredient for manufacture or processing of Cattle feed and Poultry feed which may become value added product in the market. Soya husk being principal input/ingredient to Poultry feed and Cattle feed industry, which is taxable @ 5% under Subheading 2304 as per Entry 105 of Notification No. 1/17-Central Tax (Rate) dated, 28.06.2017

We are of the opinion that Soya husk will be covered by specific entry 105 of Schedule I attracting GST @5% (2.5% CGST & 2.5% SGST) under Chapter 2304.

28. AAR application filed after completion of service rejected

Case Name : In re Balkrishna Jayram Koli (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST/ARA- 22/2021-22/B-121
Date of Judgement/Order : 28/12/2021

Preliminary e-hearing was held today. The Authorized representative of the applicant, Mr. Balkrishna Koli Learned Proprietor, Shri Dinesh Bhoir Learned Advocate were present.

The Jurisdictional officer Smt. Anuradha Chimankar Learned STO C-014. Raigad Division was present. The application is filed after the service is over. The work is over. Hence application is not maintainable as per Sec 95(a), so same cannot be admitted. The Section 95(a) reads as under:

Section 95(a) "advance ruling" means a decision provided by the Authority Or the Appellate Authority [or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or Sub Section (1) of section 100 or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant:

In view of above provisions of law, the application is liable to rejected without admission. The applicant is heard on this aspect during the course of todays hearing.

29. Supply of Coaching Services with Goods is mixed supply: AAR Rajasthan

Case Name : In re Resonance Eduventures Limited (GST AAR Rajasthan)
Appeal Number : Advance Ruling No. Raj/AAR/2021-22/35
Date of Judgement/Order : 28/12/2021

The order is important as it contradicts its own ruling in Symmetric Infrastructure Private Limited dated 02.09.2021 in which Supply of 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 was held as Composite supply, and Coaching service was held as principal supply.

In this Ruling AAR held that the supply is a mixed supply of goods as well as services and attracts highest rate of tax @ 18% (i.e. 9% CGST+ 9% SGST or 18% in case of IGST).

30. No GST exemption on accommodation services provided to officials on Election Duty

Case Name : In re Golkonda Hotels And Resorts Limited (GST AAR Telangana)

Appeal Number : TSAAR Order No.32/2021

Date of Judgement/Order : 29/12/2021

M/s. Golconda Hospitality Services and Resorts Limited, are in the business of providing accommodation and services and in the course of the business they have supplied the services of boarding and lodging facility for the officials of Greater Hyderabad Municipal Corporation for conducting 2018 General Election for Telangana State Legislative Assembly. According to the applicant these services are exempt from GST under Sl.No.3 of Notification No.12/2017, dt: 28.06.2017, which however needs to be clarified. Hence this application.

Now under serial no. 3 of Notification No.12/2017 pure services provided "in relation to any function" entrusted to a municipality under Article 243W of the Constitution of India is eligible for exemption from GST. Clearly the exemption should be directly related to the functions enumerated under Article 243W of the Constitution of India i.e., those functions listed under 12th schedule.

Hon'ble Supreme Court of India in the case of Madhav Rao Jivaji Rao Scindia Vs Union of India AIR 1971 SC 530 observed that the expression "relating to" means to bring into relation or establish a relation. It was further clarified that there should be a direct and immediate link with a covenant and that there cannot be any independent existence outside such covenant.

By his own admission in the application, the applicant provided accommodation services to GHMC in relation to conduction General Elections to the Legislative Assembly of Telangana State. Thus there is no direct relation between the services provided by the applicant and the functions discharged by the GHMC under Article 243W read with schedule 12 to the Constitution of India. Therefore, these services do not qualify for exemption under Notification No.12/2017.

31. AAR rejects application filed by recipient of services

Case Name : In re U.R. Rao Satellite Centre (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 82/2021

Date of Judgement/Order : 31/12/2021

Applicant raised the issue of Applicability of GST on Insurance premium paid towards launch services and Applicability of MoF Notification No. 09/2017-Integrated Tax (Rate) dated: 28-06-2017.

On hearing AAR observed that we observe that M/s. U.R. Rao Satellite Centre, who have filed the application, is not a supplier of either goods or services or both but is a

recipient of services. Thus the instant application is not admissible and liable for rejection in terms of Section 98(2) of the CGST Act 2017.

32. AAR cannot accept application if issue is been raised in audit report

Case Name : In re New Rajamandri Electronics (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 81/2021

Date of Judgement/Order : 31/12/2021

We examine the records and observe that the instant application has been filed online on 24.09.2021 and the question raised therein is about the applicability of GST on the free security deposit. The audit objection raised in the audit report also pertains to the applicability of GST on the security deposit which has been declared by the taxpayer as NIL rated GST turnover in the GSTR 3B filed by him.

The issue raised in the instant application and the audit objection raised in the audit report are one and the same i.e., applicability of GST on security deposit. Thus first proviso to Section 98(2) of the CGST Act 2017 is squarely applicable to the instant case, as all the conditions therein are fulfilled.

In view of the above AAR rejected the application as “inadmissible”, in terms of first proviso to Section 98(2) of the CGST Act 2017.

33. AAR cannot answer questions related to Appropriateness of Invoice

Case Name : In re Madhus Tyre Care (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 80/2021

Date of Judgement/Order : 31/12/2021

In this Advance ruling assessee asked Whether the tax invoice proposed to be issued by the assessee satisfies section 31 of GST Act?, Whether the tax invoice proposed to be issued by the assessee satisfies Rule 46 of GST Rules? and Whether the total amount (inclusive of GST) shown in the main portion of the bill be interpreted as the taxable value under section 31 of GST Act and Rule 46 of GST Rules?

AAR held that Since the questions on which advance ruling is sought by the applicant is not covered under section 97(2) of CGST Act 2017, the questions cannot be answered.

34. GST Rate for Composition tax payer manufacturing Sweets & Namkins

Case Name : In re Chikkaveeranna Sweet Stall (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 79/2021

Date of Judgement/Order : 31/12/2021

For composition tax payers what is the applicable rate of GST for the manufacturing of sweet and namkins and selling the goods over the counter not having any facility of restaurant or hotel or not a part thereof and not giving for human consumption at the place of shop?

Rate of GST applicable for a Composition tax payer who are engaged in the manufacture of sweet and namkins and who is doing only the counter sales, is one percent (0.5% CGST and 0.5% SGST) subjected to the condition mentioned in the Notification No. 8/2017-Central Tax dated: 27.06.2017 and further amended notifications.

