DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT, PUNJAB, PATIALA

GST UPDATE

(June 2024)

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Punjab Government Gazette

EXTRAORDINARY

Published by Authority

CHANDIGARH, THURSDAY, JUNE 20, 2024

(JYAISTHA 30, 1946 SAKA)

LEGISLATIVE SUPPLEMENT

Contents ***Pages***

(JYST 30, 1946 SAKA)

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

CORRIGENDUM

The 14th June, 2024

In the Government of Punjab, Department of Excise and Taxation, Notification No. S.O. 15/P.A.5/2017/S.148/ 2024, dated the 14th February, 2024, published in the Punjab Government Gazette (Extraordinary), dated the 16th February, 2024, FOR "notification number ..... namely:-

READ "Notification No. S.O. 13/P.A.5/2017/S.23/ 2024, dated the 14th February, 2024, namely:-"

VIKAS PRATAP,
Additional Chief Secretary-cum-
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation

3122/6-2024/Pb. Govt. Press, S.A.S. Nagar

Judgements (1)

GST notice notice uploaded to a temporary ID: Madras HC directs reconsideration

Judiciary Case Law Details

Case Name : Annalakshmi Stores Vs Deputy State Tax (Madras High Court)

Appeal Number : Writ Petition Nos.12371, 12390, 12392 & 12396 of 2024

Date of Judgement/Order : 10/06/2024 Related Assessment Year :

Courts : All High Courts Madras High Court Download Judgment/Order Annalakshmi Stores Vs Deputy State Tax (Madras High Court) In the case of Annalakshmi Stores vs. Deputy State Tax, Madras High Court addressed writ petitions challenging assessment orders under Section 63 of the Central Goods and Services Tax Act, 2017 (CGST Act) concerning specific assessment periods. The primary issue revolved around the cancellation of GST registration of Annalakshmi

Stores with retrospective effect from 31st August 2017 due to non-filing of returns continuously for six months. The petitioner contended that they were unaware of the issuance of notices and show cause notices because these documents were uploaded using a temporary ID, which they did not have access to. The petitioner's counsel argued that under Section 63 and Rule 100 of the TNGST Rules, issuance of a show cause notice in Form GST ASMT-14 is mandatory for proceedings initiated under Section 63. They emphasized that uploading such notices on a temporary ID does not constitute proper service as per Section 169 of the GST enactments applicable. It was further highlighted that despite efforts to file statutory appeals against the tax demands, they were unable to do so due to the use of the temporary ID. On behalf of the government, the learned Additional Government Pleader countered that the petitioner's email ID and mobile number, as per their original GST registration, were used for the temporary ID. They argued that the petitioner had access to this temporary ID as the relevant password was communicated to the registered email and mobile number. Examining the impugned orders, the Court noted that the tax liability had been computed on a best judgment basis, relying on auto-populated GSTR-2A data without giving the petitioner an opportunity to present their objections in person. Considering these circumstances, the

Court found it just and necessary to afford the petitioner an opportunity to contest the tax proposals on merit. As a resolution, the Court directed that the petitioner be provided with a chance to reply to the show cause notice within two weeks. It was also stipulated that the petitioner must remit 10% of the disputed tax demand for each assessment period, as previously agreed, within two weeks from receiving a copy of the court's order. The court instructed that any application for refund of the remitted amount should be processed within 30 days. Furthermore, the orders under challenge were set aside, and the matters were remanded for reconsideration by the Deputy State Tax Officer. The Deputy State Tax Officer was directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and issue fresh orders within three months from receiving the petitioner's reply.

Judgements (2)

HC Orders Release of Seized Goods Upon Delivery Challan Production

Judiciary Case Law Details

Case Name : Mane Kancor Ingredients Pvt. Ltd. Vs State Tax Officer (FAC) (Madras High Court)

Appeal Number : W.P. No. 15052 of 2024

Date of Judgement/Order : 14/06/2024

Related Assessment Year :

Courts : All High Courts Madras High Court Download Judgment/Order Mane Kancor Ingredients Pvt. Ltd. Vs State Tax Officer (FAC) (Madras High Court) Goods seized for not accompanying delivery challan: HC directs release on production of relevant delivery challans In a significant ruling, the Madras High Court has directed the release of goods seized from Mane Kancor Ingredients Pvt. Ltd. The case involves the detention of goods and imposition of penalties due to the absence of delivery challans during transportation. This decision underscores the importance of adhering to documentation requirements under the GST regime and clarifies the conditions under which goods can be transported

without accompanying delivery challans. Background Mane Kancor Ingredients Pvt. Ltd., a prominent supplier of natural food ingredient solutions, encountered legal challenges when their goods were detained by the State Tax Officer (FAC). The detention occurred on 21.05.2024, while transporting 16 metric tonnes of 'Oleoresin Paprika Crude' from Chennai Sea Customs Port to their Karnataka unit. The impugned order, dated 27.05.2024, cited the absence of delivery challans as the primary reason for detention and imposed penalties on the company. Petitioner's Argument The petitioner, Mane Kancor Ingredients Pvt. Ltd., argued that the transportation of goods was compliant with existing GST regulations. They provided several key documents to support their case: Advance Authorisation Certificate: This certificate specified the Karnataka unit as an authorized destination for the transported goods. GST Registration Certificate: This document listed the Karnataka unit as an additional place of business, thereby legitimizing the transportation route. E-Way Bill: The bill clearly indicated the shipment's origin, destination, and the details of the exporter and importer. The petitioner's counsel highlighted a circular issued by the Central Board of Indirect Taxes and Customs (CBIC) on 26.03.2018. According to paragraph 8.4 of this circular, delivery challans are mandatory when goods are dispatched directly by the principal to a job worker. However,

the petitioner contended that since the goods were transported directly to a job worker, the absence of a delivery challan should not be grounds for detention. Respondent's Argument The respondent, represented by Mr. C. Harsha Raj, argued that the petitioner, being a registered entity in Kerala, must ensure proper documentation for all transactions. The absence of a delivery challan, according to the respondent, disrupted the documentation chain from the exporter to the importer and finally to the recipient. Thus, the respondents justified the interception and detention of the goods. Court's Decision After considering the arguments, the Madras High Court found merit in the petitioner's case. The court noted that the Advance Authorisation Certificate, GST Registration Certificate, Bill of Entry, and E-Way Bill collectively established the legitimacy of the transportation. Furthermore, the court acknowledged the petitioner's reliance on the CBIC clarification, which supports the transportation of goods directly to a job worker without an accompanying delivery challan in specific scenarios. The court directed the first respondent to reconsider the petitioner's request for the release of the goods, subject to the production of relevant delivery challans. This direction was given with a clear timeline, requiring the respondent to resolve the matter by 20.06.2024.

