GST UPDATE
(December, 2020)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. Tax Invoice to have 8 digit HSN code on specified products

Tax Invoice to have 8 digit HSN code on specified products classifying under various tariff items of Chapter 28, 29, 38 & 39 of CTA (Mainly Chemicals and Plastic items) and specified Chemicals falling under various tariff heading.

[Notification No. 90/2020 – Central Tax – 1st December, 2020]

2. Due date of GST compliance by Authority extended to 31.03.2021

Notification No. 91/2020 seeks to extend due date of compliance by any authority and for actions in respect of anti-profiteering measures under GST which falls during the period from 20.03.2020 to 30.03.2021 till 31.03.2021.

[Notification No. 91/2020 – Central Tax dated 14.12.2020]

3. GST- Govt notifies 9 Sections of Finance Act, 2020 wef 01.01.2021

Government notifies Sections 119,120,121,122,123,124,126,127 and 131 of Finance Act, 2020 (12 of 2020) related to GST w.e.f 1st January 2021 vide Notification No 92/2020-Central Tax dated 22nd December 2020. Details of such amendment with reference to CGST Act, 2017 is as follows:-

Section 10 of CGST Act, 2017- Composition Scheme

- In section 10(2) of the CGST Act, in clauses (b), (c) and (d), after the words “of goods”, the words “or services” shall be inserted
- Thus, the conditions for eligibility to pay tax under composition are harmonised and certain categories of taxable persons, engaged in making-
  - supply of services not leviable to tax under the CGST Act, or
  - inter-State outward supply of services, or
  - outward supply of services through an e-Commerce operator.
- Are excluded from the ambit of the Composition scheme.

Section 16(4)- Time limit for taking credit of debit note

- In section 16(4) of the CGST Act, the words “invoice relating to such” is omitted.
- Thus, the date of issuance of debit note is delinked from the date of issuance of the underlying invoice for purposes of availing input tax credit.

Cancellation of voluntary registration

- Section 29(1) of the CGST Act, for clause (c), the following clause shall be substituted, namely:—
- *“(c) the taxable person is no longer liable to be registered under section 22 or section 24 or* ***intends to opt out of the registration voluntarily made under sub-section (3) of section 25:”***

- Thus, now it also provides for cancellation of registration which has been obtained voluntarily under section 25(3)

Section 30(1)- Time limit for revocation of cancellation of registration

- Section 30(1) of the CGST Act (Revocation of cancellation of registration)
  - Time limit of 30 days to apply for revocation of cancellation of registration ,
  - Made extendable by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days and by the Commissioner, for a further period not exceeding thirty days

Section 31- Invoice

- Section 31(2) of the CGST Act, for the proviso, the following proviso shall be substituted, namely:—
  - "Provided that the Government may, on the recommendations of the Council, by notification,— (a) **specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;** (b) subject to the condition mentioned therein, specify the categories of services in respect of which— (i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or (ii) tax invoice may not be issued.".

TDS- Section 51(3) & (4)

- Section 51 of the CGST Act,— (a) for sub-section (3), the following sub-section shall be substituted, namely:–
- ***"(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.***
- Earlier sub-sections (3) and (4) which provided for requirement of issuing TDS certificate on deductor and provision for late fees for not issuing such certificate with in five days are deleted

Amendment of section 122

- In section 122 of the CGST, after sub-section (1), the following sub-section shall be inserted, namely:—
- *"(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.*
- Thus, it makes the beneficiary of the transactions of passing on or availing fraudulent Input Tax Credit liable for penalty similar to the penalty leviable on the person who commits such specified offences.

Amendment of section 132

- Section 132 of the CGST Act, in sub-section (1),—
  (i) for the words "Whoever commits any of the following offences", the words "Whoever commits, ***or causes to commit and retain the benefits arising out of,*** any of the following offences'' shall be substituted;.

  (ii) for clause (c), the following clause shall be substituted, namely:— "(c) avails input tax credit using the invoice or bill referred to in clause (b) ***or fraudulently avails input tax credit without any invoice or bill***;";

  (iii) in sub-clause (e), the words ", fraudulently avails input tax credit" shall be omitted.

Amendment to Schedule II

- In Schedule II to the CGST Act, in paragraph 4, the words
- "whether or not for a consideration," at both the places where they occur, shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July 2017.
- Schedule II cannot include a transaction, without consideration, because then it would not be a supply at all in the first place. Schedule II, issued under section 7(1)(d) is meant only for the purpose of classification of a transaction either as a supply of goods or as a supply of services
- Thus, para 4 is being corrected retrospectively from 1st July 2017.

[Notification No 92/2020-Central Tax dated 22nd December 2020]

4. Late fees for delay in furnishing of FORM GSTR-4 waived for Ladakh dealers

Late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2019-20 under section 47 of the said Act, from the 1st day of November, 2020 till the 31st day of December, 2020 shall stand waived for the registered person whose principal place of business is in the Union Territory of Ladakh.

[Notification No 93/2020-Central Tax dated 22nd December 2020]

5. Central Goods and Services Tax (Fourteenth Amendment) Rules, 2020

As per the notification dated 22 December 2020, No. 94 /2020. the validity period of e-waybill will be changed from 100 KM per day to 200 KM per day from 01/01/2021.

Time limit for system-based GST Registration increased

- The time for system-based registration has been enhanced from 3 days to 7 days.
- That means, now department shall be required to review and grant registration within 7 days against 3 days as provided earlier from the date of filing of registration application.
- Where the applicant does not do adhaar authentication or where department feels fit to carry out physical verification the time limit for grant of registration shall be 30 days instead of 21 days.

Cancellation of GSTIN

- **Clause (e) in Rule 21 of CGST Rules 2017.**
  - Now the officer can proceed for cancellation of GSTIN where a taxpayer avails Input Tax Credit (ITC) exceeding than that permissible in Section 16.
- **Clause (f) inserted in Rule 21 of CGST Rules, 2017**
  - Liability in GSTR-3B < GSTR-1, cancellation may be initiated
  - Where the liability declared in GSTR 3B is less than that declared in GSTR 1 in a particular month, department may now proceed with cancellation of GSTIN.

Suspension of GSTIN

- Now, no opportunity of being heard shall be given to a taxpayer for suspension of GSTIN, where the proper officer (PO) has reasons to believe that the registration of person is liable to be cancelled.
- The words “opportunity of being heard” omitted from clause (2) of Rule 21A.

Cancellation Notice in GST REG-31

- Where there are significant deviation / anomalies between details of outward supply between GSTR 3B and GSTR1 or inward supplies (ITC) between GSTR 3B and GSTR 2B which indicate contravention of Act, department shall now serve a notice in **FORM GST REG 31** to call explanation as to why GSTIN should not be cancelled.
- Taxpayer shall be required to submit his reply within 30 days of such notice being served to him.

No refund during suspension of GSTIN

- Where a GSTIN is suspended, no refund under Section 54 of CGST Act 2017 can be availed by the taxpayer.
- This means that first GSTIN Suspension proceedings have to be closed before applying for refund.

Restriction on claim of ITC as per Rule 36(4)

- The claim of ITC in respect of invoices not furnished by the corresponding vendors has now been restricted to 5% of the credit available in GSTR 2B. This limit earlier was 10% of ITC available.
- This would mean that a taxpayer’s ITC claim shall now be restricted to 105% of the Credit reflected in his GSTR 2B.
- Any claim exceeding the specified limit shall result in violation of CGST Act read with rules which may result into suspension of GSTIN as described above.
- The provision shall come into effect from 1st January 2021.

Restriction on utilization of ITC- Rule 86B

- New Rule 86B shall be affected from 1st January 2021 wherein restriction has been placed on setting off more than 99% of tax liability from Input tax credit where the value of taxable supplies other than exempt supply and zero rated supply exceeds Rs. 50 lakhs in a month. Few exceptions have been provided to this rule which are as follows:
  - Where the taxpayer has paid Income Tax exceeding Rs. 1 lakh in two preceding financial year.
  - Where taxpayer has received refund exceeding Rs. 1 lakhs u/s 54 of CGST Act 2017.
  - Where taxpayer has used electronic cash ledger to pay off liability on outward supplies which cumulatively makes 1% of the total liability up to the said month.
  - Where a person is a Government Department, Public Sector Undertaking (PSU), local authority or a statutory body.

Validity of E-way Bill

- Earlier one day was permitted for distance up to 100 km under E-Way Bill provision.
- Now the same has been increased to 200 km.
- This means that only one day validity shall be granted to cover a distance up to 200 km which was earlier 100 km.

[Notification No 94/2020-Central Tax dated 22nd December 2020]

6. GST annual returns due date for FY 2019-20 extended till 28.02.2021

CBIC has vide Notification No. 95/2020- Central Tax dated -30th December 2020 extended the due date for filing of Annual Return in Form GSTR-9 and Annual Reconciliation Statement in Form GSTR- 9C for the financial year 2019-2020 from 31st December 2020 to 28th February, 2021.

[Notification No 95/2020-Central Tax dated 30th December 2020]

(II) PUNJAB GST NOTIFICATIONS

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(Excise And Taxation-II Branch)

NOTIFICATION

The 18th December, 2020

No. S.O. 60/P.A.5/2017/S.148/2020.- In exercise of the powers conferred by section 148 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is hereby pleased to notify the registered persons required to prepare the tax invoice in the manner specified under sub-rule (4) of rule 48 of the Punjab Goods and Services Tax Rules, 2017, who have prepared tax invoice in a manner other than the said manner, as the class of persons who shall, during the period from the 1st day of October, 2020 to the 31st day of October, 2020, follow the special procedure such that the said persons shall obtain an Invoice Reference Number (IRN) for such invoice by uploading specified particulars in **FORM GST INV-01** on the Common Goods and Services Tax Electronic Portal, within the period of thirty days from the date of such invoice, failing which the same shall not be treated as an invoice.

This notification shall be deemed to have come into force on and with effect from the 1st day of October, 2020.

A. VENU PRASAD,
Financial Commissioner (Taxation) and Secretary to
Government of Punjab,
Department of Excise and Taxation.

2186/12-2020/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(Excise And Taxation-II Branch)

NOTIFICATION

The 18th December, 2020

No. S.O. 61/P.A.5/2017/S.148/2020.- In exercise of the powers conferred by section 148 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) (hereafter in this notification referred to as the said Act) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is hereby pleased to notify the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said registered persons shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** under the Central Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

Table

S. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
(1)	(2)	(3)
1	October, 2020 to December, 2020	13th January, 2021
2	January, 2021 to March, 2021	13th April, 2021

3. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2020 to March, 2021 shall be subsequently notified in the Official Gazette.

4. This polification shall be deemed to have come into force on and with effect from the 15th day of October, 2020.

A. VENU PRASAD,
Financial Commissioner (Taxation) and Secretary to
Government of Punjab,
Department of Excise and Taxation.

2186/12-2020/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(Excise And Taxation-II Branch)

NOTIFICATION

The 18th December, 2020

No. S.O. 62/P.G.S.T.R./2017/R.46/Amd./2020 .-In exercise of the powers conferred by the first proviso to rule 46 of the Punjab Goods and Services Tax Rules , 2017 and all other powers enabling him in this behalf , the Governor of Punjab , on the recommendations of the Council , is hereby pleased to make the following amendment in the notification of the Government of Punjab in the Department of Excise and Taxation . No. S.O. 23 /PGSTR/2017/R.46/2017, dated the 30th June , 2017 , published in the Gazette of Punjab , Extraordinary , Part III , dated the 30th June , 2017, namely :-

AMENDMENT

In the said notification , with effect from the 01st day of April , 2021 , for the Table, the following shall be substituted , namely , -

Table

"

serial Number	**Aggregate Turnover in the preciding Financial Year**	**Number of Digits of Harmonised System of Nomenclature Code (HSN Code)**
(1)	**(2)**	**(3)**
1.	Up to rupees five crores	4
2.	more than rupees five crore	6

Provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code , as specified in the corresponding entry in column (3) of the said Table in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons . "

A. VENU PRASAD,

Financial Commissioner (Taxation) and Secretary to

Government of Punjab,

Department of Excise and Taxation.

2186/12-2020/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(Excise And Taxation-II Branch)

NOTIFICATION

The 18th December, 2020

No. S.O. 63/P.A.5/2017/S.148/Amd./2020 .- In exercise of the powers conferred by section 148 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No.5 of 2017) (hereinafter referred to as the said Act), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is hereby pleased to make the following amendment in the notification of Government of Punjab in the Department of Excise and Taxation. No S.O. 28/P.A.5/2017/S.148/2020, dated the 8th August, 2020, published in the Gazette of Punjab, Extraordinary, Part III, dated the 18th August, 2020, namely: -

AMENDMENT

In the said notification in the opening paragraph, for the words and figures "financial years 2017- 18 and 2018-19", the words and figures "financial years 2017-18, 2018-19 and 2019-20" shall be substituted.