35. GST on milling of food grains into flour for distribution under Public Distribution System

Case Name : In re Shiv Flour Mill (GST AAR West Bengal)
Appeal Number : Advance Ruling Order No. 16/WBAAR/2021-22
Date of Judgement/Order : 31/12/2021

Whether the supply of service provided by the applicant to Food & Supplies Department, Govt. of West Bengal by way of milling of food grains into flour for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and what shall be rate of GST on such milling, if it does not fall under entry No. 3A.

(1) In the instant case, value of supply shall be the consideration in money and shall also include all the components towards non-cash consideration, as discussed. This composite supply of services by way of milling of food grains into flour (Atta) to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry serial no. 3A of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 only when the value of goods involved in such composite supply does not exceed 25% of the value of supply.

(2) If the value of goods involved in such composite supply exceeds 25% of the value of supply, the supply shall attract tax @ 5% (CGST @ 2.5% + WBGST @ 2.5%) vide entry serial No. 26 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 [corresponding State Tax Notification No. 1135-FT dated 28.06.2017].

36. GST on milling of food grains into flour for Food & Supplies Department, Govt. of West Bengal

Case Name : In re Maa Laxmi Enterprise (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 18/WBAAR/2021-22
Date of Judgement/Order : 31/12/2021

Whether the supply of service provided by the applicant to Food & Supplies Department, Govt. of West Bengal by way of milling of food grains into flour for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of notification No. 12/2017- CT (R) dated 28.06.2017 and what shall be rate of GST on such milling, if it does not fall under entry No. 3A.

(1) In the instant case, value of supply shall be the consideration in money and shall also include all the components towards non-cash consideration, as discussed. This composite supply of services by way of milling of food grains into flour (atta) to Food

& Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry serial no. 3A of the notification No. 12/2017- CT (R) dated 28.06.2017 only when the value of goods involved in such composite supply does not exceed 25% of the value of supply.

(2) If the value of goods involved in such composite supply exceeds 25% of the value of supply, the supply shall attract tax @ 5% (CGST @ 2.5% + WBGST @ 2.5%) vide entry serial No. 26 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 [corresponding State Tax Notification No. 1135-FT dated 28.06.2017].

37. GST on construction of water distribution networks and operation & maintenance for Kolkata Municipal Corporation

Case Name : In re Suez India Private Limited (GST AAR West Bengal)

Appeal Number : Advance Ruling No. 17/WBAAR/2021-22

Date of Judgement/Order : 31/12/2021

Whether the supplies provided by the applicant to Kolkata Municipal Corporation shall be considered as divisible supplies and what would be its taxability under the GST Act.

The contract for water loss management made by the applicant with Kolkata Municipal Corporation which includes construction of water distribution networks and operation & maintenance shall be treated as an indivisible single contract and qualifies for works contract as defined under clause (119) of section 2 of the GST Act.

The instant composite supply of works contract gets covered under entry serial number 3(iii) of the Notification No. 20/2017- Central Tax (Rate) dated 22.08.2017 [corresponding West Bengal State Notification No. 1497 F.T. dated 22.08.2017] and therefore shall attract tax @ 12% (Central Tax @ 6% + State Tax @ 6%) w.e.f. 22.08.2017.

For the period from 01.07.2017 to 21.08.2017, the supply is taxable @ 18% (Central Tax @ 9% + State Tax @ 9%) vide entry serial number 3(ii) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 [corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017].

(VI) COURT ORDERS/ JUDGEMENTS

1. HC directs GSTN to facilitate filing of TRAN-1 by Petitioner

Case Name : Ashok Kumar Meher Vs Commissioner of Sales Tax & GST (Orissa High Court)

Appeal Number : W.P.(C) No. 12763 of 2021

Date of Judgement/Order : 01/12/2021

HC held that The plea of technical difficulties or technical glitches will not come in the way of the above order being given effect to. For this purpose a direction is issued to GSTN to either modify or make changes in the portal to facilitate the Petitioner filing TRAN-1 to claim the ITC or accept returns manually against the old RC so that the Petitioner can avail of the ITC.

2. HC permits petitioner to file rectified TRAN-I Form electronically or manually

Case Name : Eid Parry (India) Limited Vs Union of India (Karnataka High Court)

Appeal Number : Writ Petition No. 21882 of 2021(T-RES)

Date of Judgement/Order : 02/12/2021

In this petition the petitioner seeks Writ of Mandamus to respondent Nos.2 and 3 either to open the online portal so as to enable the petitioner to again file the rectified TRAN-I form electronically which was originally filed physically at Annexure-B or to permit the petitioner to manually transition the credit amounting to Rs.4,96,163/- to their Electronic Credit Ledger under the GST regime and for other reliefs.

2. Heard the learned counsel for the petitioner and learned AGA for respondent No.2 and Sri. Vikram. S. Huilgol, learned counsel for respondent No.3 and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the documents produced by the petitioner, learned counsel for the petitioner submits that prayer 'B' sought for in the petition is directly covered by decision of this Court in the case of Union of India vs. Asaid Paints Limited and Ors., reported in (2021) 49 GSTL 256, wherein it is held as under:

52. Therefore, on a careful consideration of the judgments cited by the learned senior counsel and learned counsel for respondents in light of the order impugned, we find that the learned single Judge has been persuaded by the judgment passed in Adfert Technologies in coming to the conclusion that the assessee herein must be granted relief by giving them another opportunity to file/revise TRAN-1 either electronically or manually on or before 31.12.2020. We find that the reasoning of the learned single Judge and the relief granted would not call for any interference except to the extent of extending the time within which they would now have to file TRAN-1. The said time-frame has now expired even after successive extensions on 30.08.2020. Therefore, the respondents-assessee are permitted to file/revise TRAN-1 either electronically or

manually on or before 31.03.2021. The revenue is at liberty to verify the genuineness or the merits of the claim in accordance with law.

4. It is therefore, submitted that even this petition deserves to be disposed of in terms of the said decision by issuing appropriate direction to respondent Nos.2 and 3.

5. Per contra learned counsel for respondents while not disputing that the issue in controversy in the present petition is covered by the aforesaid decision submits that direction can be to the respondents to permit the petitioner to file rectified TRAN-I Form electronically or manually within a period of 30 days from today. The said submission of the learned counsel for the respondents is placed on record.

6. In view of the aforesaid facts and circumstances and in light of the decision of Hon'ble Division Bench of this Court in the case of Union of India vs. Asaid Paints Limited and Ors., supra, I am of the considered opinion that present petition also deserves to be disposed of in terms of the aforesaid decision. In the result I pass the following:

ORDER

i) The petition is allowed in terms of the aforesaid decision of Union of India vs. Asaid Paints Limited and Ors.,

ii) The petitioner is permitted to file once again rectified TRAN-I Form electronically or manually within a period of 30 days from today; pursuant to the petitioner filing the said form, respondents would consider and pass appropriate orders in accordance with law.