Judgements (3)

Bombay HC Sets Aside MVAT on Vehicle Registration, Handling & Insurance Charges

Judiciary Case Law Details

Case Name : Chavan Motors Division India Pvt. Ltd. & Ors. Vs State of Maharashtra & Ors. (Bombay High Court)

Appeal Number : Writ Petition No. 7603 of 2023

Date of Judgement/Order : 24/06/2024

Related Assessment Year :

Courts : All High Courts Bombay High Court Download Judgment/Order Chavan Motors Division India Private Limited Vs State of Maharashtra and Ors. (Bombay High Court) Bombay HC sets aside Review Orders imposing MVAT on registration charges, handling charges and insurance charges on motor vehicles Introduction In a significant ruling, the Bombay High Court has quashed the imposition of Maharashtra Value Added Tax (MVAT) on registration, handling, and insurance charges for motor vehicles. This decision comes as a relief to automobile dealers and buyers, ensuring that such ancillary charges do not fall under the purview of MVAT. The case in focus is Chavan Motors Division India Private Limited Vs State of Maharashtra

and Ors., where the court cited the precedent set in Modi Car Agencies Pvt. Ltd. v/s. The State of Maharashtra and Ors. Detailed Analysis The primary argument in the petitions, represented by Mr. Samal, was that the charges levied as MVAT on registration, handling, and insurance were beyond the scope defined under the MVAT Act, 2002. This stance was supported by a prior judgment in Modi Car Agencies Pvt. Ltd. v/s. The State of Maharashtra and Ors., where similar charges were deemed outside the taxable sales price. Key Points of the Judgment 1. Impugned Orders Quashed: The impugned order dated February 28, 2023, was set aside, and the matter was remanded to the respondent for reconsideration based on the established legal precedent. 2. Applicability of Previous Judgment: The court reinforced the application of the Modi Car Agencies Pvt. Ltd. judgment, ensuring that the MVAT imposition on registration, handling, and insurance charges would not stand unless overturned by the Apex Court. 3. Provisional Compliance: Ms. Vyas, representing the state, did not provide instructions on whether the Modi Car Agencies Pvt. Ltd. judgment was challenged in the Supreme Court. However, she conceded to the court's orders with a provision that if the Supreme Court rules in favor of the Revenue, the case could be reopened. 4. Specific Reliefs Granted: The court issued a Writ of Mandamus directing the quashing of the review order and

instructed the relevant authorities to adhere to the judgment of the Maharashtra Sales Tax Tribunal, Pune, as seen in B.U. Bhandari Auto (Supra). 5. Future Contingencies: The court clarified that if the law laid down in Modi Car Agencies Pvt. Ltd. is set aside by a higher court, the Revenue is at liberty to take necessary steps, including reopening the cases in accordance with the new legal standards. Conclusion The Bombay High Court's decision to set aside the MVAT on registration, handling, and insurance charges for motor vehicles underscores the importance of clear tax definitions and legal precedents in taxation matters. This ruling not only aligns with the previous judgments but also provides a structured approach to dealing with such charges in the future. While the court's decision offers immediate relief to automobile dealers and purchasers, it also leaves room for re-evaluation pending any Supreme Court judgments.

Judgements (4)

HC Directs Re-adjudication of E-way Bill Generation by Job Worker Based on Transaction Value

Case Law Details

Case Name : Gopal Nondy Vs Assistant Commissioner of State Tax (Calcutta High Court)

Appeal Number : WPA 13141 of 2024

Date of Judgement/Order : 13/06/2024

Related Assessment Year :

Courts : All High Courts Calcutta High Court

Download Judgment/Order

Gopal Nondy Vs Assistant Commissioner of State Tax (Calcutta High Court) In the case of Gopal Nondy Vs Assistant Commissioner of State Tax (Calcutta High Court), the petitioner, proprietor of Arpan Enterprise, challenged an order under Section 107 of the WBGST / CGST Act, 2017 concerning the detention and subsequent penalty on a consignment received from M/s Apex Auto Private Limited. The consignment, transported from Jamshedpur to West Bengal, was intercepted

and detained due to alleged defects in documentation, specifically the absence of an e-way bill. The petitioner argued that as a job worker under a contract with Apex Auto, the transaction value did not require an e-way bill as per Section 15 of the said Act, since it fell below Rs. 50,000. The petitioner also cited Trade Circular No. 30/2018, which exempts job workers from certain documentation requirements post job work completion. The Court noted discrepancies in how the value of goods was determined by the tax authorities, emphasizing that the transaction value should have been considered as per Section 15(1) of the Act. It directed the appellate authority to re-evaluate the case, instructing the petitioner to disclose all relevant job work documents within three weeks for proper assessment of transaction value. If the documents were not disclosed in time, the appeal would proceed based on available information. Ultimately, the Court set aside the appellate authority's decision, remanding the case for a fresh determination based on disclosed documents. It clarified that failure to provide necessary documents within the stipulated period would result in the appeal being decided based on existing records. Ads by FULL TEXT OF THE JUDGMENT/ORDER OF CALCUTTA HIGH COURT 1. Affidavit of service filed in Court today is retained with the records. 2. The present writ petition has been filed, inter alia, challenging the order dated 27th December 2023

passed by the appellate authority under Section 107 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act"). 3. The petitioner is the proprietor of Arpan Enterprise and is registered under the provisions of the said Act. The petitioner claims to have received certain orders from M/s Apex Auto Private Limited having its place of business outside the State of West Bengal at Jamshedpur (hereinafter referred to as the "principal") for executing certain job work in respect of certain "Railway Component" (hereinafter referred to as the "consignment"). Pursuant to and in furtherance of the aforesaid contract executed between the petitioner on one hand the said principal, the petitioner received 22 pieces of consignment aggregating an invoice value of Rs.5,92,623.20/- from the said principal against two separate purchase orders dated 4th November 2022 and 21st November 2022 respectively. The aforesaid consignment was transported from Jamshedpur to the petitioner's place of business in the State of West Bengal through a transporter namely, CARCA Rapid Solutions Private Limited under two separate e-way bills both dated 23rd November 2022, for invoice amount of Rs.96,509.30/- and Rs.4,96,113.90/-respectively aggregating to Rs.5,92,623.20/-. 4. It is the petitioner's case that when the petitioner was in the process of returning the consignment upon executing the job work and had loaded the same in a vehicle, the same was