2. This notification shall be deemed to have come into force on and with effect from the 15th day of October, 2020.

A. VENU PRASAD,
Financial Commissioner (Taxation) and Secretary to
Government of Punjab,
Department of Excise and Taxation.

2186/12-2020/Pb. Govt. Press, S.A.S. Nagar

(III) CENTRAL TAX NOTIFICATIONS

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

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

Notification No. 90/2020 – Central Tax

New Delhi, the 1st December, 2020

G.S.R.....(E).—In exercise of the powers conferred by the first proviso to rule 46 of the Central Goods and Services Tax Rules, 2017, the Central Board of Indirect Taxes and Customs, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2017 – Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), dated the 28th June, 2017, namely:–

In the said notification, after the first proviso, the following proviso shall be inserted, namely, -

Provided further that for class of supply as specified in column (2) and whose HSN Code as specified in column (3) of the Table below, a registered person shall mention eight number of digits of HSN Codes in a tax invoice issued by him under the said rules –

S.No. (1)	Chemical name (2)	HSN Code (3)
1	Mixture of (5-ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate (CAS RN 41203-81-0) and Bis [(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate (CAS RN42595-45-9)	38249100
2	Dimethyl propylphosphonate	29313200
3	(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl methyl methylphosphonate	29313600
4	Bis[(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate	29313700
5	2,4,6-Tripropyl-1,3,5,2,4,6-trioxatriphosphinane 2,4,6-trioxide	29313500

6	Dimethyl methylphosphonate	29313100
7	Diethyl ethylphosphonate	29313300
8	Methylphosphonic acid with (aminoiminomethyl) urea (1: 1)	29313800
9	Sodium 3-(trihydroxysilyl) propyl methylphosphonate	29313400
10	2,2-Diphenyl-2-hydroxyacetic acid	29181700
11	2-(N,N-Diisopropylamino)ethylchloride hydrochloride	29211400
12	2-(N,N-Dimethylamino)ethylchloride hydrochloride	29211200
13	2-(N,N-Diethylamino)ethylchloride hydrochloride	29211300
14	2-(N,N-Diisopropylamino)ethanol	29221800
15	2-(N,N-Diethylamino)ethanethiol	29306000
16	Bis(2-hydroxyethyl)sulfide	29307000
17	2-(N,N-Dimethylamino)ethanethiol	29309092
18	Product from the reaction of Methylphosphonic acid and 1,3,5-Triazine-2,4,6- triamine	As applicable
19	3-Quinuclidinol	29333930
20	R-(-)-3-Quinuclidinol	29333930
21	3,9-Dimethyl-2,4,8,10-tetraoxa-3,9-diphosphaspiro [5.5] undecane 3,9- dioxide	29313900
22	Propylphosphonic dichloride	29313900
23	Methylphosphonic dichloride	29313900
24	Diphenyl methylphosphonate	29313900
25	O-(3-chloropropyl)O-[4-nitro-3-(trifluoromethyl)phenyl] methylphosphonothionate	29313900
26	Methylphosphonic acid	29313900
27	Product from the reaction of methylphosphonic acid and 1,2-ethanediamine	As applicable
28	Phosphonic acid,methyl-, polyglycol ester (Exolit OP 560 TP)	38249900
29	Phosphonic acid,methyl-,polyglycol ester (Exolit OP 560)	38249900
30	Bis (polyoxyethylene) methylphosphonate	39072090
31	Poly(1,3-phenylene methyl phosphonate)	39119090
32	Dimethylmethylphosphonate, polymer with oxirane and phosphorus oxide	38249900
33.	Carbonyl dichloride	28121100

34.	Cyanogen chloride	28531000
35.	Hydrogen cyanide	28111200
36.	Trichloronitromethane	29049100
37.	Phosphorus oxychloride	28121200
38.	Phosphorus trichloride	28121300
39.	Phosphorus pentachloride	28121400
40.	Trimethyl phosphite	29202300
41.	Triethyl phosphite	29202400
42.	Dimethyl phosphite	29202100
43.	Diethyl phosphite	29202200
44.	Sulfur monochloride	28121500
45.	Sulfur dichloride	28121600
46.	Thionyl chloride	28121700
47.	Ethyldiethanolamine	29221720
48.	Methyldiethanolamine	29221710
49.	Triethanolamine	29221500

[F. No. CBEC-20/06/04/2020-GST]

(Pramod Kumar)
Director, Government of India

Note: The principal notification number 12/2017 – Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.660(E), dated the 28th June, 2017 and last amended vide notification No. 78/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 638(E), dated the 15th October, 2020.

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

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

Notification No. 91/2020 – Central Tax

New Delhi, the 14th December, 2020

G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in the proviso to clause (i),

(i) for the words, figures and letters "29th day of November, 2020", the words, figures and letters "30th day of March, 2021" shall be substituted.

(ii) for the words, figures and letters "30th day of November, 2020", the words, figures and letters "31st day of March, 2021" shall be substituted

2. This notification shall be deemed to have come into force with effect from 1st day of December, 2020.

[F.No.20/13/07/2019-GST]

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 65/2020 – Central Tax, dated the 1st September, 2020, published in the Gazette of India, Extraordinary *vide* number G.S.R. 542(E), dated the 1st September, 2020.

[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 92/2020-Central Tax

New Delhi, the 22nd December, 2020

S.O. ..... (E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance Act, 2020 (12 of 2020) (hereinafter referred to as the said Act), the Central Government hereby appoints the 1st day of January, 2021, as the date on which the provisions of sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the said Act shall come into force.

[F.No. CBEC-20/06/04/2020-GST]

(Pramod Kumar)
Director, 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. 93/2020-Central Tax

New Delhi, the 22nd December, 2020

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the 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. 73/2017–Central Tax, dated the 29th December, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 1600(E), dated the 29th December, 2017, namely :–

In the said notification, after the third proviso, the following proviso shall be inserted, namely: –

"Provided also that the late fee payable for delay in furnishing of **FORM GSTR-4** for the Financial Year 2019-20 under section 47 of the said Act, from the 1st day of November, 2020 till the 31st day of December, 2020 shall stand waived for the registered person whose principal place of business is in the Union Territory of Ladakh.".

[F.No. CBEC-20/06/04/2020-GST]

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 73/2017-Central Tax, dated 29th December, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended *vide* notification number 67/2020 – Central Tax, dated the 21st September, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R 572(E), dated the 21st September, 2020.

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

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

Notification No. 94 /2020 – Central Tax

New Delhi, the 22nd December, 2020

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 (Fourteenth Amendment) Rules, 2020.

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

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 8, for sub-rule (4A), with effect from a date to be notified, the following sub-rule shall be substituted, namely: -

"(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 sub-rule.".

3. In the said rules, in rule 9,-

(a) in sub-rule (1), -

(i) after the words "applicant within a period of", for the word "three", the word "seven" shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely: -

"Provided that where-

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.";

(b) in sub-rule (2), -

(i) for the word "three", the word "seven" shall be substituted;

(ii)for the proviso, the following proviso shall be substituted, namely: -

"Provided that where-

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the notice in **FORM GST REG-03** may be issued not later than thirty days from the date of submission of the application.";

(c)for sub-rule (5), the following sub-rule shall be substituted, namely: -

"(5) If the proper officer fails to take any action, -

(a) within a period of seven working days from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or

(b) within a period of thirty days from the date of submission of the application in cases where a person is covered under proviso to sub-rule (1); or

(c) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

the application for grant of registration shall be deemed to have been approved.".

4. In the said rules, in rule 21,-

(a) in clause (b), after the words "goods or services", the words "or both" shall be inserted;

(b) after clause (d), the following clauses shall be inserted, namely:-

"(e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or

(f) furnishes the details of outward supplies in **FORM GSTR-1** under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

(g) violates the provision of rule 86B.".

5. In the said rules, in rule 21A,-

(a) in sub-rule (2), the words ",after affording the said person a reasonable opportunity of being heard," shall be omitted;

(b) after sub-rule (2), the following sub-rule shall be inserted, namely: -

"(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in **FORM GSTR-1**; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1,**

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in **FORM GST REG-31**, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.";

(c) in sub-rule (3), after the words, brackets and figure "or sub-rule (2)", the words, brackets, figure and letter "or sub-rule (2A)" shall be inserted;

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

"(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.";

(e) in sub-rule (4), -

(i) after the words, brackets and figure "or sub-rule (2)", the words, brackets, figure and letter "or sub-rule (2A)" shall be inserted;

(ii) the following proviso shall be inserted, namely: -

"Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.".

6. In the said rules, in rule 22,-

(a) in sub-rule (3), after the words, brackets and figure "the show cause issued under sub-rule (1)", the words, brackets, figures and letters "or under sub-rule (2A) of rule 21A" shall be inserted;

(b) in sub-rule (4), after the words, brackets and figure "reply furnished under sub-rule (2)", the words, brackets, figures and letters "or in response to the notice issued under sub-rule (2A) of rule 21A" shall be inserted.

7. In the said rules, in rule 36, in sub-rule (4), with effect from the 1st day of January, 2021,-

(a) for the word "uploaded", at both the places where it occurs, the word "furnished" shall be substituted;

(b) after the words, brackets and figures "by the suppliers under sub-section (1) of section 37", at both the places where they occur, the words, letters and figure "in **FORM GSTR-1** or using the invoice furnishing facility" shall be inserted;

(c) for the figures and words "10 per cent.", the figure and words "5 per cent." shall be substituted.

8. In the said rules, in rule 59, after sub-rule (4), the following sub-rule shall be inserted, namely: -

"(5) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.".

9. In the said rules, after rule 86A, with effect from the 1st day of January, 2021, the following rule shall be inserted, namely: -

"**86B**. **Restrictions on use of amount available in electronic credit ledger**.-Notwithstanding anything contained in these rules, the registered person shall not use the amount available in

electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:

Provided that the said restriction shall not apply where –

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or
(b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or
(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or
(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or
(e) the registered person is –
(i) Government Department; or
(ii) a Public Sector Undertaking; or
(iii)a local authority;or
(iv)a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.".

10. In the said rules, in rule 138, in sub-rule (10), with effect from the 1st day of January, 2021,-

(a) in the Table, against serial number 1, in column 2, for the figures and letters "100 km.", the figures and letters "200 km." shall be substituted;
(b) in the Table, against serial number 2, in column 2, for the figures and letters "100 km.", the figures and letters "200 km." shall be substituted.

11. In the said rules, in rule 138E, -

(a) in clause (b), for the words "two months", the words "two tax periods" shall be substituted;
(b) after clause (c),the following clause shall be inserted, namely:-

"(d) being a person, whose registration has been suspended under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A.".

12. In the said rules, after **FORM GST REG-30**, the following **FORM** shall be inserted, namely-

"**FORM GST REG – 31**

[*See rule 21A*]

Reference No. Date: <DD><MM><YYYY>

To,

GSTIN
Name:
Address:

Intimation for suspension and notice for cancellation of registration

In a comparison of the following, namely,

(i) returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017;
(ii) outwards supplies details furnished by you in **FORM GSTR-1**;
(iii) auto-generated details of your inwards supplies

for the period _____ to _____;
(iv) …….. (specify)

and other available information, the following discrepancies/ anomalies have been revealed:

- □ Observation 1
- □ Observation 2
- □ Observation 3

(*details to be filled based on the criteria relevant for the taxpayer*).

2. These discrepancies/anomalies prima facie indicate contravention of the provisions of the Central Goods and Services Tax Act, 2017 and the rules made thereunder, such that if not explained satisfactorily, shall make your registration liable to be cancelled.

3. Considering that the above discrepancies/anomalies are grave and pose a serious threat to interest of revenue, as an immediate measure, your registration stands suspended, with effect from the date of this communication, in terms of sub-rule (2A) of rule 21 A.

4. You are requested to submit a reply to the jurisdictional tax officer within seven working days from the receipt of this notice, providing explanation to the above stated discrepancy/ anomaly. Any possible misuse of your credentials on GST common portal, by any person, in any manner, may also be specifically brought to the notice of jurisdictional officer.

5. The suspension of registration shall be lifted on satisfaction of the jurisdictional officer with the reply along with documents furnished by you, and any further verification as jurisdictional officer considers necessary.

6. You may please note that your registration may be cancelled in case you fail to furnish a reply within the prescribed period or do not furnish a satisfactory reply.

Name:
Designation:

NB: This is a system generated notice and does not require signature by the issuing authority.".

[F. No. CBEC-20/06/04/2020-GST]

(Pramod Kumar)
Director, 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 last amended *vide* notification No. 82/2020-Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 698(E), dated the 10th November, 2020.