3. Re-open online portal or accept manual filing of Form TRAN-1 -HC

Case Name : Nagorao Auto Engineering Works Vs Union of India (Chhattisgarh High Court)

Appeal Number : WPT No. 129 of 2021

Date of Judgement/Order : 02/12/2021

HC directed GST Authority to re-open online portal or accept manually filing of Form TRAN-1 due to technical glitch.

Conclusion:

Due to compelling circumstances and because of the technical glitches and difficulties, assessee was not able to file TRAN-1 form, therefore, High Court directed GST Authority to re-open online portal to enable filing of Form TRAN-1 electronically or accept manually.

Held:

Assessee was a trader registered under the GST Act dealing in two and three wheeler spare parts holding GSTIN-22ABHPN8512G1ZU. Assessee did make her attempt in ensuring that the TRAN -1 form was uploaded through online mode but because of

the inexperience on the part of the legal heirs of the original proprietor as also on the part of the personnel handling the accounting of assessee-establishment, the same could not be uploaded because of the technical reasons. That assessee never tried to avoid the submission of the said details but was ever willing to do so but for the technical glitches that occurred, the same could not be uploaded. That the reasons for not uploading were beyond the control of assessee and assessee could not be attributed for the said lapse and prayed for a chance to upload the same afresh, either by opening of the portal by the respondents or permitting them to submit the same manually. Respective authority contended that assessee had not challenged the provision of the GST Act Rule 117 of the GST Rules which prescribed a fix date by which time the TRAN-1 Form had to be submitted. It was noted that the husband of assessee who was the original proprietor having expired in the midst of introduction of the new GST regime on 20.09.2017 and the then compelling circumstances, and further because of the technical glitches and difficulties which assessee faced in the course of submission of TRAN-1 form, this Court also endorsed the view taken by the various High Courts. The court directed the authority to permit assessee either submit the TRAN-1 Form online by opening of the portal or permit to submit the TRAN- 1 Form manually and thereafter to process assessee's claim for grant of the input tax credit at the earliest.

4. Transitional ITC not claimed due to technical problem on GST Portal cannot lapse

Case Name : Vikas Elastochem Agencies Private Limited Vs Deputy Commissioner Central Excise & GST (Madras High Court)
Appeal Number : W.P. No. 23107 of 2021
Date of Judgement/Order : 03/12/2021

No doubt, the petitioner was required to file GST Tran 1 with correct information. However, the Courts have taken note of the fact that there were difficulties in making proper declarations in Tran 1 at the initial phase of implementation of the GST which had resulted in the denial of transitional credit to assesses.

Ultimately, these are the amounts which have accumulated prior to the introduction of the respective GST Act, 2017 with effect from 01.07.2017. The amount lying in the respective rules as it prevailed under the provisions of the Central Excise Rules, 2002 and CENVAT Tax liability.

The technical problem arose at the time of initial implementations of GST which resulted in difficulties both for the Assessee and the for the Department. Ultimately, the amounts which were available as input tax credit under the erstwhile Central Excise Rules, 2002 read with Cenvat Credit Rules were to be transited as their equivalent to cash to the extent and that they are available for being used for discharging the tax liability.

The procedure prescribed under the provisions of Central Goods and Service Tax Act, 2017 and the respective State Enactments and the Rules made there under should not come in the legitimate way of transitional credits as such credits were already available for being utilized for discharging the tax liability. These amounts cannot

lapse. The difficulty in amending the Tran-1 is on account of the Architecture of the Web Portal which did not permitted the petitioner to make such amendments. The petitioner cannot be found fault of Architecture of the indefeasible and cannot lapse. Considering the same, I am inclined to dispose this writ petition by directing the second respondent to take an independent decision by deputing a suitable officer from the Department to verify the petitioner indeed had un-utilized accumulated credit for a sum of Rs.33,28,709.60 (Central Excise Credits Rs.24,81,347.10 and Customs Duty credits Rs.8,47,362.50]. The second respondent or any other Nodal officer may examine the issue and call upon the petitioner to produce their records and thereafter come to a proper conclusion as to whether the petitioner was indeed unable to transition the credit in time.

If the aforesaid amount of credit was available on 01.07.2017, the technical problem in the GST Portal may be internally resolved by the respondents by issuance of suitable directions in terms of decision of the Hon'ble Madurai Bench of this Court rendered in M/s.Ram Auto Vs. The Commissioner of Central Taxes and Central Excise and ors reported in 2021-VIL-192-Mad. This exercise shall be carried out by the of a copy of this order.

5. Rule 86A- ITC cannot be blocked for more than a year- HC lifts restriction

Case Name : Advent India PE Advisors Private Limited Vs Union of India and Ors. (Bombay High Court)

Appeal Number : Writ Petition No. 2320 of 2021

Date of Judgement/Order : 03/12/2021

Having regard to the statutory mandate in sub-rule (3) of rule 86A, the petitioner is entitled to claim that the input tax credit ought to have been unblocked immediately after one year of the restriction being imposed under sub-rule (1) thereof. If indeed the respondents were of the view that the petitioner had not been cooperating with the department, they ought to have proceeded against it in a manner known to law. However, to say that reply is awaited and hence lifting of the restriction has not been resorted to is clearly illegal.

6. SC Classical Interpretation on Pre-Deposit Criteria Before Appeals

Case Name : VVF (India) Limited Vs The State of Maharashtra (Supreme Court of India)

Appeal Number : Civil Appeal No 7387 of 2021

Date of Judgement/Order : 03/12/2021

While analyzing the rival submissions, it is necessary to note, at the outset, that, under the provisions of Section 26(6A), the aggregate of the amounts stipulated in the sub-clauses of the provision has to be deposited and proof of payment is required to be produced together with the filing of the appeal. Both clauses (b) and (c) employ the expression "an amount equal to ten per cent of the amount of tax disputed by the appellant". The entirety of the undisputed amount has to be deposited and 10 per cent of the disputed amount of tax is required to be deposited by the appellant. In the

present case, the appellant disputes the entirety of the tax demand. Consequently, on the plain language of the statute, 10 per cent of the entire disputed tax liability would have to be deposited in pursuance of Section 26(6A). The amount which has been deposited by the appellant anterior to the order of assessment cannot be excluded from consideration, in the absence of statutory language to that effect. A taxing statute must be construed strictly and literally. There is no room for intendment. If the legislature intended that the protest payment should not be set off as the deposit amount, then a provision would have to be made to the effect that 10 per cent of the amount of tax in arrears is required to be deposited which is not the case. Justice Bhagwati in *A.V Fernandez v. State of Kerala*⁴, writing for a Constitution Bench, elucidated the principle of strict interpretation in construing a taxing statute as follows:

“29. In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter.”