intercepted and detained on 24th/26th November, 2022 within the State of West Bengal at Nimpara, Paschim Medinipur by the respondent no. 1. As would appear from the order of detention dated 26th November 2022, the consignment was detained only on the ground that the documents tendered were found to be defective and that no e-way bill was produced for movement of the goods in question. On a physical verification conducted on the said date, no other discrepancy apart from what was indicated in the detention order was identified by the respondents. The same was followed by an order under Section 129(3) of the said Act dated 27th November 2022, where under the proper officer had determined the penalty payable by the petitioner. 5. Records would reveal that the petitioner had obtained release of the aforesaid consignment by making payment of penalty in terms of Section 129(1)(a) of the said Act and consequent thereon an order dated 29th November 2022 was passed, releasing the consignment and the conveyance which had been so detained. The petitioner has subsequently preferred an appeal challenging the said order dated 29th November 2022, determining penalty payable by the petitioner in terms of Section 129 of the said Act. The said appeal was rejected on 27th December 2023 by confirming the order dated 29th November 2022 passed by the proper officer. 6. Das, learned advocate appearing for the petitioner by drawing

attention of this Court to the purchase order appearing at page 24 of the writ petition submits that it is not in dispute that the petitioner had been entrusted to carry out certain job works on contractual basis. By placing reliance on Section 15 of the said Act, he submits that value of the taxable supply is required to be determined in terms of the said Section and since, the petitioner was carrying out job work, the petitioner had indicated the value of the supply of goods in the invoices on the basis of the transaction as is required to be done in terms of Section 15 of the said Act. He submits that since, the transaction value did not exceed Rs.50,000/-, the petitioner was, therefore, not required to generate e-way bill. This aspect was completely over-looked both by the proper officer as also by the appellate authority while passing the orders impugned. 7. By placing reliance on a trade circular no. 30/2018 dated 17th September 2018 it is submitted that after executing the job work, when the job workers returns the goods to the principal, such goods are required to be accompanied by a challan and no other documents. By further drawing attention of this Court to clause 9.4 of the said circular it is submitted that in respect of supply of job work services, although job workers are liable to pay GST, such payment is required to be made on the basis of the invoice at the time of supply of such services and the time of supply of services is required to be determined in terms of Section 13 read

with Section 31 of the said Act. He submits that the proper officer at the first instance had committed an irregularity while determining the value of the supply of goods in respect of the job work on the basis of the value of the goods and not on the basis of the transaction, for execution of the job work. 8. By drawing attention of this Court to Rule 138 of CGST/WBGST Rules 2017 (hereinafter referred to as the "said Rules") it is submitted that an e-way bill is required to be generated provided the consignment value exceeds Rs.50,000/-. Admittedly, according to the petitioner in this case, since the consignment value did not exceed Rs.50,000/-, no e-way bill was generated. There is no irregularity on the part of the petitioner in not generating the e-way bill and the consignment not being accompanied by an e-way bill. This aspect was not properly considered both by the proper officer as also by the appellate authority. In the facts as noted above, it is submitted that this Court may be pleased to set aside the orders impugned and direct the respondents, either to refund or to adjust the penalty already paid by the petitioner against future levy of GST. 9. Mr. Siddiqui, learned advocate appearing for the respondents on the other hand submits that the arguments canvassed by the petitioner before this Court are not supported by proper disclosure. The job work contract has not been disclosed and as such, in absence of such job work contract, the proper officer had determined the

value of the consignment on the basis of the value of goods and not on the basis of the contract. He, however, acknowledges the fact that the aforesaid issue requires proper consideration on the basis of appropriate disclosure to be made by the petitioner. 10. Heard the learned advocates appearing for the respective parties and considered the materials on record. 11. In this case, it may be noticed that the petitioner is a job worker. From a perusal of Explanation-2 of Rules 138 of the said Rules, it would appear that for the purpose of the said Rule, the consignment value of the said goods shall be the value determined in accordance with the provisions of Section 15 of the said Act, so declared in an invoice, a bill of supply or delivery challan as the case may be. To more fully appreciate the same, Rule 138 (1) of the said Rules and Section 15 of the said Act is extracted hereinbelow:- "138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees— (i) in relation to a supply; or (ii) for reasons other than supply; or (iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on

the common portal and a unique number will be generated on the said portal: Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal: Provided further that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal: Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment: Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment. Explanation 2.- For the purposes of this rule, the consignment value of goods shall bethevalue,

determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods." xxx xxx xxx

Section 15 : Value of taxable supply. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. (2) The value of supply shall include– (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier; (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both; (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply

and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services; (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and the State Governments. Explanation.–For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy. (3) The value of the supply shall not include any discount which is given– (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and (b) after the supply has been effected, if– (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply. (4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed. (5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be

determined in such manner as may be prescribed. Explanation–For the purposes of this Act,– (a) persons shall be deemed to be related persons if– (i) such persons are officers or directors of one another's businesses; (ii) such persons are legally recognised partners in business; (iii) such persons are employer and employee; (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them; (v) one of them directly or indirectly controls the other; (vi) both of them are directly or indirectly controlled by a third person; (vii) together they directly or indirectly control a third person; or (viii) they are members of the same family; (b) the term "person" also includes legal persons; (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related. 12. Although, it has been strenuously argued by Mr. Das that the value of the goods ought to be the transaction value, however, I notice that in terms of Section 15 of the said Act where the value of supply of goods or services cannot be determined under sub-Section (1) of the said Section the same shall be determined as may be prescribed. In the instant case, I find that the petitioner chose not to disclose the contract in question, though a reflection thereof is available in the purchase order. 13. Records, however,

do not reveal that the proper officer had proceeded to ignore the transaction value by recording that the same is not possible to be determined in accordance with Section 15(1) of the said Act. In fact, the aforesaid aspect has not been considered either by the proper officer or by the appellate authority. As to whether or not the petitioner is required to generate e-way bill, would however depend on the determination of the transaction value in respect of the goods in question and the same would be required to be gone into on the basis of the facts. 14. Since admittedly, the aforesaid aspect has not been considered either by the proper officer or by the appellate authority, I remand back the matter to the appellate authority for re-determination of the aforesaid issue. I, further direct the petitioner to disclose all documents in connection with the job work for the proper officer to identify the transaction value of the goods/consignment. Such disclosure must be made by the petitioner within a period of 3 weeks the date of communication of this order. The appellate authority, on the basis of the disclosure made by the petitioner, shall decide the appeal in accordance with the observations and directions made hereinabove within 3 weeks from the date of communication of this order on the basis of the disclosures to be made by the petitioner. 15. As a sequel thereto, the order dated 27th December 2023 passed by the appellate authority is set aside.