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

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

Corrigendum

New Delhi, the 28th December, 2020

G.S.R……(E). - In the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 94/2020-Central Tax, dated 22nd December,2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 786(E), dated the 22nd December, 2020,:

- at page 8, in line 31, for the words "for the proviso" read "for the provisos";
- at page 12, in line 12, for the words "seven working days" read "thirty days".

[F. No. CBEC-20/06/04/2020-GST]

(Pramod Kumar)
Director, 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. 95/2020 – Central Tax

New Delhi, the 30th December, 2020

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with rule 80 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, for the financial year 2019-20 till 28.02.2021.

[F. No. CBEC-20/06/13/2020-GST]

(Pramod Kumar)
Director, Government of India

(IV) CGST CIRCULARS

Circular No.144/14/2020-GST

F. No. CBEC- 349/48/2017-GST (Part I)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 15th December,2020

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)/ The Principal Director General/ Director General (All)/ Pr. Chief Controller of Accounts (CBIC)

Madam/Sir,

Subject: Waiver from recording of UIN on the invoices for the months of April 2020 to March2021-regarding

Vide Circular No.63/37/2018-GST dated 14th September, 2018 & corrigendum to the said circular dated 6th September 2019, waiver from recording of UIN on the invoices issued by retailers/other suppliers were given to UIN entities till March,2020.

2. It has been bought to the notice of the Board that the issue of non-recording of UINs has continued even after 31st March,2020. Therefore, it has been decided to give waiver from recording of UIN on the invoices issued by the retailers/suppliers, pertaining to the refund claims from **April 2020 to March 2021**, subject to the condition that the copies of such invoices are attested by the authorized representative of the UIN entity and the same is submitted to the jurisdictional officer.

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

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

(Sanjay Mangal)
Commissioner (GST)

(V) ADVANCE RULINGS

1. GST on works contract services to Kerala State Electricity Board

Case Name : **In re R. S. Development & Constructions Pvt Ltd. (GST AAAR Kerala)**
Appeal Number : Order No. AAR/08/2020
Date of Judgement/Order : 03/12/2020

The Kerala State Electricity Board Ltd falls under the category of a Government entity for the purpose of the said exemption.

The supply of services viz. execution of the civil works of Pazhassi small hydro electric project covered under Work order No. 06/CEECCN/ 2017-18 dated 06.10.2017 made by the appellant to the Kerala State Electricity Board Ltd are not eligible to concessional rate of CGST @6% provided by the said **Notification No.11/2017-Central Tax (Rate) dated 28.06.2017**.

Consequently, the said services shall not be eligible for concessional rate of SGST @6% also in terms of notification No. SRO 370/2017 dated 30.06.2017 since the CGST statutory provisions are pan materia with State GST provisions.

Moreover, on the basis of the above discussion and findings, the contention of the appellant that the Advance ruling in question is in violation of the principles laid down by the decision of the 25th GST council meeting is baseless.

2. No GST on Grant received for promotion of Tourism by HP Tourism Development Board from Government

Case Name : **In re HP Tourism Development Board (GST AAR Himachal Pradesh)**
Appeal Number : Advance Ruling No. HP-AAR-04/2020
Date of Judgement/Order : 03/12/2020

The amount credited in favour of H.P Tourism Development Board by Department of Tourism, Govt. of H.P, as grant in aid or financial assistance is exempt under GST as per Serial No 9C of **Notification No 32/2017-Central Tax (Rate) dated 13th October, 2017**.

3. GST on fabrication of steel structures when material except paint is supplied by recipient

Case Name : **Vrinda Engineers Private Limited (GST AAR West Bangal)**
Appeal Number : Order number 14/WBAAR-20-21
Date of Judgement/Order : 04/12/2020

Whether fabrication of steel structures is job work when the materials except paint are supplied by the recipient?

The applicant supplies a mixed supply constituting of the job work of fabrication of steel structures and the works contract of applying paint to the erected steel structures. It is taxable @ 12% in terms of the provisions under section 8(b) of the GST Act.

4. GST on supplying manpower to Hospitals & Dispensaries run by Government medical college

Case Name : **In re Janki Sushikshit Berojgar Nagrik Seva Sahakari Sanstha Ma (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA- 69/2019-20/B-61
Date of Judgement/Order : 15/12/2020

Applicant is mainly supplying manpower and only in the case of Government Ashram school, applicant is providing goods in the form of vegetable and mutton as per the contract executed.

The first question raised by the applicant is whether the supply of impugned services like; supply of staff for cleaning the District Collector's office premises; providing manpower in the form of skilled assistants and technicians, to Hospitals and Dispensaries run by Government medical college, are covered under clause 1 & 2 of Twelfth Schedule of Article 243W.

It is seen that Clause 1 is related to Urban planning including town planning and Clause 2 is related to Planning of land- use and construction of buildings for municipalities. In the subject case, as per the submissions made, the applicant is providing manpower/staff (labourj/security guard to the Amravati Municipal Corporation, Amravati (AMC). Amravati Municipal Corporation is a municipality, set up as per the provisions of Article 243 P of Constitution of India. The remaining supply of services/goods are to various departments of the Government but not to the municipality.

For the subject issue, we find that Clause No. 1 and 2 mentioned above are related to Urban planning including town planning and planning of land – use and construction of buildings, which are totally different from the applicant's supply of services. The applicant is supplying manpower for specific purposes like computer work, cleaning of office premises, security, skilled and unskilled labour, etc. In our view, such supply of services and goods cannot be said to be related to functions specified under Clause land 2 of the 12lh Schedule. Applicant has not provided manpower in relation to any urban planning or planning of land-use and construction of building. Further, the applicant has not brought on record as to how their supply is in furtherance of functions specified in the above mentioned Clause 1 and 2. Hence it is felt that, such subject supply is out of purview of the scope of Clause 1 and 2 of 12th Schedule of Article 243 W of the Constitution, as functions entrusted to Municipality.

5. GST on supply of Manpower to Municipal Corporation

Case Name : **In re Work Group Sushikshit Berojgar Nagrik Sewa Sahkari Sanstha Maryadit Amravati (GST AAR Maharashtra)**
Appeal Number : Advance No. GST-ARA-89/2019-20/B- 62
Date of Judgement/Order : 15/12/2020

Clause (q) of the 12th Schedule mentioned above, mandates Municipal Corporations to provide Public amenities including street lighting, parking lots, bus stops and public conveniences. Applicant is providing manpower to the Amravati Municipal Corporation for collecting vehicle parking Charges in the Municipal Corporation area. This activity is in relation to functions and responsibilities as mentioned in of Clause (q) above and will be covered under Public amenities including parking lots, etc. Therefore, the applicant will be eligible for exemption under Entry No. 3 of Exemption **Notification No. 12/2017 dated 28.06.2017** since in such a case, applicant is assisting the Municipality in providing/maintaining Public amenities including parking lots.

Further, the applicant, in Para 2 (a) of their submissions have stated that they are supplying manpower for cleaning of public washrooms and restrooms but it is not mentioned whether such services are provided to the Amravati Municipal Corporation. In their submissions, under the heading “Scope of Work”, they have not at all mentioned anything about providing manpower to the Amravati Municipal Corporation, for cleaning of public washrooms and restrooms. According to their submissions, under the head ‘Scope of Work’ Sr. Nos. 9 & 10, services to the Amravati Municipal Corporation providing manpower for collecting vehicle parking fees from people who park their vehicles in the municipal corporation area and providing manpower for collecting rent from hawkers who use the municipal corporation area for selling the stuff on street respectively. All other supplies mentioned under the head ‘Scope of Work’ relates to services rendered to MSEDCL. Also, as per the table of supply provided by them in their missions, they have at Sr. no. 8 of the table, mentioned that they are providing to the Amravati Municipal Corporation, staff for cleaning. They have not mentioned whether it is staff provided for cleaning of public washrooms/restrooms. Hence a perusal of their submissions in its entirety do not reveal that such services of providing staff for cleaning of public washrooms/restrooms are supplied to Amravati Municipal Corporation. We are of the opinion that providing manpower for cleaning of public washrooms and restrooms, if provided Municipal Corporations, will be covered under Public health, sanitation conservancy and solid waste management /Public amenities including street lighting, parking lots, bus stops and public conveniences since these functions are entrusted to the Municipalities under Article 243 W of the Constitution. Since it is not forthcoming from the applicant’s submissions that, they are providing such services of providing staff for cleaning of public washrooms/restrooms to the Amravati Municipal Corporation, the applicant will not be eligible for exemption under Entry No. 3 of Exemption **Notification No. 12/2017 dated 28.06.2017.**

6. ITC allowed wef 01.02.2019 on leasing, renting or hiring of motor vehicles, for transportation of persons

Case Name : **In re Tata Motors Limited (GST AAR Maharashtra)**
Appeal Number : Order No. GST-ARA-23/2019-20/B-63
Date of Judgement/Order : 15/12/2020

Section 17(5) had clearly debarred Input Tax Credit on motor vehicles or conveyances used in transport of passengers till the date of the amendment i.e. 01.02.2019. However with effect from 01.02.2019, Input Tax Credit has been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons (including the driver).

7. No GST on financial assistance under German Government development programme

Case Name : **In re Prettl Automotive India Private Limited (GST AAR Maharashtra)**
Appeal Number : Advance No. GST/ARA-20/2019-20/B-59
Date of Judgement/Order : 15/12/2020

In re Prettl Automotive India Private Limited (GST AAR Maharashtra)

Q1. Whether the financial assistance to be received by the Applicant are covered as consideration for supply and the activity is covered under the meaning of supply of services in terms of Section 7 of the CGST Act, 2017/MGST Tax Act, 2017?

Answer:- Answered in the affirmative.

Q.2 If the above activity is not considered as 'supply of services' then whether the said activity is to be considered as "exempted supply' or 'non-taxable supply? and accordingly input tax credit is to be reversed in accordance with section 17 of CGST Act, 2017/MGST Act, 2017 read with Rule 42 of **Central Goods and Services Tax Rules, 2017/ Maharashtra Goods and Services Tax Rules, 2017?**

Answer:- Not answered in view of answer to question no. 1 above.

Q.3 If the above activity is considered as supply of services, then whether the same is classifiable under SAC 9997 as other services nowhere else classified" under Sr. no 35 of the **Notification-11/2017- Central Tax (Rate) dated 28th June 2017** /Sr. No 35 of the Notification-11/2017-State Tax (Rate) dated 29th June 2017/Sr. No 35 of the **Notification 8/2017- Integrated Tax (Rate) dated 28th June 2017**?

Answer:- In view of the discussions made above, the supply of service in the subject case , is classifiable under SAC 999792 under **Notification-11/2017- Central Tax (Rate) dated 28th June 2017.**

Q.4 Where the said activity if considered as supply of service, then whether the same is covered as "Zero Rated Supply and qualifies as "export of service under the

provisions of Integrated Goods and Services Tax Act, 2017 and can be exported without payment of IGST?

Answer:- Answered in the negative.

8. ITC on promotional material given to franchisees & retailers

Case Name : **In re Page Industries Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRA 54/2020
Date of Judgement/Order : 15/12/2020

Whether in the facts and circumstances of the case, the promotional products/Materials and Marketing Items used by the Applicant in promoting their brand and marketing their products can be considered as "inputs" as defined under Section 2(59) of the CGST Act, 2017 and GST paid on the same can be availed as input tax credit in terms of section 16 of the CGST Act, 2017?'

1. The ITC on GST paid on the procurement of the "distributable" products which are distributed to the distributors, franchisees is allowed as the said distribution amount to supply to the related parties which is exigible to GST. Further the said distribution to the retailers for their use cannot be claimed as gifts to the retailers or to their customers free of cost and hence ITC of GST paid on such procurement is not allowed as per Section 17(5) of the GST Acts.

2. The GST paid on the procurement of "non-distributable" products qualify as capital goods and not as "inputs" and the applicant is eligible to claim input tax credit on their procurement, but in case if they are disposed by writing off or destruction or lost, then the same needs to be reversed under Section 16 of the **CGST Act, 2017** read with Rule 43 of the **CGST Rules, 2017**.

9. AAR explains GST on supply of Digital Goods/Online Gaming

Case Name : **In re Amogh Ramesh Bhatawadekar (GST AAR Maharashtra)**
Appeal Number : Order No. GST-ARA-06/2019-20/B-58
Date of Judgement/Order : 15/12/2020

Question. I) Whether 'e-goods' as commercially known in the market are 'goods' as defined in the GST Acts or are they services as per GST Act?

Answer: – E-goods, in this case- 'Online Gaming' will be covered under services under the GST Act.

Question. 2) If they are goods what is the It's HSN classification and or if services what is SAC classification& rate of GST on its sale/supply within state?

Answer: – In view of observations made above the SAC will be 998439.

Question. 3) Whether they are exempted from GST?

Answer: – Answered in the negative.

Question. 4) If Not exempted, what is the rate of GST on supply?