The High Court, while rejecting the petition, placed reliance on the fact that there has to be a proof of payment of the aggregate of the amounts, as set out in clauses (a) to (d) of Section 26(6A). The second reason which weighed with the High Court, is that any payment, which has been made albeit under protest, will be adjusted against the total liability and demand to follow. Neither of these considerations can affect the interpretation of the plain language of the words which have been used by the legislature in Section 26(6A). The provisions of a taxing statute have to be construed as they stand, adopting the plain and grammatical meaning of the words used. Consequently, the appellant was liable to pay, in terms of Section 26(6A), 10 per cent of the tax disputed together with the filing of the appeal. There is no reason why the amount which was paid under protest, should not be taken into consideration. It is common ground that if that amount is taken into account, the provisions of the statute were duly complied with. Hence, the rejection of the appeal was not in order and the appeal would have to be restored to the file of the appellate authority, subject to due verification that 10 per cent of the amount of tax disputed, as interpreted by the terms of this judgment, has been duly deposited by the appellant.

Subject to the aforesaid verification, we allow the appeal and set aside the impugned judgment and order of the High Court of Judicature at Bombay dated 8 November 2019 in Writ Petition No 8834 of 2018. The appeal shall stand restored to the file of the appellate authority.

7. Request GST Commissioner to Extend Time for Rectifying Mistake in TRAN-1: HC directs Petitioner

Case Name : Pioneer Carbide Pvt. Ltd. Vs Union of India (Meghalaya High Court)
Appeal Number : WP (C) No.404/2021
Date of Judgement/Order : 06/12/2021

The present matter is governed by Rule 117 of the CGST Rules of 2017. Thus, on plain reading of the Rule, a registered person who has submitted a declaration electronically in the relevant form is entitled to revise the declaration and file it afresh within the period stipulated in Section 117 of the said Rules of 2017. However, there is also a possibility of the time for filing the revised declaration to be enlarged by a general order or a specific order of the Commissioner as the expression “or such further period as may be extended by the Commissioner” suggests. It is possible that the period for filing the declaration under the relevant Rules, including under Rule 117 of the said Rules of 2017, is extended by a general order of the relevant Commissioner. In such an event, the time for filing a declaration under the relevant Rules, including under Rule 117 of the said Rules of 2017 which is relevant in the present case, would stand extended. The expression also permits the Commissioner to make a specific extension at the request of a registered person who had submitted a declaration electronically in the relevant form and then seeks to revise the declaration after the time for submitting the declaration has expired.

It does not appear that the petitioner herein availed of such opportunity or requested the relevant Commissioner for a specific extension so that the petitioner could revise the declaration already furnished.

Accordingly, the petition is allowed by permitting the writ petitioner to make a specific request to the relevant Commissioner under Rule 120A of the said Rules of 2017 to extend the time for the petitioner to file a revised declaration upon correcting whatever mistake may be perceived to have been committed in the course of the initial filing. If such request is made by the petitioner to the relevant Commissioner within a fortnight from date, the Commissioner will consider the matter in appropriate perspective and without reference to the order impugned dated August 12, 2021. In the unlikely event that the Commissioner declines the request, due reasons in support of such decision should be communicated to the petitioner within a period of six weeks from the receipt of the written request in terms of this order.

8. GST refund on Inter-State supply subsequently held as intra-State supply- HC refers matter back to Appellate Authority

Case Name : Radhemani and Sons Vs Additional Commissioner (Appeals) CGST and Central Excise (Chhattisgarh High Court)
Appeal Number : WPT No. 213 of 2021
Date of Judgement/Order : 07/12/2021

Remanded GST refund matter where supply made as inter-State was subsequently held as intra-State to decide in light of Circular No. 162/18/2021-GST

Chhattisgarh High Court set aside the order rejecting the refund claim of the assessee amounting to INR 12,69,255/- passed by the Appellate Authority and remanded back the matter to decide the same afresh in accordance with law and in light of the Circular No. 162/18/2021-GST dated September 25, 2021 (Circular) interpreting the phrase “subsequently held” in the provisions of Section 77 of Central Goods and Services Tax

Act, 2017 (CGST Act) and Section 19 of the Integrated Goods and Services Tax Act, 2017 (IGST Act).

Facts:

M/s Radhemani And Sons (“the Petitioner”) a proprietorship firm had filed an application for refund claim of INR 12,69,255/- on March 18, 2020 under Rule 89 (1) of Central Goods and Services Tax Rules, 2017 (“CGST Rules”) on account of “Excess payment of IGST in February, 2018 in GSTR 3B Return” for the tax period February, 2018 in RFD-01. After considering the said application, a Show Cause Notice dated March 31, 2020 (“the SCN”) was issued by the Deputy Commissioner (“the Respondent No. 2”) in Form GST-RFD-08 and the Petitioner failed to submit any reply w.r.t. the SCN, therefore, the Respondent No. 2, vide order dated April 23, 2020 rejected the refund application of the Petitioner.

Being aggrieved, an appeal was preferred by the Petitioner before the Additional Commissioner (Appeals) CGST and Central Excise, Raipur (“the Respondent No. 1”) who, in turn, while considering the provisions prescribed under Section 77 of the CGST Act, and Section 19 of the IGST Act, vide order dated June 25, 2021 (“the Impugned Order”) rejected the appeal while affirming the order of the Respondent No. 2. Aggrieved therewith, the Petitioner has filed this writ petition

The Petitioner contended that the word “subsequently held”, referred in Section 77 of the CGST Act, read with Section 19 of IGST Act, has been interpreted in the Circular by observing inter alia that 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.

Issue:

Whether the refund would be available to the Petitioner for the inter-State or intra-State supply made?

Held:

The Hon’ble Chhattisgarh High Court in W.P.(T) No. 213 of 2021 dated December 7, 2021 held as under:

- Observed that, considering the contention of the Petitioner, vis-a-vis, the Circular interpreting and/or clarifying the word “subsequently held”, it would, be appropriate to remit the matter back to the Respondent No. 1, in the interest of justice.
- Set aside the Impugned Order and remanded the matter back to the Respondent No. 1.
- Further clarified that, the Court has not expressed any opinion on merits of the case, directed the Respondent No. 1 to decide the same afresh in the light of the Circular in accordance with law.

9. Assessee allowed to adjust tax dues payable in 24 monthly installments with ITC against last installment

Case Name : Jud Cements Ltd. & Anr. Vs Commissioner of Central Goods, Service Tax & Central Excise (Meghalaya High Court)

Appeal Number : WP (C) No. 344/2021

Date of Judgement/Order : 07/12/2021

The Hon'ble Meghalaya High Court in JUD Cements Ltd. & Anr. v. the Commissioner, CGST, Shillong [WP (C) No. 344/2021 dated December 7, 2021] held that adjustment of Input Tax Credit (ITC) with tax dues to be paid off by the assessee in 24 equal or nearly equal monthly installments on account of the orders passed in the pending appeals and on account of ITC, if any, against the last installment. Further held that, the assessee will also be liable to pay interest on reducing balance basis on the tax due component of the amount less any adjustment on account of appellate orders or ITC.