16. It is made clear that if the petitioner fails to disclose the documents within the time as specified above, the appellate authority shall hear out and dispose of the appeal on merits in accordance with law. 17. With the above observations and directions, the writ petition being WPA 13141 of 2024 is accordingly disposed of. 18. Since, I have not called for any affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents. 19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

Judgements (5)

Delay in GST appeal filing due to illness: HC directs appellate authority to hear case on merits

Case Law Details

Case Name : Krishna Enterprise Vs Commissioner (Calcutta High Court)

Appeal Number : W.P.A. 12830 of 2024

Date of Judgement/Order : 12/06/2024

Related Assessment Year :

Courts : All High Courts Calcutta High Court

Krishna Enterprise Vs Commissioner (Calcutta High Court) In a significant ruling, the Calcutta High Court addressed the case of Krishna Enterprise Vs Commissioner, involving a 38-day delay in filing a GST appeal due to the proprietor's illness. The court's directive to the appellate authority to hear the case on merit underscores the importance of considering genuine reasons for delays in legal proceedings. The case revolves around Krishna Enterprise, a proprietorship firm, which filed a writ petition challenging the rejection of its GST appeal by the

appellate authority. The appeal, initially dismissed due to a delay in filing, brought to light critical issues regarding the interpretation of “sufficient cause” for delays under Section 107 of the CGST/WBGST Act, 2017. The petitioner, Krishna Enterprise, was served with a show cause notice on August 3, 2023, under Section 73 of the CGST/WBGST Act, citing discrepancies in tax filings for the financial year 2017-18. Following this, an order was passed on November 9, 2023, leading the petitioner to file an appeal under Section 107. The appeal included a pre-deposit of 10% of the disputed tax, as confirmed by the submission of form GST APL-01. The core issue was the 38-day delay in filing the appeal, which exceeded the prescribed period of limitation. The petitioner, through an affidavit, attributed this delay to the illness of its proprietor, who was advised complete rest from February 2024. Supporting medical certificates were provided to validate this claim. The petitioner argued that the proprietor’s illness constituted a valid and sufficient cause for the delay, as evidenced by medical documentation. The appellate authority, however, dismissed the appeal, citing a lack of explanation for the period prior to February 2024 and concluding that there had been sufficient time to file the appeal before the illness. The Calcutta High Court, upon reviewing the materials and arguments, acknowledged the proprietor’s illness and the medical certificates. While recognizing the absence of an

explanation for the delay from November 2023 to February 2024, the court emphasized the need for a fair hearing. Consequently, it directed the appellate authority to hear the appeal on merit, conditional upon the petitioner paying Rs. 5,000 to the State Revenue Authorities. The Calcutta High Court's decision in Krishna Enterprise Vs Commissioner highlights the balance between procedural compliance and substantive justice. By directing the appellate authority to hear the case on merit, the court ensured that the genuine health issues of the proprietor were duly considered. FULL TEXT OF THE JUDGMENT/ORDER OF CALCUTTA HIGH COURT 1. The present writ petition has been filed, inter alia, challenging the order dated 28th March 2024 rejecting the petitioner's appeal under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") on the ground of delay and on the ground that the petitioner had failed to make out sufficient cause for filing the appeal beyond the statutory period. 2. Records reveal that the petitioner was served with a show cause notice dated 3rd August 2023 under Section 73 of the said Act on the ground of discrepancies found during scrutiny for the financial year 2017-18 in respect of the tax period July 2017-March 2018. The same ultimately, culminated in the order dated 9th November 2023. Being aggrieved the petitioner had preferred an appeal under Section 107 of the said Act along with pre-deposit of 10 per cent

of the disputed tax. Such fact would corroborate from the form GST APL-01. 3. Admittedly, since the appeal was filed beyond the prescribed period of limitation, the petitioner appears to have affirmed an affidavit though its proprietor on 18th March 2024, indicating that the petitioner is a proprietorship firm and that its proprietor was unwell on or after February 2024 and his physician had advised him complete rest for a month. In support of his contention, a medical certificate had also been disclosed. The said affidavit also identifies that there is a delay of 38 days in filing of the appeal. 4. Before the aforesaid appeal was taken up for consideration, the petitioner was served with a notice dated 19th March 2024 asking the petitioner to show cause by 27th March 2024 as to why the appeal should not be rejected for filing the same beyond the statutory period. Pursuant to the aforesaid, the petitioner's representative appeared before the appellate authority and in support of his contention for condonation of delay, had placed the above affidavit affirmed by the petitioner's proprietor on 18th March, 2024 that the petitioner's proprietor was unwell on or after February 2024 and under the treatment of Dr. Bhaskar Mondal. 5. The appellate authority despite acknowledging the factum of the illness of the petitioner's proprietor and the medical certificate, had proceeded to dismiss the appeal on the ground that there was no explanation offered by the petitioner for the

period prior to February 2024 and that the petitioner otherwise had sufficient time to file the appeal. 6. Mr. Ghosh, learned advocate appearing for the petitioner submits that the petitioner had sufficiently explained the reasons for the delay. Unfortunately, the appellate authority, despite acknowledging the illness of the petitioner's proprietor had purported to reject the same. In the facts as noted hereinabove it is submitted that the order dated 28th March 2024 rejecting the petitioner's appeal should be set aside and the matter should be remanded back to the appellate authority for hearing of the appeal on merits. 7. Mr. Chakraborty, learned advocate appearing for the respondents, on the other hand, has strenuously argued that the petitioner has failed to offer any explanation as to what prevented the petitioner from preferring the appeal up to February 2024. In absence of such explanation being offered by the petitioner, it cannot be said that the appellate authority had committed any irregularity in rejecting the appeal. He submits that no case for interference has been made out and the writ petition should be dismissed with costs. 8. Heard the learned advocates appearing for the respective parties and considered the materials on record. 9. Admittedly, in this case the order passed under Section 73(9) of the said Act had been received by the petitioner on 9th November 2023. It is true that there is no appropriate explanation provided by the

petitioner for the period between 9th November 2023 and February 2024. However, there appears to be some explanation given by the petitioner for the period from February 2024 till 18th March 2024 when the appeal was filed. The doctor's certificate has also been disclosed. The appellate authority has acknowledged the factum of the petitioner's proprietor's illness. 10. Taking into consideration the aforesaid, I am of the view that justice will be sub-served if the appeal is directed to be heard out on merits subject to payment of costs of Rs.5,000/- to be paid by the petitioner to the State Revenue Authorities. If such payment is made within two weeks from date, the appellate authority shall hear out and dispose of the appeal on merits preferably within a period of two weeks from the date of communication of this order. As a sequel thereto, the order dated 28th March 2024 stands set aside. 11. With the above directions and observations, the writ petition being WPA 12830 of 2024 is disposed of. 12. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