Answer: – GST rate will be 18%.

Question. 5) In what circumstances IGST under reverse charge will be applicable or whether it is applicable in the situation of procurement from foreign supplier & supply from out of India as discussed above?

Answer: – In the situation of procurement from foreign supplier & supply from out of India the applicant has to discharge IGST liability under reverse charge mechanism.

Question.6)If the customer is from India and paying the consideration in dollar, whether it will be allowed as exports or if not allowed as exports then whether GST is leviable? What is rate of SGST & CGST or IGST? Under which HSN Code or SAC?

Answer: – Since both, the customer and the applicant arc in India, GST would be liable @18% under SAC 998439.

Question.7) If customer pays for the e-goods in Indian rupees and goods delivered through CLOUD located outside India whether SGST & CGST or IGST leviable on such transactions?

Answer: – GST is leviable, in view of the discussions made above.

Question. 8) In case where customer / buyer is from out of India and payment is done in dollar according to us it is export of goods / services and therefore neither SGST & CGST is leviable? Please clarify the same.

Answer: – Not answered in view of discussions made above.

Question.9) In case buyer is from India the goods/ services are stored in CLOUD which are the servers outside India therefore even though payment is received in rupees ,it is again export of services being services are received from distantly installed servers. Hence No CGST and or SGST is leviable?

Answer: – Said services are not export of services and hence GST must be discharged by the applicant.

Question. 10) Whether IGST is applicable under section 5(3) & 5(4) of the IGST Act, according to us it is not because it is not imported into India and the services are stored on CLOUD and therefore it cannot be said to be imports and thus not liable for RCM?

Answer: – IGST is applicable under section 5(3) & 5(4) of the IGST Act.

Question. 11) If suppose RCM is applicable then its rate? May please be clarified.

Answer: – Answered in the affirmative. IGST @ 18% will be applicable.

10. AAR application rejected as question raised in application is already pending

Case Name : **In re Dempo Diary Industries Limited (AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 59/2020
Date of Judgement/Order : 16/12/2020

The applicant themselves admitted that M/s KMF hold 90% shares and hence have management / administrative control over the applicant. M/s KMF are the owners of `Nandini' brand, against whom an offence case is pending before DGGI, Bengaluru on classification of flavoured milk. Thus it is very clear that the applicant, being the job worker to M/s KMF, becomes part of M/s KMF, as they also supply the same product of 'flavoured milk' and hence is bound to oblige the conclusion of the proceedings in this regard. Hence the pendency of the proceedings automatically applies to the applicant also. Therefore the instant application is liable for rejection, under first proviso to Section 98(2) of the **CGST Act 2017**.

11. Classification of Flavored Milk : AAR rejects application U/s. 98(2)

Case Name : **In re Bengaluru Co-Operative Milk Union Ltd (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 58/2020
Date of Judgement/Order : 16/12/2020

Whether the Flavored Milk is liable to be classified under HSN 0402 99 90 or under 2202 99 30 or under any other Chapter?

The applicant themselves admitted that they are one of the share holders of M/s KMF, who are the owners of `Nandini' brand and against whom an offence case is pending before DGGI, Bengaluru on classification of flavoured milk. Thus it is very clear that the applicant being the share holder in M/s KMF becomes part of M/s KMF as they also supply the product 'flavoured milk' under the Vandini' brand and hence is bound to oblige the conclusion of the proceedings in this regard. Hence the pendency of the proceedings automatically applies to the applicant also. Therefore the instant application is liable for rejection, under first proviso to Section 98(2) of the CGST Act 2017.

In view of the foregoing, The application is rejected as "inadmissible", in terms of first proviso to Section 98(2) of the CGST Act 2017.

12. AAR cannot give ruling on issue which is under Investigation

Case Name : **In re Sri. V. Mohandas Pai - Prop. Dheeraj Enterprises. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 57/2020
Date of Judgement/Order : 16/12/2020

We examine the records and observe that the instant application has been filed on 22.09.2020 and the question raised there in is about the classification of the services being provided by the applicant. It is an undisputed fact that a search, of applicant's registered premises, was conducted by the Superintendent of Central Tax, Anti Evasion, Bangalore West Commissionerate under authorization issued by the competent authority on 30.08.2019, a Statement was recorded on 31.08.2019, an

offence case was booked on 11.09.2020 and DRC-01A dated 09.07.2020 was issued on the issue of suppression of taxable value. Further, a summon dated 03.09.2020 was issued seeking clarification on the question of classification. The applicant vide letter dated 08.09.2020 to the Department sought a notice on the issue and informed that they will take up the matter of classification with Karnataka Film Chamber of Commerce and CBIC. It is pertinent to mention here that the DRC-01A dated 10.09.2020 clearly specified the grounds of quantification out of which one issue is the **"Wrong classification resorted under self assessment by the applicant, under SAC 9973 instead of SAC 9996 14".** Thus it is clearly evident that the issue of classification of the services provided by the applicant was under investigation as evident from DRC- lA dated 10.09.2020.

Rule 142[1A] of the CGST Rules 2017,as amended, stipulates that the proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A. Further the said form is prescribed one and contains a reference of the case proceedings, which clearly indicates that proceedings have been initiated and are not concluded. Thus it proves that the case proceedings are pending.

The issue raised in the instant application and the issue pending under the proceedings are one and same i.e. classification of the services provided by the applicant. 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.

The application is rejected as "inadmissible", in terms of first proviso to Section 98(2) of the CGST Act 2017.

13. GST: Value in respect of transfer to branches located outside state

Case Name : **In re Thirumalai Chemicals Limited (GST AAR Tamil Nadu)**
Appeal Number : Order No. 41/AAR/2020
Date of Judgement/Order : 18/12/2020

Q. The value to be adopted in respect of transfer to branches located outside the state?

Ans: The applicant can adopt any one of the following three methods provided under Rule 28 of the CGST/ TNGST Rules 2017 read with Section 15 of the CGST/TNGST Act 2017to arrive at the value in respect of supply to distinct persons

a. Open Market Value as is presently being adopted by them;

b. 90% of the ultimate sale value as raised by the distinct persons to the un-related ultimate customers based on the Purchase Orders in cases of 'as such' supplies;

c. The distinct persons being eligible for full Input Tax credit of Taxes paid by the applicant, the 'Invoice value' is the deemed 'Open Market Value'

14. Letting out of compressors for pumping of water from borewells to agricultural field is not 'Support Service for agriculture

Case Name : **In re Vallalar Borewells (GST AAR Tamilnadu)**
Appeal Number : Order No. 40/ARA/2020
Date of Judgement/Order : 18/12/2020

Q1. Whether the following supply of services provided by the applicant are in relation to agricultural operations directly in connection with raising of agricultural produce

i.Drilling of Borewells for supply of water for agricultural operations like cultivation including seeding, planting and ploughing.

ii. Letting out of compressors for pumping of water from the borewells to the agricultural fields.

Ans: 'Provision of agricultural machinery with crew and operators' and 'operation of irrigation systems for agricultural purposes' are listed as 'Support services to crop production'. In the case at hand the applicant does not undertake the 'operation of irrigation system for agricultural purposes' and also `compressors' are not agricultural machinery. They undertake the activity of drilling of borewells in the agricultural land and let out compressors. The said activity is not classifiable under SAC 9986. It is pertinent to note that even setting up of an irrigation system with pipe lines are classifiable only under SAC 9983 and the activity of 'operation' of such irrigation system alone is coded as 'Support service to agriculture'. In the case at hand, the applicant undertakes only drilling of bore wells in the agricultural land and are letting out compressors. The applicant are classifying the same under SAC 995434, when the said activity is undertaken in places other than agricultural land and under SAC 995434 when the drilling is done in other than agricultural land.

Water-well drilling services are specifically covered under 995434 and the said category includes all Water-well drilling services without any exceptions. Therefore, it is evident that the drilling of borewell without exceptions (even in the agricultural land) is a construction service involving drilling water well and not a support service for agriculture. As the activity do not merit classification under SAC 9986, the applicant is not eligible for exemption as per Sl. No. 54 of **Notification No. 12/2017-CT(R), dated 28.06.2017**.

Q2. If the answer to the above question is in the affirmative, whether the said services are covered by the entry Sl.No 54 of Notification No. 12/2017-CT(R), dated 28.06.2017.

Ans: In respect of letting of Compressor, the applicant claims that the same is let out for pumping water from the bore-wells drilled by them in the agricultural land, on drilling of the said wells and therefore is a 'Support service for agriculture'. Their contention is that water is essential for cultivation and the compressor are let out to pump water. Compressor is not an agricultural machinery and is a General-Purpose Machinery. Also, only provision of agricultural machinery with crew and operators are stated as 'Support service for agriculture'. Therefore, letting out of the same is also not a

'Support service for agriculture' classifiable under SAC 9986 and the applicant is not eligible for exemption as per SI. No. 54 of **Notification No. 12/2017-CT(R), dated 28.06.2017**.

15. Drilling of Borewells for supply of water in agricultural land is not 'Support Service for agriculture

Case Name : **In re Aravind Drillers (GST AAR Tamil Nadu)**
Appeal Number : Order No. 39/ARA/2020
Date of Judgement/Order : 18/12/2020

1. Drilling of Borewells for supply of water in agricultural land is not 'Support Service for agriculture classifiable under 'SAC 9986' for the reasons stated in para 8.3 above

2. Letting out of compressors for pumping of water from the borewells to the agricultural field is not 'Support Service for agriculture classifiable under `SAC 9986' for the reasons stated in para 8.4 above

3. The above two activities of the applicant are not 'Support service for agriculture' classifiable under SAC 9986 and therefore the exemption at SI.No.54 of **Notification No.12/2017-C.T.(Rate)** is not applicable to the tivities of the applicant.

16. No Ruling by AAR on issue under investigation with DGGSTI

Case Name : **In re M/s Faiveley Transport Rail Technologies India Limited (GST AAR Tamil Nadu)**
Appeal Number : Order No. 38/ARA/2020
Date of Judgement/Order : 18/12/2020

DGGSTI has taken up investigations on the classifications adopted by the applicant on their supplies to Indian Railways and classified under CTH 8607. The subject goods are supplied to `Indian Railways' and the applicant classify the same under CTH 8607. The application is filed on 20.01.2020 while the proceedings on the 'Classification of the goods supplied to Indian Railways' and the 'rate adopted for payment of GST' were initiated through summon dated 10.10.2018. Also from the list of parts given to the DGGSTI by the applicant, it is seen that details relating to 'Pantograph and Parts' is also furnished. The applicant claims that the DGGSTI did not contend the classification of 'Pantograph' and therefore the said goods were never a part of the investigation. The first proviso to Section 98(2) of the Act, states that where the question raised is pending or decided in any proceedings under this Act, the same is not eligible for admission before this authority. It is clear that classification and rate adopted in respect of 'Pantograph' irrespective of the claim that their classification was acceded/contended by the investigating authority has been called for as a part of the investigation proceedings under Summon issued under Section 70 of the Act which establishes that the question raised before us is a part of the proceedings of DGGSTI and therefore squarely covered under proviso to Section 98(2) of the Act.

The applicant has relied upon the rulings pronounced by GST Advance Ruling Appellate Authority/ Advance Ruling Authority of different states wherein the said authorities have rejected the applications when the Investigations pertained to specific goods. The applicant has contended that in their case the investigation was generic and the subject goods were not part of the proceedings and therefore the application is to be admitted. As brought out in para supra, the investigation initiated by DGGSTI in the case of applicant is on the classification and rate of GST adopted by the applicant on the supplies to Indian Railways, classifying under CTH 8607. It is without doubt that the applicant has been classifying the subject goods under CTH 8607 and the supplies are made to 'Indian Railways' and therefore we are unable to agree the contention that the investigation is 'generic', while we find the investigation is on the 'class of products' classified under CTH 8607 and supplied to 'Indian Railways'.

In View of the above, The application is not admitted under first proviso to Section 98(2) of the CGST/TNGST Act 2017 for the reasons mentioned in para 9 above.