Facts:

This petition has been filed by JUD Cements Ltd. ("the Petitioner") for adjustment of ITC with tax dues to be paid by the Petitioner in installments amounting to INR 43,49,50,071/- as per the letter issued by the Revenue Department ("the Respondent"), that has been accepted by the Petitioner subject to the conclusion of the appeals, on account of the appeals pending for the period of 2017-18.

Held:

The Hon'ble Meghalaya High Court in WP (C) No. 344/2021 dated December 7, 2021 held as under:

Held that, the entire amount of INR 43,49,50,071/- should be paid off by the Petitioner in 24 equal or nearly equal monthly installments beginning December 15, 2021 and payable by the 15th day of the 23 succeeding months and the adjustment on account of the orders passed in the pending appeals and on account of ITC, if any, will be only against the last installment.

Further held that, the balance amount then due will become automatically payable on default of payment of any installment by the Petitioner within the time permitted, and it will be open to the CGST authorities to proceed for realization in accordance with law.

Stated that, the Petitioner would be liable to pay interest on reducing balance basis on the tax due component of the amount of INR 43,49,50,071/-, less any adjustment on account of appellate orders or ITC to be calculated after the completion of payment of last installment in terms of this order and the entire interest component will be payable within 60 days of the last scheduled date for payment of installments.

Clarified that, the interest that is required to be paid and after the completion of the installments payment will be calculated on reducing balance basis in respect of the tax due component and not in any respect of the penalty or interest already added into

the figure of INR 43,49,50,071/-. Further, the Petitioner will continue to pay the current GST dues without seeking any concession on account of the payment.

Directed the Respondent, to annul the order cancelling the GST registration of the Petitioner and to restore the access the portal and all other facilities as in any normal case, upon the first installment payment made. Further clarified that, it will be open to the Respondent to cancel the registration within 15 days of any default in payment and deny access of the portal within 7 days of any such default, unless rectified before the relevant measure is taken.

10. Non-submission of receipt of electricity bill is not a ground of rejection of application for GST registration

Case Name : Ranjana Singh Vs Commissioner of State Tax (Allahabad High Court)
Appeal Number : Writ Tax No. 1084 of 2021
Date of Judgement/Order : 09/12/2021

The Allahabad High Court in the matter of Ranjana Singh v. Commissioner of Service Tax [W.P (Tax) 1084 of 2021 dated December 12, 2021] set aside the rejection of application of GST registration on the ground that, if for the purpose of proof of business ownership there is an option to furnish either house tax receipts or electricity bill receipts, then application cannot be rejected on the basis of non-compliance if receipt of electricity bills are not furnished.

Facts:

Ranjana Singh (Petitioner) is engaged in the business of providing employment through consultancy, which fall within the purview of the Uttar Pradesh Goods and Services Tax Act, 2017 (UPGST Act). On August 17, 2021, the Petitioner applied for grant of registration under the UPGST Act through online mode. The Petitioner had provided the documents as per Section 25 of the UPGST Act and Rule 8 and 9 of the Uttar Pradesh Goods and Services Tax Rules, 2017 (UPGST Rules). On submission of the application, an inspection was made at the business premises of the Petitioner on September 15, 2021, and thereafter, show cause notice was issued for providing certain information and documents in support thereof. On submission of reply, by means of the order dated September 23, 2021 (OIO), the application of the Petitioner was rejected, against which the Petitioner preferred an appeal which too has been dismissed vide order dated October 28, 2021 (Impugned Order). Hence, the writ petition was sought.

Issue:

Whether non- submission of receipt of electricity bill is non-compliance and ground for rejection of application of GST registration?

Held:

The Allahabad High Court in W.P (Tax) 1084 of 2021 dated December 12, 2021 held as under:

- The Petitioner had submitted the explanation regarding the nature or possession of the business premises as the owner and submitted the house tax receipt in compliance with the show cause notice.
- The authorities without whispering any word or assigning any reason had rejected the application for non-specifying possession of the business premises and insisted for submission of electricity bill. The authorities have further erred in law in not pointing out any defect in submission of house tax receipt and insisted for submission of electricity bill whereas the notice dated September 15, 2021, gave an option for submission of recent electricity bill or house tax receipt.
- It is clear from the records that all the documents as required under the UPGST Act and Rules made thereunder as well as in compliance to the show cause notice were furnished by the Petitioner and without pointing out any defect or short coming therein, the application should not have been rejected.
- The Petitioner had every right to carry on her business lawfully and her right to do business cannot be confiscated in illegal and arbitrary manner.

Relevant Provision:

Rule 8 of UPGST Rules:

“8. Application for registration. –

(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as the applicant) shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

(2) (a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes.

(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and

(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.

(3) On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(4A) Every application made under rule (4) shall be followed by-

(a) biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number; or

(b) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done, of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this subrule.

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under subrule (5) shall be issued electronically only after the said deposit.”

11. Uber challenges GST applicability on Auto Rickshaws services

Case Name : Uber India Systems Private Limited Vs Union of India & Anr (Delhi High Court)

Appeal Number : W.P. (C) No. 14048/2021

Date of Judgement/Order : 10/12/2021

Present writ petition has been filed challenging clause (iv) of the Notification No. 16/2021– Central Tax (Rate) dated 18th November, 2021 and clause 1(i) and clause 2(i) of Notification No. 17/2021 – Central Tax (Rate) dated 18th November, 2021 as ultra vires the Constitution of India being unreasonable, arbitrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

Learned senior counsel for the Petitioner states that Notification No. 16/2021-CT (Rate) & 17/2021-CT (Rate), Dated Nov 18, 2021 have made amendments to the parent notifications i.e. Notification No. 12/2017 and Notification No. 17/2017 in order to levy GST on the supply of transportation of passenger service, through an ‘electronic commerce operator’, and provided by an auto rickshaw. He further states that the Impugned Notifications will come into effect from 1st January, 2022 and if an auto-driver registers itself with an e-commerce operator like the Petitioner and

provides transportation of passenger services to passengers identified through such e-commerce platform, GST at 5% or 12% will become applicable on the fare collected on such passenger transport services through auto rickshaws, even though an auto ride through offline modes like street hailing of auto will still be exempt.

Learned senior counsel for the Petitioner submits that the impugned notifications are violative of Article 14 of the Constitution of India as they fail to satisfy the test of reasonable classification. He states that no differentiation in tax treatment can be created between passenger transport services rendered by auto drivers facilitated through e-commerce platforms versus passenger transport services rendered by auto drivers offline.