Judgements (6)

Madras HC Grants Hearing for GSTR 1 and 3B Mismatch Dispute

Case Law Details

Case Name : Abishek Suppliers Vs Commercial Tax Officer (Madras High Court)

Appeal Number : Writ Petition No. 15133 of 2024

Date of Judgement/Order : 20/06/2024

Related Assessment Year :

Courts : All High Courts Madras High Court

Download Judgment/Order

Abishek Suppliers Vs Commercial Tax Officer (Madras High Court) Introduction: In a recent ruling, the Madras High Court addressed the issue of a mismatch between GSTR 1 statements and GSTR 3B returns in the case of Abishek Suppliers vs. Commercial Tax Officer. The court's decision highlighted procedural lapses and underscored the importance of adhering to principles of natural justice. The court granted Abishek Suppliers an opportunity to be heard on the merits of the case, conditional upon a 10% pre-deposit of the disputed tax

demand. Background and Case Details: Abishek Suppliers faced an adverse order dated April 16, 2024, after failing to upload a reply to a show cause notice issued on December 14, 2023. The notice demanded an explanation for discrepancies between the GSTR 1 statement and GSTR 3B return. The petitioner, represented by their learned counsel, argued that the mismatch occurred due to an inadvertent error: only the transactions for November and December 2017 were uploaded in GSTR 1, while GSTR 3B included all transactions. The petitioner sought additional time to explain the disparity but failed to upload the response due to technical issues. Court Proceedings and Arguments: During the proceedings, the petitioner's counsel emphasized the unintentional nature of the error and the need for a fair opportunity to clarify the mismatch. The petitioner agreed to remit 10% of the disputed tax demand as a pre-condition for remand. The respondent, represented by Mrs. K. Vasanthamala, argued that natural justice was followed, citing the issuance of the show cause notice and the subsequent order. She maintained that the petitioner had been given sufficient time to respond. Judgment and Reasoning: The Madras High Court examined the impugned order and noted that the tax proposal was confirmed solely due to the petitioner's failure to reply. The court recognized the procedural oversight and the petitioner's willingness to comply with the

pre-deposit condition. The court stated that in the interest of justice, the petitioner should be allowed to contest the tax demand on merits. Key Directives from the Court: 1. Setting Aside the Impugned Order: The court set aside the order dated April 16, 2024, contingent upon the petitioner depositing 10% of the disputed tax within two weeks. 2. Opportunity to Submit a Reply: The petitioner was granted the chance to submit a reply to the show cause notice within the specified period. 3. Personal Hearing and Fresh Order: Upon receipt of the reply and confirmation of the pre-deposit, the respondent was directed to provide a reasonable opportunity for a personal hearing before issuing a fresh order within three months. Conclusion: The Madras High Court's ruling in the case of Abishek Suppliers vs. Commercial Tax Officer underscores the judiciary's commitment to ensuring fair treatment and upholding natural justice principles in tax disputes. By granting a hearing opportunity and emphasizing procedural compliance, the court has set a significant precedent for handling GSTR mismatches and related disputes. This decision not only provides relief to Abishek Suppliers but also serves as a critical reminder for tax authorities and taxpayers to ensure due process is followed in tax adjudication. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT An order in original dated 16.04.2024 is challenged on the ground that the petitioner was unable to upload the reply

to the show cause notice. The petitioner received a show cause notice dated 14.12.2023 calling upon the petitioner to explain the disparity between the GSTR 1 statement and the GSTR 3B return. By reply dated 12.01.2024, the petitioner requested for time. According to the petitioner, she could not upload the reply to the show cause notice thereafter. 2. Learned counsel for the petitioner submits that the mismatch occurred because the petitioner inadvertently uploaded only the November and December 2017 transactions in the GSTR 1 statement, whereas the GSTR 3B return recorded all transactions. If provided an opportunity, she submits that the petitioner would be in a position to explain the disparity. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand. 3. Mrs. K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She points out that principles of natural justice were complied with by issuing show cause notice dated 14.12.2023 and issuing the impugned order about three months after the petitioner's reply dated 12.01.2024 requesting for one month time. 4. On examining the impugned order, it is evident that the tax proposal, which pertains to the mismatch between the petitioner's GSTR 1 and 3B, was confirmed solely because the tax payer failed to reply to the show cause notice. In the facts and circumstances outlined

above, the interest of justice warrants that an opportunity be provided to the petitioner to contest the tax demand on merits by putting the petitioner on terms. 5. For reasons set out above, the impugned order dated 16.04.2024 is set aside on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the petitioner's reply. 6. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

Judgements (6)

Gujarat HC Grants Relief against Coercive Tax Recovery by GST Department Bimal Jain

Case Law Details

Case Name : P.R. Trading Vs Commissioner of Central Goods And Services Tax & Anr. (Gujarat High Court)

Appeal Number : R/Special Civil Application No. 8070 of 2024

Date of Judgement/Order : 10/06/2024

Related Assessment Year :