17. Appeal against non-admittance of application for advance ruling not maintainable

Case Name : **In re Tirumala Milk Products Pvt Ltd. (GST AAAR Karnataka)**
Appeal Number : Order No. KAR/AAAR-08/2020-21
Date of Judgement/Order : 22/12/2020

In the instant appeal, the Appellant is aggrieved by the grounds on which the lower Authority has refused to admit the application for advance ruling which is that, the question on which the ruling was sought is a matter that is being investigated by the Directorate of GST Intelligence and hence the application cannot be admitted in terms of the proviso to Section 98(2) of the CGST Act. The Appellant has assailed this reasoning and argued that it is only when the same question is being investigated by the 'concerned officer' that the provisions of the proviso to Section 98(2) will apply; that investigations conducted by any other agency will not attract the said proviso. The Appellant has gone into great length in analyzing the intention of the legislature in framing the provisions of Section 98 and has put forth the view that it is only proceedings which are pending before the 'concerned/jurisdictional officer' which qualify for rejection in terms of the proviso to Section 98(2). We have already reproduced the provisions of Section 98 of the CGST Act and we find that such an interpretation is certainly not implied in the framing of the said Section. The first proviso to Section 98(2) makes an application ineligible for admission if the Authority finds that the question raised in the application is already pending or decided in `any proceedings' in the case of the applicant under any provisions of this Act. Commencement of investigation in terms of Section 67 of the CGST Act, can be said to be the start of a proceeding to safeguard the government revenue. The investigation can be initiated either by the concerned/jurisdictional officer or by agencies who are empowered under the provisions of the CGST Act to issue summons and investigate. Therefore, the use of the phrase "any proceedings" in the 1st proviso to Section 98(2) encompasses within its fold proceedings pending either before the concerned/jurisdictional officer or before any investigative agency such as DGSTI. We

also find from the records that the statement recorded by the DGSTI pursuant to the summons issued, deals mainly with the classification and rate of tax of the product “Flavoured Milk”. Therefore, we agree with the decision taken by the lower Authority that the application for advance ruling is inadmissible in terms of the proviso to Section 98(2) of the CGST Act.

In view of the aforesaid, we hold that the appeal filed against the non-admittance of the application for advance ruling is not maintainable in as much as the impugned order is not an appealable order under Section 100 of the CGST Act, 2017.Since the appeal itself is not maintainable, the question of condoning the delay in filing the appeal does not arise.

(VI) COURT ORDERS/ JUDGEMENTS

1. Department to rectify order passed in GST DRC 07 if Tax & Penalty been paid

Case Name : **Libra International Limited Vs Assistant Commissioner Commercial Tax (Allahabad High Court)**
Appeal Number : Writ Tax No. 665 of 2020
Date of Judgement/Order : 02/12/2020

A combined reading of subrules (5), (6) and (7) of Rule 142 of the Rules, 2017, indicate that a mechanism is provided for uploading summary of certain specified orders, including the order issued under Section 129 in **FORM GST DRC07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. In the event the order aforementioned has been rectified or withdrawn, a summary of the rectification order was of the withdrawal order is uploaded electronically by the proper officer in **FORM GST DRC08**.

The challenge sought to be raised to the order dated 15.2.2018 passed under Section 129 (3) of the Act, 2017, having been made at a belated stage, we are of the view that the relief claimed in this regard in terms of relief clause (I), would be barred by laches; moreso, in the light of the fact that the petitioner claims to have deposited the entire amount of tax and penalty determined under the said order, and by virtue of the deeming provision under subsection (5) all proceedings in respect of the notice specified under subsection (3) shall be deemed to be concluded.

As regards the prayer for quashing the summary of the order uploaded electronically in **FORM GST DRC07** dated 18.9.2020, as under relief clause (II), we may observe that in the event the petitioner has actually made payment of the entire amount due towards tax and penalty referred to in the notice issued under subsection (1) of Section 129, he may submit proof thereof before the authority concerned and apply for rectification/withdrawal of the said order.

2. GST Authorities can initiate inquiry u/s 70 collaterally with proceedings u/s section 6(2)(b)

Case Name : **G.K.Trading Company Vs Union Of India And 4 Others (Allahabad High Court)**
Appeal Number : Writ Tax No. 666 of 2020
Date of Judgement/Order : 02/12/2020

Conclusion: GST authorities are allowed to initiate inquiry proceedings under Section 70 of **CGST Act, 201**7 collaterally with the proceedings under section 6(2)(b) as prohibition of Section 6(2)(b) of the C.G.S.T. Act shall come into play only when any proceeding on the same subject-matter has already been initiated by a proper officer under the U.P.G.S.T. Act and therefore, proper officer under the U.P.G.S.T. Act or the C.G.S.T. Act may invoke power under Section 70 in any inquiry.

Held: The issue arose for consideration was that once inquiry has been initiated under U.P. GST Act, the officer could neither initiate any inquiry nor summon could be issued under Section 70 of the CGST Act against assessee in view of the provisions of Section 6 (2) (b) of U.P. GST Act, 2017. It was held that the word "inquiry" in Section 70 has a special connotation and a specific purpose **to summon any person** whose attendance may be considered necessary by the proper officer either **to give evidence or to produce a document or any other thing.** The process of inquiry under Section 70 is specific and unified by the very purpose for which provisions of Chapter XIV of the Act confers power upon the proper officer to hold inquiry. The word "inquiry" in Section 70 is not synonymous with the word "proceedings", in Section 6(2)(b) of the U.P.G.S.T. Act/ C.G.S.T. Act. The words **"any proceeding"** on the same **"subject-matter"** used in Section 6(2)(b), which is subject to conditions specified in the notification issued under sub-Section (1); means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties etc., proceedings for demands and recovery under Section 73 and 74 etc. Section 6(2)(b) of the C.G.S.T. Act prohibits a proper officer under the Act to initiate any proceeding on a subject-matter where on the same subject-matter proceeding by a proper officer under the U.P.G.S.T. Act has been initiated. There was no proceeding by a proper officer against assessee on the same subject-matter referable to Section 6(2)(b). It was merely an inquiry by a proper officer under Section 70 of the C.G.S.T. Act.

3. GST is leviable on Lottery & gambling: SC

Case Name : **Skill Lotto Solutions Pvt. Ltd. v. Union of India & Ors. (Supreme Court)**
Appeal Number : Writ Petition (Civil) No. 961 of 2018
Date of Judgement/Order : 03/12/2020

The Hon'ble Supreme Court in ***Skill Lotto Solutions Pvt. Ltd. v. Union of India & Ors. [W.P. (C) No. 961 of 2018 dated December 3, 2020]*** held that lottery and gambling under GST's ambit is legally valid, upholding validity of tax imposition on lottery tickets and the prize money.

4. Petition filed Challenging vires of CGST Rule 86A

Case Name : **Surat Mercantile Association Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 15329 of 2020
Date of Judgement/Order : 03/12/2020

Rule 86A of the GST Rules has given unbridled power to a GST officer to block input tax credit in electronic credit ledger maintained on GSTN portal without giving any notice or intimation to the tax payer if the concerned GST officer has reason to believe that input tax available in the electronic credit has been fraudulently availed or is ineligible.

Electronic credit ledger of a buyer of goods or services of an honest business entity is getting blocked even if it is not at fault.

Surat Mercantile Association has filed a petition before the Hon'ble Gujarat High Court challenging the constitutional validity and vires of Rule 86A of the Central GST Rules and the Gujarat GST Rules.

Hon'ble Gujarat High Court has issued notice to the Central and State Government to submit its response by 21st January, 2021.

This matter is being argued by Advocate Vinay Shraff with Advocate Parth Shah on the ground that Rule 86A of the Rules which allows unilaterally blocking the electronic credit ledger without issue of Show Cause Notice and without giving an opportunity of fair hearing is in violation of principles of natural justice. Rule 86A of the Rules is a draconian, arbitrary, irrational and unduly harsh provision and therefore violative of article 14 of the Constitution of India. Rule 86A of the Rules is ultra virus the **Section 74** of the Act in as much as Section 74 of the Act mandates issue of show cause notice for demand of ineligible or fraudulently availed input tax credit. Rule 86A of the Rules is also ultra-virus the Section 75(4) of the Act which mandates grant of an opportunity of hearing where any adverse decision is contemplated against a tax payer. Rule 86A of the Rules also seeks to circumvent the right of appeal to the extent that such right can be exercised upon payment of 10% of the disputed amount under **section 107** of the Act.

5. SC disposes appeal challenging constitutional validity of pre-deposit under TNVAT Act

Case Name : **M/S. V.V.V. And Sons Edible Oil Ltd. Vs The State of Tamil Nadu & Ors. (Supreme Court of India)**
Appeal Number : Civil Appeal No. 3964 of 2020
Date of Judgement/Order : 04/12/2020

The Hon'ble Supreme Court of India in ***M/S. V.V.V. And Sons Edible Oil Ltd. v. The State of Tamil Nadu & Ors. [Civil Appeal No. 3964 of 2020 dated December 04, 2020]*** disposed of the appeal filed against the judgment passed by the Hon'ble Madras High Court, wherein, the Assessee had challenged the constitutional validity of pre-deposit contained under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (**TNVAT Act**) and held that, since the matter is still at the first appellate stage, the Appellant would, therefore, be obliged to deposit 25% of the demanded sum.

Facts:-

This appeal filed by M/S. V.V.V. And Sons Edible Oil Ltd. (**"Assessee/Appellant"**) challenges the judgment and order passed by the Hon'ble Madras High Court ***in W.P. (MD) No. 21856 of 2016 dated February 26, 2020.***

The aforesaid writ petition was filed by the Appellant challenging the validity of second proviso to Section 51(1) of the TNVAT Act and second proviso to Section 58(1) of the TNVAT Act. Under Section 51(1) of the TNVAT Act, the Appellant at the first appellate

stage is obliged to deposit 25% of the difference in the amount of tax assessed by the assessing authority and the tax admitted by the Appellant whereas under Section 58(1) of the TNVAT Act, the Appellant at the second appellate stage is required to deposit the sum ordered by the appellate authority. The constitutional validity of these provisions were under challenge in the aforesaid writ petition and the challenge having been negatived, this appeal has been preferred.

Issue:-

Constitutional validity of pre-deposit contained under second proviso to Section 51(1) of the TNVAT Act and second proviso to Section 58(1) of the TNVAT Act.

Held:-

The Hon'ble Supreme Court of India in ***Civil Appeal No. 3964 of 2020 dated December 04, 2020*** held as under:

- Noted that the matter insofar as the case of the present Appellant is concerned, is still at the first appellate stage.
- Held that, in terms of second proviso to Section 51(1) of the Act, the Appellant would, therefore, be obliged to deposit 25% of the demanded sum.
- Observed that, a sum of Rs. 13 crores has already been deposited by the Appellant before the authorities in question vide order dated, September 04, 2020 by this court, which satisfies the requirements of deposit of 25% of the sum.
- Stated that, since on facts, the matter arises from the first appellate stage, the court does not deem it appropriate at this stage to consider that in case the Appellant does not succeed at the first appellate stage, the question may still arise about the liability and how much money should be deposited at the second appellate stage. In case, the occasion to advance the submissions with regard to the validity of second proviso to Section 58(1) of the TNVAT Act arises, the Appellant shall be at liberty to take appropriate measures.

Comments:- Relevant Provisions of Pre-Deposit under the GST law

Under GST, as per Section 107 of the of **Central Goods and Services Tax Act, 2017** (**"CGST Act"**), the aggrieved taxpayer who wishes to contend against the order passed by the adjudicating authority, can file an appeal before the first appellate authority, within three months of receiving the order. No appeal shall be filed unless the taxpayer have paid:

- Such part of tax demanded in the order that the taxpayer admits being liable for; and
- 10% of the remaining part of tax demanded in the order as a pre-deposit amount or Rs. 25 crores (i.e., totaling to INR 50 crores for CGST and SGST/UTGST or IGST), whichever is less.

Similarly, in case the taxpayer is not satisfied with the order passed by the first appellate authority, he may approach the appellate tribunal as a next resort, to file appeal within three months under Section 112 of the CGST Act. No appeal shall be filed unless the taxpayer have paid:

- Such part of tax demanded in the order that he admits being liable for; and

- 20% of the remaining part of tax demanded in the order as a pre-deposit amount or Rs. 50 crores (i.e., totaling to INR 100 crores for CGST and SGST/UTGST or IGST), whichever is less, in addition to what was deposited before the first appellate authority. The above pre-fixed deposit amount shall be refunded in case the aggrieved taxpayer succeed in the disputed matter(s).

Relevant Provisions:-

Section 51(1) of the TNVAT Act:

"51 .Appeal to Appellate Deputy Commissioner.—

(1) Any person objecting to an order passed by the appropriate authority under section 22, section 24, section 26, sub-sections (1), (2), (3) and (4) of section 27, section 28, section 29, section 34 or sub-section (2) of section 40 other than an order passed by an Deputy Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him, in the manner prescribed, appeal to the Appellate Deputy Commissioner having jurisdiction:

Provided that the Appellate Deputy Commissioner may, within a further period of thirty days admit an appeal presented after the expiration of the first mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period:

Provided further that in the case of an order under section 22, section 24, section 26, sub- sections (1), (2), (3) and (4) of section 27, section 28 or section 29, no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty-five per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant."

Section 58(1) of the TNVAT Act:

"58. Appeal to Appellate Tribunal.—

(1) Any officer prescribed by the Government or any person objecting to an order passed by the Appellate Deputy Commissioner under sub-section (3) of section 51, or by the Appellate Joint Commissioner under sub-section (3) of section 52, or by the Joint Commissioner under sub-section (1) of section 53, may,–

(a) within a period of one hundred and twenty days, in the case of an officer so prescribed by Government.