Issue notice. Ms. Supriya Juneja, Advocate accepts notice on behalf of respondent no.2. She states that Mr. Aditya Singhla, Advocate, who is to argue the matter, is in personal difficulty. She also prays for some time to obtain instructions. In the interest of justice, re-notify on 21st December, 2021.

12. GST paid during Investigation shall be treated as amount paid 'under protest'

Case Name : Aditya Energy Holdings Vs Directorate General of GST Intelligence (Madras High Court)
Appeal Number : WP.No.9654 of 2021
Date of Judgement/Order : 10/12/2021

The amount paid by the petitioner are only deposits pending proper adjudication under Section 73/74 of the CGST Act, 2017. It appears that the amounts were collected from the petitioner during March 2021, at the time when summons were also issued to the petitioner, Mahazar was drawn and seizure memo was also issued to the petitioner on the same date. The petitioner also appears to have sent a representation on 01.04.2021.

There is no merits in this Writ Petition at this stage. The amount paid by the petitioner shall be treated as amount paid by the petitioner "under protest" and will be subject to the final appropriation in the proceedings to be initiated under Sections 73 / 74 of CGST Act, 2017. The respondents perhaps are investigating and therefore, seized the documents from the petitioner. Considering the same, I am inclined to dispose the Writ Petition by directing the respondent or the proper officers concerned to complete the investigation and proceed to issue appropriate show cause notice to the petitioner within a period of six months from the date of receipt of a copy of this order.

13. Bail granted to Person Accused of Wrongfully Availing ITC under GST

Case Name : Rakesh Hanuman Prasad Vs State of Haryana and Another (Punjab & Haryana High Court)
Appeal Number : CRM-M-48871-2021
Date of Judgement/Order : 10/12/2021

Affidavit of Aman Yadav, HPS, Assistant Commissioner of Police, Sadar Gurugram has been filed which is taken on record.

Learned Sr. counsel has at the outset categorically stated that the petitioner has volunteered to deposit half of the disputed amount with the GST Authorities subject to the final adjustment within a period of ten days. He has further submitted that the entire case is based upon documentary evidence and all the documents are already available with the police/SIT and it is a case where the allegation against the petitioner was that he had evaded input tax credit facility by forging various documents/vouchers of various other companies. Learned counsel has submitted that as per the prosecution, the total liability of the petitioner turns out to be Rs.2.5 crores and the petitioner has volunteered to deposit half of the amount within ten days subject to final adjustment. He submitted that the petitioner is ready and willing to join the investigation and, therefore, no useful purpose will be served in case the custodial investigation is done by the police and the petitioner will abide by the conditions and shall also fully cooperate with the investigation process.

In view of the above, it is directed that the petitioner shall join the investigation and shall fully cooperate with the investigation process and on his doing so, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall continue to join the investigation as and when called upon to do so and shall abide by all the conditions as provided under Section 438(2) Cr.P.C. It is further directed that the petitioner shall forthwith deposit his passport, if any, with the SIT.

Needless to say that in case the petitioner violates any of the conditions imposed by this Court then the State shall always be at liberty to file appropriate application before this Court even before the next date of hearing.

14. Whether Form GSTR-3B is a return or not under the CGST Law

Case Name : Union Of India & Ors. Vs. AAP And Company (Supreme Court)
Appeal Number : Civil Appeal No(s). 5978/2021
Date of Judgement/Order : 10/12/2021

The Hon'ble Supreme Court of India in Union of India & Ors. v. Aap and Company [Civil Appeal No(s). 5978/2021 dated December 10, 2021] reversed the judgment of the Hon'ble Gujarat High Court, ruling that FORM GSTR-3B is not a return under Section 39 of the Central Goods and Services Tax Act, 2017 (the CGST Act). Noted that, the Hon'ble Gujarat High Court in AAP and Co. v. Union of India [R/Special Civil Application No. 18962 of 2018 dated 24.06.2019] had held that, Form GSTR-3B is not a return under Section 39 of the CGST Act and it is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified. Stated that, the judgment in AAP and Co. (ibid) has been expressly overruled by a three-Judge Bench by the decision of the Hon'ble Supreme Court of India in Union of India v. Bharti Airtel Ltd. & Ors., [Civil Appeal No.6520 of 2021 dated October 28, 2021] Held that, the appeal succeeds on the same terms as in Bharti Airtel Ltd. & Ors. (ibid).

15. No Denial of ITC if transactions were genuine & supplier registration cancelled thereafter- HC

Case Name : LGW Industries Limited & Ors. Vs Union of India & Ors. (Calcutta High Court)

Appeal Number : WPA No. 23512 of 2019

Date of Judgement/Order : 13/12/2021

1. If all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration the judgments of the Supreme Court and various High Courts which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit in question.

2. Remanding these cases To consider afresh the cases of the petitioners on the issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners want to rely in support of their claim of genuineness of the transactions in question and shall also consider as to whether payments on purchases in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP).

3. It cannot be said that that there was any failure on the part of the petitioners in compliance of any obligation required under the statute before entering the transactions in question or for verification of the genuineness of the suppliers in question.

4. If the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question. Petitioners further submit that all the purchases in question invoices-wise were available on the GST portal in form GSTR-2A which are matters of record.

16. Transitional Credit allowed to be taken through GSTR-3B

Case Name : Nodal Officer, Jt. Commissioner Vs Das Auto Centre (Calcutta High Court)

Appeal Number : M.A.T. 552 of 2020

Date of Judgement/Order : 14/12/2021

Hon'ble Division Bench of the Hon'ble Calcutta High Court in the matter of Nodal Officer versus M/s. Das Auto Centre M.A.T. 552 of 2020 and others in its judgment dated 14.12.2021 has allowed claiming of transitional credit through GSTR-3B in cases where Form TRAN-1 could not be uploaded in time for claiming of the

transitional credit on account of a technical glitch or on account of the assesses not being felt sensitized with the system or on account of other connectivity issues or when the assesses/dealers are located in remote corners of the State.

It was observed by the court that most important feature in all cases is the entitlement of the writ petitioners to the input credit has crystallized. This crystallized right, which ripened into the vested right, is now being denied to the writ petitioners on account of procedural problem.

The Hon'ble Calcutta High Court noted that majority of the High Courts have issued appropriate directions in favour of the writ petitioners. This would go to say that the problem is not confined to a particular state or a few states but appears to be a pan-India problem.

The Hon'ble Calcutta High Court further observed that the decision rendered by various High Courts has clearly brought out the difficulties faced by the assesses and also as to how the assesses having substantially complied with the requirement under law and having been entitled credit on account of transition to GST regime which is beyond the purview of the assessee and the assessee cannot be put to prejudice on account of technicalities.