Courts : All High Courts Gujarat High Court

Download Judgment/Order

P.R. Trading Vs Commissioner of Central Goods And Services Tax & Anr. (Gujarat High Court) Court grants interim relief where Revenue (GST) department made coercive recovery by under guise of Voluntary payment by Petitioner In a significant ruling, the Gujarat High Court has provided interim relief to P.R. Trading v. Commissioner of Central Goods and Services Tax [R/Special Civil Application Nos. 8070 & 8090 of 2024 dated June 10, 2024],

restraining the Revenue department from making coercive recoveries under the guise of voluntary payments rom the assessee until it resolve the matter, listed the matter for hearing on July 01, 2024.. This decision comes as a crucial intervention in the ongoing debate over the coercive recovery practices employed by tax authorities during search operations. The case, P.R. Trading Vs Commissioner of Central Goods And Services Tax & Anr., will be heard further on July 1, 2024, offering a potential precedent for similar disputes. Facts: M/s. P.R. Trading ("the Petitioner"), was compelled to deposit the amount during search operation. The deposit was characterized as 'Voluntary Deposit', although the Petitioner claimed it was made under coercion. Challenging the coercive recovery by Revenue department the Petitioner filed writ before the Hon'ble High court. Issue: Whether the coercive recovery made by Revenue under the guise of 'Voluntary Deposit' by Petitioner justified? Held: The Hon'ble Gujarat High Court in R/Special Civil Application Nos. 8070 8090 OF 2024 held as under: Noted that, the issue of coercive recovery made by the Revenue authorities during the course of search by forcing the assessee's by compelling them to deposit the amount along with an undertaking that they are depositing such amount as a voluntary deposit are pending for consideration before the court. And directed that the Revenue department to not take

any coercive action against the Petitioner until the matter is resolved. Listed the matter for hearing on July 01, 2024. Conclusion: The Gujarat High Court's interim relief in the P.R. Trading Vs Commissioner of Central Goods And Services Tax & Anr. case marks a crucial intervention in addressing coercive recovery practices by tax authorities. The case, set for a detailed hearing on July 1, 2024, will provide further clarity on the legality and fairness of such recovery methods. This ruling serves as a critical reminder of the importance of protecting taxpayer rights and ensuring that recovery processes are conducted transparently and without coercion. FULL TEXT OF THE JUDGMENT/ORDER OF GUJARAT HIGH COURT Heard Mr. Ashutosh S. Dave, learned advocate for the petitioners. Mr. Ashutosh S. Dave, learned advocate for the petitioner has submitted that the similar matters being Special Civil Application No. 783 of 2021 and other allied matters are pending before this Court where the issue of coercive recovery made by the respondents-authorities during the course of search as the petitioners were compelled to deposit the amount along with an undertaking that they are depositing such amount as a voluntary deposit are pending for consideration. Considering the above submissions, issue Rule returnable on 1st July, 2024 By way of ad-interim relief, no coercive recovery shall be made by the respondents-authorities. To be heard with Special Civil

Application No. 783 of 2021 and other allied matters. Direct service is permitted.

Judgements (7)

Fresh opportunity be granted for personal hearing when SCN was inadvertently sent to old address of Assessee

Case Law Details

Case Name : C. Ekambaram Vs Assistant Commissioner of GST & Central Excise (Madras High Court)

Appeal Number : W.P. N o.12380 of 2024

Date of Judgement/Order : 07/06/2024

Related Assessment Year :

Courts : All High Courts Madras High Court

Download Judgment/Order

C. Ekambaram Vs Assistant Commissioner of GST & Central Excise (Madras High Court)

The Hon'ble Madras High Court in C. Ekambaram v. Assistant Commissioner of GST And Central Excise [W.P. No. 12380 Of 2024 dated June 7, 2024], held that fresh opportunity be granted for personal hearing and filing of reply when Show Cause Notice ("the SCN") was inadvertently sent to old address of the

Assessee. Facts: C. Ekambaram ("the Petitioner") filed a writ petition against the Order-in-Original dated October 26, 2022 ("the Impugned Order") passed by the Revenue department ("the Respondent") on the ground that the Petitioner be granted an opportunity to contest the demand on merits as the Impugned Order was passed stating that no person was found on the address where SCN was sent as the Petitioner had shifted to new address. Also, it is stated that as the Petitioner was not registered for Service Tax purposes, the SCN was sent to the address as per the data on the Income Tax Portal which was the old address of the Petitioner. Issue: Whether fresh opportunity be granted for filing of reply and personal hearing when SCN was inadvertently sent to old address of the Assessee? Held: The Hon'ble Madras High Court in the case of W.P. No. 12380 of 2024 allowed the writ petition and held that the Petitioner be granted an opportunity to the Petitioner to contest the tax demand on merit. Hence, the Impugned Order was set aside and the Petitioner was directed to file reply after the receipt of SCN. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT An order in original dated 26.10.2022 is challenged on the ground of breach of principles of natural justice. The petitioner asserts that he is a painting contractor. While he was an Income Tax assessee, he was not registered for service tax purposes. Upon purchasing a house on 07.11.2013, the petitioner shifted from the

old premises at No.20/38, Privari Road, Anna Nagar, Chennai 40 to the new premises at No.226, Fort Street, Nehru Nagar, 13th Main Road, Anna Nagar, Chennai 40. As a consequence, the petitioner asserts that he did not receive either the show cause notice or the impugned order until the recovery notice was received by him in July 2023 at the new address. The present writ petition was filed in these facts and circumstances. 2. By referring to the impugned order, learned counsel points out that it is recorded therein that the notice for personal hearing was returned by the postal authority with the remark "no such person in the address". On merits, learned counsel submits that the proposal pertains to labour charges which were paid by the petitioner to persons engaged in painting work. Therefore, learned counsel seeks an opportunity to contest the tax demand on merits. On instructions, he agrees to remit a sum of Rs.50,000/- as a condition for remand. 3. Mr. K. Mohanamurali, learned senior standing counsel, accepts notice for the respondents. He points out that even the income tax return of the petitioner for assessment year 2017-18 contains the old address to which the notices were sent. He also points out that the impugned order were issued in October 2022 and that revenue interest should be protected. 4. As contended by learned counsel for the petitioner, the impugned order records expressly that the personal hearing notice was returned with

the endorsement “no such person in the address”. The petitioner has placed on record the sale deed for purchase of a house on 07.11.2023. Upon such purchase, the petitioner asserts that he shifted to such address. In these facts and circumstances, it is just and necessary that an opportunity be provided to the petitioner to contest the tax demand on merits, albeit by putting the petitioner on terms. 5. For reasons set out above, the impugned order dated 26.10.2022 is set aside subject to the condition that the petitioner remits a sum of Rs.50,000/- towards the tax demand within a maximum period of three weeks from the date of receipt of a copy of this order. The respondent is directed to serve a copy of the show cause notice on the petitioner within one week from the date of receipt of a copy of this order. Upon receipt thereof, the petitioner is permitted to reply within two weeks from the date of receipt of the show cause notice. Upon receipt of the petitioner’s reply, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a period of three months from the date of receipt of the petitioner’s reply. 6. W.P.No.12380 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.13497 and 13498 of 2024 are closed.