(b) within a period of sixty days, in the case of any other person, from the date on which the order was served, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may, within a further period of one hundred and twenty days in the case of an officer prescribed by Government and sixty days in the case of any other person, admit an appeal presented after the expiration of the first mentioned period of one hundred and twenty days or sixty days, as the case may be, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period:

Provided further that no appeal filed by any person objecting to an order passed,-

(a) under sub-section (3) of section 51 or under sub-section (3) of section 52 shall be entertained unless it is accompanied by satisfactory proof of the payment of the tax as ordered by the Appellate Deputy Commissioner or by the Appellate Joint Commissioner, as the case may be;

(b) under sub-section (1) of ***section 53****, unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty-five per cent of the difference of the tax ordered by the Joint Commissioner under section 53 and the tax admitted by the appellant:*

Provided also that no appeal shall be admitted against an order, passed by the Appellate Deputy Commissioner under section 51 or by the Appellate Joint Commissioner under section 52, as the case may be, setting aside the assessment and directing the assessing authority to make a fresh assessment."

6. HC imposes cost of Rs. 3 Lakh on taxpayer for dismissing dept. order passed without sufficient opportunity

Case Name : **Tvl.G. Sankar Timber Depot Vs The State Tax Officer (Madras High Court)**
Appeal Number : W.P.(MD).Nos. 17880,17885& 17886 of 2020
Date of Judgement/Order : 08/12/2020

Admittedly, the show cause notices were issued on 03.08.2020 and the impugned assessment orders have been issued on 31.10.2020, within a short period of three months. When the petitioner has been seeking for sufficient time for sending a detailed reply and that too when he has sought for documents, which was furnished only on 20.10.2020, the respondent ought to have given some more time to the petitioner to place all his objections with regard to the demand made by the respondent as per the show cause notices, dated 03.08.2020. However, as seen from the impugned assessment orders, sufficient time has not been granted to the petitioner to raise all objections available to them under law. When it is the categorical stand of the petitioner that they are not liable to pay the demand as claimed by the respondent, the respondent ought to have given sufficient opportunity to the petitioner to raise all objections. However, as observed earlier, the respondent has not done so, while passing the impugned assessment orders. However, this Court considering the huge amount of taxes payable as seen from the impugned assessment orders, this Court will have to put the petitioner on terms, before the impugned orders are quashed and remanded back to the respondent for fresh consideration on merits and in accordance with law.

This court is of the considered view that the petitioner will have to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs) in respect of each of the impugned assessment order on or before 05.01.2021 and on such payment, the impugned assessment orders shall stand quashed and the matter remanded back to the respondent for fresh consideration and the respondent shall pass final orders on merits and in accordance

with law, after giving adequate opportunity to the petitioner to raise all their objections and also grant them the right of personal hearing within a period of twelve weeks from the date of payment of the conditional amount imposed under this order.

It is also made clear that if the petitioner fails to pay the conditional amount, as mentioned in this order, the writ petitions shall stand dismissed automatically.

7. Petition cannot be filed before HC when alternate remedy exists merely for necessity of pre-deposit for Appeal

Case Name : **Raju Laxman Pachhapure Vs Union of India (Bombay High Court)**
Appeal Number : Writ Petition No. 2539 of 2020
Date of Judgement/Order : 08/12/2020

In this case Appellant submits that although there is a statutory remedy of appeal available against the order and though the petitioners are desirous of filing the same but because a pre-deposit would be necessary for filing an appeal which would be burdensome on the petitioners, therefore this petition before Hon'ble High Court.

Mr. Jetly, learned senior counsel appearing on behalf of the respondents would submit that the order-in-original has been passed on 21.8.2019 after considering the materials on record, the written reply of the petitioner dated 10.7.2019 and after giving several opportunities of personal hearing to the petitioner on 27.12.2018, 30.1.2018, 19.3.2019, 28.3.2019, 11.4.2019, 16.4.2019, 30.4.2019, 30.5.2019 and 31.3.2019. He would submit that earlier petitioners had also been granted sufficient opportunity by the 2nd respondent during the various stages of the proceedings right upto the passing of the impugned order-in- original dated 21.8.2019. He would therefore submit that this is not a case where no opportunity was granted to the petitioners. He would further submit that as the facts suggest this is also not a case where the authorities have acted without jurisdiction or contrary to the procedure prescribed under law. He submits that there has been no violation of the principles of natural justice and clearly the alternate remedy by way of appeal should have been availed of by the petitioners. Regarding the submission that though the petitioners are desirous of filing an appeal but since pre-deposit would be necessary and because that would be burdensome on the petitioners they have approached this court, Mr. Jetly would submit that the same is untenable as the right of appeal is a statutory right and not an absolute right and can be circumscribed by the conditions in the grant. He would also submit that all the contentions and grounds taken up by the petitioners in the writ petitions can be taken up by them in the appeal provided under the **Central Goods and Services Tax Act, 2017** (the "CGST Act") and therefore, these petitions ought to be dismissed.

Having heard the learned counsel for the parties for some time and also having perused the papers and proceedings, we are not persuaded to invoke our writ jurisdiction at this stage. We are of the considered opinion that the alternative remedy of appeal is efficacious and the reason given for not invoking the same i.e. pre-deposit being burdensome does not appeal to us. Accordingly, we relegate the petitioners to the remedy available under the CGST Act by way of appeal.

Accordingly, we dismiss both the petitions leaving all contentions open to be agitated before the appellate forum. There shall, however, be no costs in the matter. Interim Application (l) No.93481 of 2020 does not survive and the same also stands disposed off.

8. Cash Credit Account cannot be attached to recover GST dues

Case Name : **Vinodkumar Murlidhar Chechani Proprietor Of M/S Chechani Trading Co. Vs. State of Gujarat (Gujarat high Court)**
Appeal Number : R/Special Civil Application No. 12498 of 2020
Date of Judgement/Order : 09/12/2020

1. We have heard Mr. Tushar Hemani, the learned Sr. Counsel assisted by Ms. Vaibhavi Parikh, the learned counsel appearing for the writ applicant and Mr. Chintan Dave, the learned AGP appearing for the State – respondents on advance copy served upon him.

2. The challenge in this writ application is to the legality and validity of the order of provisional attachment of the bank accounts passed under Section 83 of the **Gujarat Goods and Services Tax Act,** ("GST Act" for short). There are two orders on record. The first order is dated 28.08.2020 (inadvertently mentioned as 28.08.2018, at Annexure-A) passed by the Additional Commissioner, CGST, Ahmedabad South for the provisional attachment of the Cash Credit/Current Account held by the writ applicant with the AMCO Bank. The second order is also of the provisional attachment under **Section 83** of the GST Act of one Current Bank Account and one Savings Bank Account held by the writ applicant in the HDFC Bank Ltd. The challenge to this action of invoking Section 83 of the Act by the respondents is on manifold grounds.

3. One of the submissions of Mr. Tushar Hemani, the learned Senior Counsel appearing for the writ applicant based on or rather fortified by few orders passed by this Court is that the Cash Credit Account cannot be ordered to be attached. In other words, the Cash Credit Account is an account, which enables the assessee to borrow the money from the bank for the purpose of its business. Any money, therefore, which the bank may make available to the assessee would necessarily be in the nature of a loan or cash credit facility. The view taken by our High Court in such circumstances is that, the bank and the assessee will not have the debtor – creditor relationship.

4. Mr. Chintan Dave, the learned AGP appearing for the State respondents submitted that, notice may be issued to enable him to take appropriate instructions in the matter.

5. We are of the view, having regard to the submissions canvassed on either side, that the writ applicant has been able to make out strong prima facie case to have an interim order in his favour so far as the Cash Credit/Current Bank Account No.066028304000013 maintained with the AMCO Bank, Ahmedabad is concerned.

6. In such circumstances, by way of an interim order, we direct that the provisional attachment of the cash credit account referred to above maintained with the AMCO Bank, Ahmedabad, shall no longer operate. The provisional attachment is ordered to be lifted. The AMCO Bank shall permit the writ applicant to operate the Cash Credit

Account referred to above. So far as other two accounts maintained with HDFC Bank Ltd. are concerned, appropriate order shall be passed on the next date of hearing.

7. Let Notice be issued to the respondents, returnable on 23.12.2020. No further notice now be issued to the respondents as Mr. Chintan Dave, the learned AGP has already entered his appearance.

8. In view of this order passed today, the connected civil application would not survive and stands disposed of accordingly.

9. Faulty decision-making process adopted while passing impugned order cannot be sustained

Case Name : **Tvl. Bmw India Private Limited Vs Deputy Commissioner (CT) (Madras High Court)**
Appeal Number : W.P. No. 22132 of 2017
Date of Judgement/Order : 09/12/2020

High Court held that the faulty decision-making process adopted while passing the impugned order cannot be sustained. Learned Government Advocate appearing for the Respondents, on instructions, states that the enquiry for personal hearing would be held on 21.12.2020 and the Petitioner may appear before the First Respondent on that date with all supporting materials.

The result of the foregoing discussion is that the impugned order is set aside and the First Respondent shall take on record the reply dated 07.12.2020 submitted by the Petitioner as explanation to the notice dated 30.05.2017. The Petitioner shall appear before the First Respondent at 11.30 a.m. on 21.12.2020 with all supporting documents to substantiate its contentions. If the First Respondent is not in a position to take up the matter on that date, he shall inform the Petitioner of the adjourned date of hearing in the prescribed manner. It is incumbent upon the First Respondent to conduct enquiry affording full opportunity of personal hearing to the Petitioner following the procedure in consonance with the principles of natural justice, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

The Writ Petition is disposed on the aforesaid terms.

10. GST on Mining under HC Scanner

Case Name : **Mahadev Enclave Pvt Ltd V/S Union Of India And Ors (High Court of Punjab & Haryana)**
Appeal Number : CWP-21029-2020
Date of Judgement/Order : 09/12/2020

Punjab & Haryana HC issued notice of motion on plea challenging validity of levy of tax on the payment of royalty made to the Govt. of Punjab for mineral rights under reverse charge mechanism

The petitioner, M/s Mahadev Enclave Pvt. Ltd has challenged the constitutional validity of Entry 17 (viii) of the Table in **Notification No. 11/2017 CT (Rate) dated 28.06.2017** as amended vide **Notification No. 27/2018-CT (Rate) dated 31.12.2018** which seeks to levy tax on the royalty payment made to the Govt. of Punjab for mineral rights under reverse charge mechanism

The petitioner also challenged the validity of **Circular No. 121/40/2019-GST dated 11.10.2019** being contrary to Entry 50 of the List-II of Seventh Schedule appended to the Constitution of India and for the reason that the tax on mining rights could either be imposed by State Govt. or Central Govt, but not by both concurrently.

A Bench headed by Justice S. Muralidhar heard the submissions of Advocate Sandeep Goyal, alongwith Advocate Rishab Singla, appearing on behalf of Petitioner who contended that the said levy was unconstitutional as the same was in contravention of Entry 50 of List-II of the Seventh Schedule appended to the Constitution of India. Besides, by virtue of the assailed Notification, tax is being levied on land also, which is an immovable property and thus, in contravention of Entry 49 of List-II of the Seventh Schedule appended to the Constitution of India.

After hearing the parties, the Division bench issued notice of motion to the respondents with respect to the reliefs as prayed for.

11. HC quashes Non-Speaking GST Registration cancellation order

Case Name : **Vimal Yashwantgiri Goswami Vs State Of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 15508 of 2020
Date of Judgement/Order : 10/12/2020

Be that as it may, we are inclined to quash the impugned order dated 25th February 2020 passed by the Commercial Tax Officer on the short ground that the same is a non-speaking order passed without any application of mind. It is very sad to note the manner in which the show-cause notices came to be issued. The show-cause notices, referred to above, are absolutely bereft of any material particulars or information, and it is but obvious that in the absence of the same, how does the authority expect the writ-applicant to respond to the same in an effective and meaningful manner.

We fail to understand that having dropped the proceedings once, what prompted the authority to issue a second show-cause notice and even after discharging the second show-cause notice, what prompted the authority to issue a third show-cause notice and that too on the very same day and date of the discharge of the second show-cause notice.

12. Rejection of refund without hearing the petitioner & without intimating the reason not justified

Case Name : **Sahibabad Printers Vs Additional Commissioner CGST (Appeals) And Others (Allahabad High Court)**
Appeal Number : Writ Tax No. 696 of 2020
Date of Judgement/Order : 14/12/2020

Counsel for the petitioner argues that as the show cause notice was silent, the petitioner could not have been expected to give any reply and further questioning the appellate order he argues that the appellate authority was wrong in recording that no document has been produced, as the application of the petitioner for refund in Form RFD-01 was well with the department.