The Hon'ble Division bench of Calcutta High Court noted the directions issued by the Learned Single Judge of Calcutta High Court that the authorities have been directed to open the portal so that the assessee may be able to file their respective TRAN-1 return or revise return or re-revise return. . It was observed that this would be a difficult exercise and such cannot be run by the assessing Officer in whose jurisdiction the assessee is carrying business. It will have to be done at the very higher level and consequently direction, if any, issued to open the portal, would become unworkable qua prayer made by the writ petitioners.

While pondering on the face of the issue, The Hon'ble Court referred to the decision of the Punjab and Haryana High Court in the case of Hans Raj Sons vs. Union of India reported in 2020 (34) GSTL 58 (P & H) & Amba Industrial Corporation vs. Union of India reported in (2020) 117 Taxman.com 195 (P&H) wherein instead of directing the portal to be open, the Court while allowing the writ petition had granted two options one by directing opening of the portal and in case of non-opening of portal the writ petitioner/assessee will be entitled to make unutilized credit in their GST3B forms to be filed on the monthly basis.

The Hon'ble Calcutta High Court therefore, dismissed the miscellaneous appeals and the order and direction issued by the Learned Single Judge was slightly modified, wherein instead of directing the portal to be open, liberty was granted to the writ petitioner/assessee to file individual tax credit in GSTR-3B Forms for the month of January 2022 to be filed in the month of February 2022.

This matter was represented on behalf of petitioners by Advocate Vinay Shraff with Advocate Himangshu Kumar Ray & Advocate Priya Sarah Paul.

17. Blocking of ITC under Rule 86A- HC disposes petition as dept unblocked the same

Case Name : Vinayak Plylam Marketing Vs Superintendent (Rajasthan High Court)
Appeal Number : D.B. Civil Writ Petition No. 10383/2020
Date of Judgement/Order : 15/12/2021

The petitioner's main grievance is with respect to the blocking of the input tax credit to the tune of Rs.3,43,630/- by the respondent authorities on the petitioner's GST portal under an order dated 18.03.2020. It appears that invoking clause (b) of sub-rule (2) of Rule 86 of GST Rules, 2017 the department has taken the said action. The petitioner had therefore challenged the vires of the said provision. However, the main thrust of the advocate for the petitioner at this stage was that in terms of sub rule (3) of the said Rule 86A in any case upon expiry of a period of one year from the date of imposition of restriction, the same would no longer survive. In support of his contention in addition to relying upon sub rule (3) of Rule 86A counsel has also placed reliance on the decision of the Karnataka and Bombay High Courts in case of Aryan Tradelink Vs. Union of India– [2021] 128 taxmann.com 268 (Karnataka) and Advent India PE Advisors Private Limited Vs. The Union of India and Ors. dated 03.12.2021 respectively.

Learned counsel for the department stated that the credit has already been unblocked and therefore the main grievance of the petitioner no longer survives. He clarified that the department has already issued notice for disallowing the claim of input tax credit of much larger amount which the petitioner must face.

In view of the statement made by the counsel for the respondents, it is not necessary to go into the question of continuing the restriction imposed on the petitioner enjoying the input tax credit in question. If this unblocking of the tax credit is not already reflected on the GST portal in the account of the petitioner, the same shall be done forthwith.

In view of these observations and developments learned counsel for the petitioner does not press to challenge the vires of Rule 86A in this petition.

The petition is disposed of accordingly.

18. HC grants bail to persons accused of issuing bogus GST bills

Case Name : Balwinder Singh Vs State Tax Officer (Punjab and Haryana High Court)
Appeal Number : CRM-M-16421-2021
Date of Judgement/Order : 20/12/2021

Through this petition, the petitioner seeks regular bail in a complaint case registered under Sections 69, 132(1), a, b and c of the Punjab Goods and Service Act, 2017, Police Station Punjab GST Mobile Wing, Chandigarh-2, at Shambhu, pending before the learned Sub Divisional Judicial Magistrate, Amlah.

As per the allegations contained in the aforesaid complaint, the petitioner along with co-accused was found to have indulged themselves in evasion of the State Tax to the Govt., by flouting bogus firms and showing fake billings and transactions in order to draw the refund of the GST payment, and thereby had caused a loss to the tune of Rs.8.95 crore to the State Government.

Learned counsel for the petitioner has contended that the petitioner had falsely been implicated in the present case inasmuch as the e-mail Id and phone number as updated with the respondent-department, do not belong to him. In fact, the petitioner opened a firm in the name and style of M/s Suvidha Enterprises and also obtained GST number from the respondent, but the said firm had been used by Prince Dhiman, who happens to be the son of his sister-in-law and adopted by him. The petitioner was not aware about the business transactions of the said firm maintained or looked after by Prince Dhiman. The petitioner had never transacted any business from the said firm and it was Prince Dhiman, who used to make all the transactions, if any, related to sales and purchase, as recorded on the on-line portal with the respondent. The petitioner had no role to play in the alleged offences. On these premise, the learned counsel prayed that the petitioner be released on bail.

It was further contended that there is a challenge to the vires of Section 69 and 132 of the Central Goods and Service Tax Act, 2017 in CWP No.8004 of 2020 titled as Tarun Bassi Vs. State of Punjab and others wherein notice stands issued to the State of Punjab and in a connected matter also, notice stands issued to the Union of India. It was further contended that the arrest under the Punjab Goods and Service Tax Act, 2017, was without jurisdiction. It was further argued that the petitioner has been in custody for the last more than 10 months and he is now not required for any investigation purposes.

It was also contended that the case is based on the documentary evidence and that no useful purpose would be served by keeping him in custody. In support of his contentions, the learned counsel relied upon the order dated 31.03.2021 passed by this Court in CRM-M-37794-2020. Further reliance was placed upon the orders dated 16.06.2020 passed by a Coordinate Bench in CRM-M-42451-2019, dated 18.06.2020 passed in CWP-8268-2020, titled as 'Rajiv Gupta Vs. Union of India and others', by a Division Bench of this Court and dated 15.03.2021 passed by a Coordinate Bench of this Court in CRM-M-3957-2021.

On the other hand, learned State counsel submitted that the petitioner and the co-accused had caused a huge loss to the Government by evading tax and issuing bogus bills through the bogus firms, to the tune of Rs.8.95 crore. The accused had committed the crime with the help of three firms, which were directly under their control. Learned State counsel further contended that there was a nexus of more than 30 more firms registered in Punjab, Rajasthan, Delhi and other neighbouring States having common email and phone number, which were directly linked to the petitioner and co-accused Prince Dhiman. It was further contended that co-accused Prince Dhiman is still at large and all efforts are being made to nab him. It was also stated that the aforesaid offence had been committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the community. It was also stated

that the allegations against the petitioner are very serious and in case, he is enlarged on bail, every effort may be made by him to tamper with the evidence. In support of his contentions, he relied upon the decision rendered by the Hon'ble Supreme Court in Nimmagadda Prasad Vs. Central Bureau of Investigation 2013(3) RCR (Criminal) 175.