Judgements (8)

Personal Hearing Mandatory for Adverse GST Orders: Madras HC

Case Law Details

Case Name : J-Lin Constructions Vs Assistant Commissioner (ST) (FAC) (Madras High Court)

Appeal Number : Writ Petition Nos.14739,& 14755 of 2024

Date of Judgement/Order : 13/06/2024

Related Assessment Year :

Courts : All High Courts Madras High Court

Download Judgment/Order

J-Lin Constructions Vs Assistant Commissioner (ST) (FAC) (Madras High Court) In a recent judgment, the Madras High Court addressed the necessity of personal hearings under GST laws, emphasizing their mandatory nature even in cases where adverse orders are contemplated without explicit request from the taxpayer. The case involved J-Lin Constructions, a business engaged in civil work contracts, contesting orders and rectification petitions issued by tax authorities. The primary contention was the denial of a personal hearing during the

issuance of orders in original and subsequent rectification orders. The petitioner argued that this denial violated Section 75(4) of GST enactments, which mandates a personal hearing before adverse orders are finalized. The court noted that despite the taxpayer not explicitly requesting a personal hearing, the law obligates tax authorities to provide one when contemplating adverse actions. It highlighted that the failure to provide such a hearing undermines procedural fairness and could render the orders invalid. The judgment emphasized that compliance with procedural requirements, including the opportunity for personal hearing, is crucial to upholding the principles of natural justice. The respondent, represented by the Additional Government Pleader, countered that a personal hearing was granted during the rectification stage. However, the court ruled that this did not suffice, as the opportunity for a hearing should have been provided earlier, before the issuance of the original adverse orders. Consequently, the Madras High Court set aside the original orders and directed the tax authorities to reconsider the matters after providing J-Lin Constructions with a proper opportunity, including a personal hearing. This decision underscores the importance of procedural compliance under GST laws and reaffirms the principle that fairness and due process must be upheld in administrative proceedings. FULL TEXT OF THE JUDGMENT/ORDER

OF MADRAS HIGH COURT In all these writ petitions, orders in original and the subsequent rectification orders are assailed on the ground that the petitioner was not provided a personal hearing. 2. The petitioner is engaged in the business of executing civil work contracts. Pursuant to an inspection of the petitioner's premises, show cause notice dated 07.07.2023 was issued to the petitioner. Such show cause notice was replied to on 07.08.2023 and 28.08.2023. Orders in original were issued on 19.09.2023. The petitioner filed rectification petitions in respect thereof and such rectification petitions were rejected by orders dated 24.04.2024. 3. Learned counsel for the petitioner submits that the petitioner contended in the reply to the show cause notice that the ingredients of Section 74 were not satisfied. He further submits that the said reply was not into consideration and that no findings were recorded on the petitioner's contentions. In addition, he submits that no personal hearing was granted thereby violating sub-section (4) of Section 75 of applicable GST enactments. 4. T. N. C. Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He points out that a personal hearing was granted when the rectification petitions were disposed of. He also points out that the petitioner did not request for a personal hearing and that the petitioner checked the box for no personal hearing. 5. Under sub-section (4) of Section 75 of applicable GST

enactments, a personal hearing is mandatory not only when requested for but when an order adverse to the tax payer is proposed to be issued. In all these cases, the tax proposals were confirmed without the petitioner being provided a personal hearing. On account of the infraction of a mandatory prescription, orders impugned herein cannot be sustained. 6. Therefore, impugned orders in original dated 19.09.2023 are set and these matters are remanded for reconsideration. The respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh orders within three months from the date of receipt of a copy of this order. 7. These writ petitions are disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

Judgements (9)

GST refunds cannot be denied solely for Manual applications instead of online

Case Law Details

Case Name : AMN Life Pvt Ltd Vs Union of India & others (Himachal Pradesh High Court)

Appeal Number : CWP No.7919 of 2022

Date of Judgement/Order : 10/06/2024

Related Assessment Year :

Courts : All High Courts Himachal Pradesh HC Download Judgment/Order AMN Life Pvt Ltd Vs Union of India & others (Himachal Pradesh High Court) In a landmark decision, the Himachal Pradesh High Court has overturned the rejection of manual GST refund applications submitted by AMN Life Pvt Ltd. This case revolves around the interpretation and application of Rule 97A of the Central Goods and Services Tax (CGST) Rules, which allows for manual submission of GST refund applications under specific circumstances. The court's ruling addresses the conflict between the rule and a departmental circular mandating electronic filing, offering significant clarity on the

matter. Background of the Case AMN Life Pvt Ltd filed a writ petition challenging the order dated 28.07.2022 issued by the 5th respondent, which declined to consider their manual GST refund applications for the financial years 2017-2018, 2018-2019, and 2020-2021. The rejection was based on three primary grounds: 1. The absence of an RFD-01 application form. 2. The petitioner's GST registration, which was only effective from October 2020. 3. The requirement that refund applications be filed electronically, not manually. Petitioner's Contentions The petitioner argued that they were compelled to file refund applications manually due to their GST registration being effective only from October 2020, following the acquisition of a business undertaking from M/s Sozin Flora Pharma LLP. Consequently, they couldn't file the applications electronically. They cited Rule 97A of the CGST Rules, which explicitly permits manual filing of applications in certain scenarios. Court's Findings The court found merit in the petitioner's arguments, emphasizing that Rule 97A allows for manual submission of refund applications. The 5th respondent's reliance on the circular dated 18.11.2019, which mandated electronic filing, was deemed inappropriate as it contradicted the statutory provisions of Rule 97A. The court highlighted that departmental circulars cannot override rules framed by the competent authority. Additionally, the court referenced judgments from the