Sri B.K.S. Raghuvanshi, counsel for the respondent on the other hand has tried to justify the order by saying that once the petitioner had not filed the refund documents, the department was bound to reject the refund claim of the petitioner and the same has been rightly rejected. He has further justified the appellate order by arguing that no error can be found out in the order passed by the appellate authority.

Considering the rival submissions made at the Bar and the judgment of the Hon'ble Supreme Court, I have no hesitation in holding that in quasi judicial proceedings that too relating to financial adjudication, the **proposed reasons for rejection should be specifically contained and informed to the assessee so as to enable him to give his reply in a conclusive and reasonable manner**. The perusal of the show cause notice in the present case fall short of all the known principles of natural justice and no prudent man could have given reply to the kind of show cause notice, which was served upon the petitioner. For the sole reason that the order rejecting the claim is based upon a silent show cause notice, I have no hesitation in holding that the principles of natural justice have been violated while adjudication of refund claim of the petitioner.

Accordingly, the order dated 07.04.2020 as well as the appellate order dated 14.09.2020 are set aside. The respondent no. 2 is directed to passed a fresh order on the application of the petitioner, for refund, already filed by the petitioner under Form RFD-01, after supplying all the requisite documents and the ground on which the department proposes to reject the application and after giving an adequate opportunity of hearing to the petitioner in accordance with law. The said application shall be decided as expeditiously, if possible, preferably within a period of three months from the date of filing of the copy of this order.

13. No Entertainment Tax on Online Cinema Ticket booking charges

Case Name : **AGS Cinemas Pvt. Ltd Vs Commercial Tax Officer (Madras High Court)**
Appeal Number : W.A.Nos. 964 and 965 of 2020
Date of Judgement/Order : 14/12/2020

Hon'ble High Court held that 'online booking charges' charged by a Cinema Hall Owner besides the "cost of ticket" for entry into the cinema hall and enjoy the entertainment in the form of a movie, is not part of taxable receipt by the Cinema Owner for the purposes of the Tamil Nadu Entertainment Tax Act, 1939.

14. Rule 36(4) of CGST Rules Challenged before Calcutta HC

Case Name : **M/s. LGW Industries Limited & anr. Vs Union of India & ors. (Calcutta High Court)**
Appeal Number : W.P.A. 92 of 2020
Date of Judgement/Order : 14/12/2020

Rule 36(4) of the CGST Rules/WBGST Rules drawing its power from Section 43A(4) of the CGST Act/WBGST Act, which is yet to be notified, restricts ITC available to a buyer of goods or services to a maximum of 10% on the basis of the details of outward supplies furnished by the supplier of goods or services on the common portal i.e. filing of GSTR 1 return by the supplier.

LGW Industries Limited has filed a petition before the Hon'ble Calcutta High Court challenging the constitutional validity and vires of Rule 36(4) of the CGST Rules/WBGST Rules and Section 43A(4) of the CGST Act/WBGST Act.

Hon'ble Calcutta High Court has issued notice to the Central and State Government to file its affidavit-in-opposition within four weeks, reply thereto, if any, two weeks thereafter.

This matter is being argued by Advocate Vinay Shraff with Advocate Himangshu Ray on the ground that Section 43A(4) and Rule 36(4) puts an onerous and impossible burden on the buyer of goods and services to somehow ensure that the supplier of goods or services does in fact uploads the details of outward supplies on the common portal and if the supplier fails to do so, it undergoes the risk of being denied the benefit of ITC. This is violative of Article 14 of the Constitution inasmuch as it treats both the innocent purchasers and the guilty purchasers alike. Restricting the benefit of ITC to a bona fide purchaser, only because of the default of the supplier or services to upload the details of outward supplies on the common portal, over which it has no control whatsoever, is arbitrary and irrational.

This will discourage business entities to make purchases from a small and medium supplier of goods or services. It therefore creates hostile discrimination against all such SME business enterprises that files their return on a quarterly basis and therefore violates Article 14 of the Constitution of India. It adversely impacts their supply chain management, bargaining power etc. and consequently severely impacts their ability to continue business and therefore violates Article 19(1)(g) of the Constitution. ITC availed after satisfying the conditions of Section 16 of the Act is property of the taxpayer and therefore keeping ITC in suspended animation causes the deprivation of the petitioner's enjoyment of the property and therefore, it violates Article 300A of the Constitution of India.

15. HC allows petitioner to apply to GST Council to get Transitional credit benefit

Case Name : **Sunil Kumar & Company Sri Ganganagar Vs Union Of India (Rajastan High Court)**
Appeal Number : D.B. Civil Writ Petition No. 717/2020
Date of Judgement/Order : 14/12/2020

High Court grant liberty to the petitioner to make an application before GST Council through Standing Counsel, who is further requested to hand over the same to the jurisdictional officer for forwarding the same to the GST Council to issue requisite certificate of recommendation alongwith requisite particulars, evidence and a certified copy of the order instantly and such decision be taken forthwith and if the petitioner's assertion is found to be correct, the GST Council shall issue necessary recommendation to the Commissioner to enable the petitioner to get the benefit of CENVAT credit within the stipulated time as stipulated by the Union of India.

16. Sanction refund of IGST paid on goods exported vide shipping bills: HC

Case Name : **Awadkrupa Plastomech Pvt. Ltd. Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 1014 of 2020
Date of Judgement/Order : 15/12/2020

It appears from the materials on record that the writ applicant wants the respondent authorities to sanction the refund of Integrated Goods and Service Tax [herein after referred to as the *'IGST'*] paid in respect of the goods exported i.e. 'Zero Rated Supplies' vide the shipping Bill No.7452830, dated 19/07/2017. It is the case of the writ applicant that the respondents authorities have illegally withhold the refund of the IGST referred to above. The claim of the writ applicant came to be rejected under Section54 of the **Central Goods and Service Tax Act, 2017** [herein after referred to as the *'CGST Act'*] read with Section 16 of the **Integrated Goods and Service Tax Act, 2017**. It appears from the materials on record that such claim came to be declined on the ground that the writapplicant had claimed higher duty drawback. According to the writ applicant, there is no legal embargo to avail the drawback at higher rate on one hand and availing refund of the IGST paid with regard to the 'Zero Rated Supply' i.e. the goods exported out of India on the other.

Held by High Court

Circular No. 37/2018-Customs, dated 09/10/2018 referred to above by the Competent Authority would apply only to the cases, where the exporters have availed the option to take drawback at the higher rate in place of the IGST refund out of their own volition. In the instant case, the assessee had never availed the option to take drawback at higher rate in place of the IGST refund. In such circumstances, the Circular is not applicable to the facts of the present case.

Even as per the Condition No.7 of the **Notification 131/2016–Cus. (N.T.) dated 31/10/2016**, if the rate indicated in the columns (4) i.e. higher duty drawback and (6)

i.e. lower duty drawback are the same, then it shall necessarily imply that the same pertains only to the Customs component and is available irrespective of whether the exporter has availed of the CENVET facility or not.

The petitioner had exported Rope Making Machine HSN Code 84794000 which attracts the same rate under both the columns (4) & (6) respectively i.e. 2 per cent. Thus it is evident that the petitioner has claimed drawback of the customs component only for their exports and there arises no question of denying the refund of IGST. The rationale for not allowing the refund of IGST for those exporters, who claim higher duty drawback is that the higher duty drawback reflects the elements of Customs, Central Excise and Service Tax taken together and since higher duty drawback is already being availed than granting the IGST refund would amount to double benefit as the Central Excise and Service Tax has been subsumed in the GST. In the case of the writ applicant, the drawback rates being the same, it represents only the Customs elements, which did not get subsumed in the GST and thus, the writ applicant cannot be said to have availed double benefit i.e. of the IGST refund and higher duty drawback.

In the result, this petition succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund towards the IGST paid in respect to the goods exported i.e.'Zero Rated Supplies' made vide the shipping bills. It appears that the writ applicant has also prayed to pay interest at the rate of 9% on the amount of refund from the date of shipping bill till the date on which the amount is actually paid.

17. No penalty under SGST in case of Interstate Transaction

Case Name : **The Status of Kerala Vs Mohammad Sheref (Kerala high court)**
Appeal Number : RP.No.930 of 2020 in WP(C). 23397/2020
Date of Judgement/Order : 16/12/2020

It has to be borne in mind that in the case of an interstate transaction the applicable statute is the IGST Act and the power of detention is exercised by virtue of the provisions of Section 20 of the IGST Act read with Section 129 of the CGST Act. There is no reference to the provisions of the SGST Act in Section 20 of the IGST Act, save for the mention in the 4th proviso to Section 20. In my view, the 4th proviso would be attracted only in a situation where, in respect of an interstate transaction, there is a liability to pay tax under the IGST Act that includes components of tax under the CGST and SGST Acts or where a penalty based on tax liability is attracted under both of the said enactments. In the case of an interstate transportation of exempted goods, the phrase used in Section 129 of the CGST Act that is mutatis mutandis made applicable to the IGST Act, is "payment of an amount equal to 5% of the value of goods or 25000 rupees whichever is less". The legislature appears to have used the words "penalty" and "an amount" distinctively and hence they cannot be seen as amounting to the same thing. In my view, the word 'amount' has to be seen as referring to a civil liability that accrues to the owner of the goods or such other person at whose instance an interstate transportation of the goods contrary to the provisions of the CGST Act is occassioned. When so viewed, the inference is inescapable that the amount to be collected from a person who is found to have transported exempted goods contrary to

the provisions of the IGST Act, can only be such amount as is found payable under the CGST Act since it is the provisions of that Act that are to be deemed as enacted under the IGST Act. In other words, there is no provision that requires one to treat the provisions of the SGST Act as forming part of the IGST Act.

The upshot of the above discussion is that the liability of a person, who is not the owner of the goods, and who has transported exempted goods in contravention of the IGST Act, can only be in an amount equal to 5% of the value of the goods or 25000 rupees whichever is less, as specified under the CGST Act. He cannot be further mulcted with a similar amount under the SGST Act since the provisions of tax and penalty under the SGST Act are not attracted to the inter-state transaction of exempted goods covered by the IGST Act. I, therefore, see no reason to review the judgment impugned in the Review Petition. The Review Petition fails and is accordingly dismissed.

18. SC Stays Delhi HC order which allowed GSTR-3B rectification

Case Name : **Union Of India Vs. Bharti Airtel Ltd. & Ors. (Supreme Court)**
Appeal Number : Petition(s) for Special Leave to Appeal (C) No(s). 8654/2020
Date of Judgement/Order : 17/12/2020

Hon'ble Supreme Court has stayed Delhi High Court Order in the case of **Bharti Airtel Limited Vs Union of India & Ors.** by which High Court allowed Form GSTR-3B rectification. Matter will list in the first week of March, 2021 for final disposal.

Earlier Delhi High Court has held that failure of the Government to operationalise the statutory returns, GSTR 2, 2A and 3 prescribed under the CGST Act, cannot prejudice the assessee. The GSTR 3B which was merely a summary return as an alternative did not have the statutory features of the returns prescribed under the Act. Therefore, if there were errors in capturing ITC on account of which cash was paid for discharging GST liability instead of utilising ITC which could not be captured correctly at that time, the return should be allowed to be rectified in the very month in which the ITC was not recorded and the cash paid should be available as refund. The High Court read down para 4 of the impugned Circular No. 26/26/2017-GST dated 29.12.2017 which did not permit such rectification as being contrary to the scheme of the CGST Act.

19. TSGST: Adjudicating Authority cannot rectify an error after 3 months

Case Name : **Kiran Enterprise Vs State of Tripura (Tripura High Court)**
Appeal Number : WP(C) No. 114 of 2020
Date of Judgement/Order : 17/12/2020

Before we formulate our decision in respect of the question whether Section 5 qua Section 29(2) of the Limitation Act would apply for purpose of condoning the delay in filing the petitioner"s petition under Section 161 of the TSGST Act, let us revisit the provisions of Section 161 of the TSGST Act as reproduced in para-9 of this judgment. Let us highlight the provisions relating to the limitation. It provides that for purpose of any error which is apparent on the face of the record in the decision or the order or the

notice or the certificate or any other documents issued by any authority, the said authority can exercise the said power to rectify either on own motion of the said authority or by the officers appointed under TSGST Act or CGST Act or by the affected person, if such action is taken within a period of three months from the date of such decision, or order or notice or certificate or any other documents as the case may be. The first proviso stipulates that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other documents. The second proviso provides that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of clerical or arithmetical error, arising from any accidental slip or omission. It is apparent on the face of the said provision [Section 161 of the TSGST Act] that this is a complete code within itself and it has impliedly excluded the Limitation Act. Thus, what has been observed by the Superintendent of Taxes in the decision communicated by the reply dated 17.12.2019 does not suffer from any infirmity. Moreover, the Limitation Act will not apply automatically unless it is extended to the special statute such as TSGST Act inasmuch as law in this regard is absolutely unambiguous that except in the case of the suit, appeal or application in the court, the limitation of Act will not apply/extend for the local or special statute. Thus, the petitioner‟s contention in respect of the extension of the Limitation Act stands dismissed. That apart, in the considered view of this court, the rectification as sought is not covered by Section 161 of the TSGST Act.