I have heard the learned counsel for the parties and also gone through the orders passed by the Division Bench of this Court seized of the matter qua challenge to vires of Section 69 and 132 of CGST Act as well as order passed by this Court and the Coordinate Bench wherein regular bail stands granted to the similarly situated persons. The judgment relied by the learned State counsel in Nimmagadda's case (supra), is not applicable to the facts of the present case for the reason that in that case, the investigation was not complete and the challan was not presented. However, in the present case, the matter already stands investigated qua the petitioner. Moreover, the petitioner has been in custody since 09.02.2021. Trial of the case would take time to conclude.

In view of the above discussion, however without going into the merits of the case, I find that no useful purpose would be served by keeping the petitioner behind the bars. Thus, the present petition is allowed and the petitioner is ordered to be on regular bail on execution of adequate personal/surety bonds amounting to Rs.5 lakh to the satisfaction of concerned trial Court/Duty Magistrate. The petitioner would surrender his passport, if any, before the concerned Court and will not leave India without prior permission of the Court.

However, any observation made herein shall not be construed to be an expression on merits of the case.

19. Wrongfully availment of ITC – HC Grants Bail

Case Name : Rohan Tanna Vs Union of India (Chhattisgarh High Court) Appeal
Number : MCRC No. 6331 of 2021
Date of Judgement/Order : 21/12/2021

Applicants are arrested for commission of offences punishable under Sections 16 & 132 (1) (b) & (c) of the GST Act. Section 138 of the GST Act deals with compounding of offences. Offence registered against applicants under Section 132 (1) of the GST Act is made compoundable by the Commissioner on making payment to the Central Government or State Government either before or after institution of prosecution. In case at hand, case is instituted against applicants and they were arrested. Though allegation against applicants is of committing economic offence, but considering provisions of the GST Act, particularly Section 138 of the GST Act and quantum of input tax credit stated to have been wrongly availed/utilized, and period of detention of applicants i.e. from 20.7.2021, charge sheet after due investigation is filed, keeping in mind dictum of Hon'ble Supreme Court in cases of Shri Gurbaksh Singh Sibbia & ors vs. State of Punjab reported in (1980) 2 SCC 565; Sanjay Chandra vs. CBI reported in (2012) 1 SCC 40; P. Chidambaram vs. Directorate of Enforcement reported

in (2019) 9 SCC 24, without commenting anything on merits of case, I am inclined to enlarge applicants on regular bail.

20. Writ Petition challenging GST order not maintainable as Alternative Statutory Remedy available

Case Name : Ram Prasad Ganga Prasad Vs Assistant Commissioner (Calcutta High Court)

Appeal Number : WPA 20138 of 2021

Date of Judgement/Order : 21/12/2021

In this writ petition, petitioners have challenged the impugned order of adjudication dated 1st November, 2021 passed by the GST Authority concerned as appears at page 47 to the writ petition. Main ground of challenge of the impugned adjudication order by the petitioners is that though the impugned adjudication order is appealable but the same is without jurisdiction and there is violation of principle of natural justice by not affording them opportunity of hearing. I am not convinced with both the grounds of the petitioners for the reasons that before passing the impugned adjudication order, show-cause-notice dated 31st August, 2021 was issued as appears from Annexure P-2 to the writ petition and it appears that against the show-cause-notice, petitioners have given a detailed reply by their letter dated 1st of October, 2021 as appears at page 40, being Annexure P-3 to the writ petition. Nowhere from the said reply to the show-cause-notice, it appears that petitioners have asked for any personal hearing in the matter. It is a settled law that opportunity of hearing may be afforded either by way of allowing the petitioners to make any written representation for their case or it may be by allowing personal hearing and in this case petitioners were allowed to make written representation/objection and when petitioners have not asked for personal hearing and petitioners have not been able to show any provision of relevant laws mandating the authority to give personal hearing, question of violation of principles of natural justice does not arise in this case. It is relevant to note that Section 75(4) of the GST Act simply says about hearing and not about personal hearing. Now so far as the ground of jurisdiction of the Adjudicating Authority, who has passed the impugned order is concerned, petitioners could not satisfy me from their submission that the Adjudicating Authority, who has passed the impugned order having inherent lack of jurisdiction. Exercising a jurisdiction in an irregular manner by an authority is different from exercising a jurisdiction by the authority having inherent jurisdiction. I do not find that the Authority, who has issued the show-cause-notice and passed the adjudication order, is having inherent lack of jurisdiction under the statute or he is not authorised to exercise the jurisdiction of adjudication in the case of the petitioners. If the petitioners are not satisfied with the impugned adjudication order or reasons according to petitioners in not sufficient or proper, it can be a case of appeal but not a case for invoking Constitutional writ jurisdiction under Article 226 of the Constitution of India. It is also not a case where the petitioners are remediless against the impugned adjudication order; Forum for statutory alternative remedy is already available to the petitioners.

In view of the discussion made above, this writ petition, being WPA 20138 of 2021 is dismissed.

21. HC quashes Order for not providing hearing opportunity to Assessee

Case Name : Naresh Aggarwal Agencies Pvt. Ltd. Vs State of Punjab & anr. (Punjab and Haryana HC)

Appeal Number : CWP No. 26101 of 2021 (O&M)

Date of Judgement/Order : 21/12/2021

1. By this petition the petitioner has challenged the order dated 02.12.2021 (Annexure P-6) on the ground that no opportunity of hearing was granted after the issuance of Show Cause Notice and submission of reply.

2. On advance notice, Ms. Sudeepti Sharma, Addl. A.G., Punjab enters and accepts notice on behalf of the respondents. Her preliminary objection is that the order is appealable. She has however taken instructions and has now accepted that as a matter of fact no notice was issued to the petitioner after the submission of reply for hearing.

3. In these circumstances, we do not deem it appropriate to non-suit the petitioner on the ground that there is an efficacious remedy of appeal, more so since we are not setting aside the order on merits but are only directing that the Assessing Officer should pass a fresh order after affording an opportunity of hearing to the petitioner.

4. In the circumstances, the petition is allowed and impugned order is set aside. The Assessing Officer is directed to pass a fresh speaking order after hearing the petitioner in accordance with law. For this purpose, parties through counsel are directed to appear before the Assessing Officer on 30.12.2021 or on any other date when the Assessing Officer may require their presence.

5. Petition stands allowed.

6. Since the main case has been decided, the pending Civil Misc.

Application, if any, also stands disposed of