20. SCN must be served prior to determination of tax leviable on ‘deemed supply’

Case Name : **Metenere Ltd. Vs. Union Of India (Allahabad High Court)**
Appeal Number : Writ Tax No. 360 of 2020
Date of Judgement/Order : 17/12/2020

Although in terms of the provisions of Section 35 (6), the unaccounted goods are ‘*deemed to be supplied’* however, determination and quantification of the tax on the said ‘deemed supply’ has to be done in accordance with Section 73 or Section 74 of the Act.

A perusal of Section 73 and 74 makes it clear that a show cause notice is bound to be served prior to determination of the tax leviable on the ‘*deemed supply’* whereas in the present case no such notice is available on record and it is common ground that apart from the said proceedings, no other proceedings have been initiated and concluded under Section 73 or 74 of the Act.

21. Service of show cause notice at wrong E-mail address is not valid

Case Name : **Ratan Industries Limited Vs State of U.P. (Allahabad High Court)**
Appeal Number : Writ Tax No. 660 of 2020
Date of Judgement/Order : 17/12/2020

Service of the show cause notice at a wrong E-mail address is neither contemplated under the Act nor can it be deemed to be a proper service under the Act. As no show cause notice has ever been served, the petitioner never had any occasion to file its reply and thereafter not serving a copy of the reasoned order quantifying the demand is clearly erroneous.

The present petition has been filed as the Tribunal contemplated under the GST Act has not been created and the petitioner argues that in the absence thereof he cannot be left remedy less, as such he approached this Court.

A perusal of the orders passed and the pleadings exchanged, make it clear that the orders passed are wholly arbitrary and contrary to the manner of passing of the order, as prescribed under the Act. There is no hesitation in holding that the orders passed against the petitioner are completely in violation of principles of natural justice.

As the show cause notice has now been served upon the petitioner and is contained in Annexure-4 of the counter affidavit, the petitioner shall file his reply to the said show cause notice within a period of four weeks from today and the respondents shall be at liberty to pass fresh orders, after giving an opportunity of hearing, in accordance with law.

22. Issue Form 'C' to sellers for Inter-state purchase of Natural Gas: HC

Case Name : **Asahi India Glass Ltd. Vs State of Maharashtra (Bombay High Court)**
Appeal Number : Writ Petition No. 2923 of 2019
Date of Judgement/Order : 17/12/2020

Petitioner has been denied 'C' forms on the ground that natural gas purchased by it in the course of inter-state sale is used for manufacturing of float glass which is not covered by the definition of goods under section 2(d) of the CST Act.

In ***Carpo Power Limited Vs. State of Haryana*, *2018 (12) GSTL 248 (P&H)***, Punjab & Haryana High Court dealt with the challenge made by the petitioner to refusal of the respondents to issue 'C' forms in respect of natural gas purchased by it in the course of inter-state sale and used by it for generation of electricity. After referring to the definition of 'goods' in section 2(d) as well as the provisions of sections 7 and 8, it was held as under:-

"26. The provisions of Section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C have not undergone any amendment after the implementation of the GST laws. There cannot be any occasion to restrict the usage of 'C' Form only for the purposes of re-sale of the six items mentioned in the amended definition of 'goods' in Section 2(d) of the CST Act. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the tele-communications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under Section 7 (2) of the CST Act. Section 7 (2) does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled

to apply for registration. Nor does section 7 (2) stipulate that an application for registration can be made or 'C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-state sale. A dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by Section 7 (2) of the Act."

While allowing the writ petition, it was held that the respondents were liable to issue 'C' forms in respect of the natural gas purchased by the petitioner from Gujarat and used in the generation or distribution of electricity at its power plants in Haryana.

It may be mentioned that against the decision of Punjab & Haryana High Court in **Carpo Power Limited** (*supra*), State had filed S.L.P. before the Supreme Court but the S.L.P. was dismissed by the Supreme Court by holding that there was no legal and valid ground for interference.

Thus having regard to the above and upon due consideration, we feel that a case for interim relief has been made out. Further, we are of the view that there should be uniformity in orders in similar matters.

Accordingly, as an interim measure, we stay operation of the letter/order dated 22.08.2019 issued by respondent No.2 and direct the respondents to issue necessary 'C' forms to the petitioner.

23. GST Rate & HSN Code must be mentioned on tender/bid document: HC

Case Name : **Bharat Forge Limited Vs Principal Chief Materials Manager Diesel Locomotive Works (Allahabad High Court)**
Appeal Number : WRIT - C No. 17620 of 2019
Date of Judgement/Order : 18/12/2020

The HSN code (Harmonized System of Nomenclature) is provided for each product/service by GST Council to specify the rate at which GST would be applicable. The suppliers have to quote HSN Code of the product to be supplied by them in the tender document, itself. The mentioning of correct HSN Code is necessary to determine the GST rate (GST value) which is to be added in the base price to arrive at the final price offered by the bidder/tenderer.

In our considered opinion, if the GST value is to be added in the base price to arrive at the total price of offer for the procurement product in a tender, and is used to determine the interse ranking in the selection process, it is incumbent on the part of the respondent nos.1 and 2 to clarify the HSN Code, i.e. to clear their stand with regard to the applicable GST rate and HSN Code of the "procurement product".

Thus, the mentioning of HSN Code in the tender document itself shall resolve all disputes relating to fairness and transperancy in the process of selection of bidder, by providing 'level playing field' to all bidders/tenderers in the true spirit of Article 19(1)(g) of the Constitution of India. For any issue relating to the applicability of correct HSN Code or GST rate, it would then be the duty of respondent nos.1 and 2 to seek clarification from the GST authorities. The respondent nos.1 and 2 cannot get away

by saying that they are not required to mention the GST rate or HSN Code in the tender document, as it is integral to the process of selection of tenderer, moreso, in view of the admission of the respondent no.1 in the counter affdavit that the offers have to be evaluated based on the GST rates as quoted by each bidder and same will be used to determine the interse ranking.

We, therefore, find it expedient to issue a direction to respondent no.2 namely, the General Manager, Diesel Locomotive Works, Varanasi that if the GST value is to be added in the base price to arrive at the total price of offer for the procurement of products in a tender and is used to determine interse ranking in the selection process, he would be required to clarify the issue, if any, with the GST authorities relating to the applicability of correct HSN Code of the procurement product and mention the same in the NIT (Notice inviting tender)tender/bid document, so as to ensure uniform bidding from all participants and to provide all tenderers/bidders a 'Level Playing Field'.

24. CGST Rule 36(4) notice issued by Hon'ble Gujarat High Court

Case Name : **Surat Mercantile Association Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 13289 of 2020
Date of Judgement/Order : 18/12/2020

Rule 36(4) of the Central GST Rules and **Gujarat and GST Rules, 2017** restricts Input tax credit to be availed by the buyer of goods or services in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1 return, to 5% of 'eligible credit' available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1 return. In other words, **Input tax credit** (ITC) of invoices or debit notes which are not reflected in GSTR-2A shall be available to the extent of 5% of eligible credit in respect of invoices or debit notes reflected in GSTR-2A.

Surat Mercantile Association has filed a petition before the Hon'ble Gujarat High Court challenging the constitutional validity and vires of Rule 36(4) of the Central GST Rules and the Gujarat GST Rules.

Hon'ble Gujarat High Court has issued notice to the Central and State Government to submit its response by 12th February, 2021.

The matter was argued by Advocate Vinay Shraff with Advocate Parth Shah. Hon'ble Gujarat High Court while issuing the notice observed that according to the learned counsel for the writ applicants, the same is unconstitutional being contrary to the scheme of the Act. It is further argued that the Rule in question puts an onerous and impossible burden on the buyer of the goods and service to ensure that the supplier of goods or services does in fact upload the details of the outward supplier on the common portal and if the supplier fails to do so, it has to face the risk of the benefit of the ITC being blocked or is kept in suspension. It is argued that the rule in question is arbitrary, irrational and therefore, violative of Article 14 of the Constitution. This rule will discourage business entities to make purchases from a small and medium supplier of goods or services who files their return on a quarterly basis and therefore it creates

hostile discrimination against all such small and medium business enterprises and consequently violates Article 14 of the Constitution of India.

25. Value of All Invoices in a Consignment Relevant For E-Way Bill Generation

Case Name : **Bon Cargos Private Limited Vs Assistant State Tax Officer (Kerala High Court)**
Appeal Number : W.A.No.1735 of 2020
Date of Judgement/Order : 21/12/2020

Explanation 2 to Section 138 defines the consignment value of goods to be that declared in an invoice, a bill of supply or a delivery chalan including the goods and services tax payable with any Cess charged. Sub-Rule (1) read with Explanation 2 leads to only one inference that the consignment value has to be determined from the invoice. But when goods of the same consignment covered by multiple invoices exceed the limit of Rs.50,000/-, necessarily there should be generation of e-way bill. Otherwise the mandate for generation of an e-way bill would be defeated and rendered redundant enabling the consignors to issue any number of bills having value below Rs.50,000/- and consign them in one vehicle. The consignment value is that shown in the invoice. When goods of the same consignor covered by different invoices are consigned together in one vehicle; the value will be the total of that in the multiple invoices. We are hence not satisfied that the detention was without jurisdiction. As pointed out by the learned Senior Government Pleader in one case already an adjudication order is also passed.

26. HC Raps Commissioner for excessive exercise of power- GST- Section 83

Case Name : **AJE India Private Limited Vs Union of India and ors. (Bombay High Court)**
Appeal Number : Writ Petition (St.) No.97165 of 2020
Date of Judgement/Order : 22/12/2020

We have perused the original record produced by Mr. Mishra which discusses about investigation under section 67 and therefore, the need to take action under section 83. Whether recourse to section 83 is warranted at this stage has not been dealt with in the record. Merely because there is a proceeding under section 67 would not mean that recourse to such a drastic power as under section 83 would be an automatic consequence, more so when petitioner has cooperated with the investigation. That apart, section 83 speaks of provisional attachment of any property including bank account. The record is silent as to whether any attempt has been made for provisional attachment of any property of the petitioner and instead why the bank accounts should be attached. Besides, by use of the word “may” in sub-section (1) of section 83 Parliament has made it quite clear that exercise of such a power is discretionary. When discretion is vested in an authority, such discretion has to be exercised in a just and judicious manner, more so when the power conferred under section 83 admittedly is a very drastic power having serious ramifications. Such power having the potential to

adversely affect property rights of persons as well as life and liberty under Article 21 of the Constitution of India has to be exercised in a fair and reasonable manner.

Being possessed of power is one thing and exercise of such power is altogether another thing. **Because the Commissioner is conferred with the power of provisional attachment under section 83 it would not *ipso-facto* mean that he can straight away proceed to provisionally attach any property including bank accounts of a taxable person merely on the ground of pendency of proceedings under section 67.**

During the course of the hearing Mr.Sridharan had referred to averments made in the writ petition more particularly to Ground No.F.11 to submit that petitioner had already offered to respondent No.2 its land, building and plant and machinery having estimated gross value of approximately Rs.44 crores to secure the interest of the revenue. In such circumstances, we are of the view that recourse to section 83 by respondent No.2 straight away is not justified. *Prima facie,* such an exercise appears to be harsh and excessive, thus arbitrary.

Consequently, we stay the impugned order dated 18th/19th November, 2020 and direct withdrawal of the provisional attachment of the bank accounts of the petitioner mentioned in the said order forthwith. However, petitioner shall furnish an undertaking before the Court by way of affidavit that it shall not alienate its land, building, plant and machinery during pendency of the present proceeding.

27. HC explains invocation of Rule 86A for blocking ITC

Case Name : **M/s S. S. Industries Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 8841 of 2020
Date of Judgement/Order : 24/12/2020

I) The invocation of Rule 86A of the Rules for the purpose of blocking the input tax credit may be justified if the concerned authority or any other authority, empowered in law, is of the prima facie opinion based on some cogent materials that the ITC is sought to be availed based on fraudulent transactions like fake/bogus invoices etc. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.

(II) The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on subjective weighty grounds and reasons.

(III) The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

(IV) The aspect of availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit.

(V) The Government needs to apply its mind for the purpose of laying down some guidelines or procedure for the purpose of invoking Rule 86A of the Rules. In the absence of the same, Rule 86A could be misused and may have an irreversible and detrimental effect on the business of the person concerned. In this regard, the Government needs to act promptly.