Bombay High Court in Laxmi Organic Industries Ltd. vs. Union of India and the Gujarat High Court in M/s Ayana Pharma Ltd. vs. Union of India, both of which upheld the precedence of Rule 97A over contradictory circulars. Registration Issue Regarding the second ground for rejection, the court pointed out that Section 54(1) of the CGST Act permits any person to apply for a tax refund, not exclusively registered persons. Furthermore, Rule 41 of the CGST Rules provides for the transfer of credit during business mergers or acquisitions, supporting the petitioner's eligibility to claim refunds. Conclusion The Himachal Pradesh High Court's decision in favor of AMN Life Pvt Ltd sets a crucial precedent for the interpretation of Rule 97A concerning manual GST refund applications. By overturning the rejection of the petitioner's applications, the court has reinforced the statutory provisions of the CGST Rules over conflicting departmental circulars. This ruling is expected to have broader implications for other businesses facing similar issues, ensuring that procedural technicalities do not unjustly hinder legitimate claims for GST refunds. The court has remitted the matter to the 5th respondent for fresh consideration on its merits within four weeks and ordered the respondent to pay costs of Rs. 10,000 to the petitioner. This judgment underscores the judiciary's role in upholding the rule of law and protecting taxpayers' rights against arbitrary administrative actions. FULL TEXT OF THE

JUDGMENT/ORDER OF HIMACHAL PRADESH HIGH COURT In this writ petition, the petitioner assails order dt. 28.07.2022 passed by the 5th respondent declining to consider the applications for refund of GST for the financial years 2017-2018, 2018-2019 & 2020-2021 made through an email dt. 30.05.2022 on three grounds (a) that an application form i.e. RFD-01 had not been filed; (b) that the petitioner had got itself registered under the Central Goods and Services Tax Act, 2017 only on 21.10.2020 and had not been registered during the relevant period; and (c) refund applications have to be filed through electronic mode only and manual applications would not be entertained. 2. As regards the first and third contentions are concerned, the petitioner contends that it had informed the respondent on 30.05.2022 vide Annexure P-6 that it got registered with GST in October 2020 pursuant to acquisition of business undertaking from M/s Sozin Flora Pharma LLP, and the eligible ITC reflecting in the Electronic Credit Ledger in the books of Sozin was transferred to it by filing ITC-02; that it therefore wished to file GST refund application under “Inverted Duty Structure” for the financial years 2017-2018, 2018-2019 & 20202021, but since its GST registration was effective from October 2020, it was not able to file GST refund applications through online mode, but was forced to apply manually. It therefore stated that it was sending refund applications for the above referred financial

years through separate emails and the same be considered. 3. We fail to see why the reasons assigned by the petitioner cannot be accepted for its inability to file refund applications in electronic mode/online mode and why its manual applications cannot be entertained having regard to Rule 97A of the Central Goods and Services Tax Rules, which specifically permits such manual filing of applications. This provision was ignored by the 5th respondent, who has instead placed reliance on a circular dt.18.11.2019 mandating refund applications to be filed only electronically w.e.f. 26.09.2019. 4. It is elementary that a circular issued by the department cannot go contrary to a rule framed by the competent authority such as Rule 97A, and the 5th respondent ought not to have rejected the applications for refund for the financial years in question on the ground that a particular application form RFD-01 has not been filed or that the applications for refund were filed manually and not in electronic/online mode. 5. As regards this aspect, the Bombay High Court in Laxmi Organic Industries Ltd. vs. Union of India & others 2021-TIOL-2248-HC-MUM-GST as well as the Gujarat High Court in M/s Ayana Pharma Ltd. vs. Union of India 2022-TIOL-715-HC-AHM-GST have held that Rule 97A of Central Goods and Services Tax Rules prevail and would have to be taken into account by the assessing authority and he cannot insist on only electronic filing of refund application. 6. As regards

the 2nd ground in the impugned order about the petitioner not being a registered person and therefore not entitled to seek refund under Section 54(3) is concerned, we may refer to sub section (1) of Section 54, which permits any person to make an application for refund of tax. 7. Therefore the 5th respondent could not have refused to entertain the application of the petitioner for refund of unutilized input tax credit on the ground that the petitioner was not a “registered” person at the relevant point of time. The 5th respondent should also have taken note of Rule 41 which deals with instances of transfer of credit on amalgamation/ merger etc. of businesses/companies. 8. In this view of the matter, the Writ petition is allowed; impugned order dt. 28.07.2022 passed by the 5th respondent is set aside and the matter is remitted to the 5th respondent for fresh consideration on merits within four weeks from the date of receipt of copy of this order. The 5th respondent shall also pay costs of Rs.10,000/- to the petitioner within four weeks. 9. Pending application(s), if any, also stand(s) disposed of.

Judgements (10)

HC directs Reconsideration of 100% Penalty on wrongly availed ITC for Car Purchase

Case Law Details

Case Name : Jayasri Traders Vs Assistant Commissioner (ST) (Madras High Court)

Appeal Number : W. P.No.13530 of 2024

Date of Judgement/Order : 11/06/2024

Related Assessment Year :

Courts : All High Courts Madras High Court Download Judgment/Order Jayasri Traders Vs Assistant Commissioner (ST) (Madras High Court) ITC availed on car purchase and paid subsequently: HC directs reconsideration of 100% Penalty order In recent judicial proceedings before the Madras High Court, the case of Jayasri Traders vs. Assistant Commissioner revolves around the imposition of penalties concerning Input Tax Credit (ITC) availed on a car purchase under GST regulations. The petitioner contested an order dated 28.06.2023, arguing that despite voluntary payment of tax dues before the issuance of the impugned order, a 100% penalty was imposed. Detailed Analysis The dispute originated from the petitioner, Jayasri

Traders, availing Input Tax Credit (ITC) for a car purchase, which subsequently was found to be ineligible under GST rules. Upon realization of the error, the petitioner promptly paid the tax dues under Form GST DRC 03 on 12.09.2023, prior to the issuance of the impugned order. Despite this, the Assistant Commissioner imposed a 100% penalty under Section 74 of the GST Act, prompting the petitioner to challenge the order before the Madras High Court. Legal Arguments Learned counsel for the petitioner contended that the imposition of a 100% penalty was unjustified in light of the voluntary payment of tax dues before the issuance of the impugned order. The counsel argued that principles of natural justice were compromised as the penalty was levied without proper reasoning under Section 74 of the GST Act. Additionally, the petitioner cited a circular by the Central Board of Indirect Taxes and Customs (CBIC), suggesting that interest should not be levied in such cases where tax dues have been paid in full. Government's Response On behalf of the respondents, Mr. V. Prasanth Kiran, learned Government Advocate, defended the imposition of the penalty, asserting that all procedural requirements were duly followed. He emphasized that the petitioner's reply and evidence of payment were considered during the adjudication process. However, the court noted discrepancies in the imposition of the penalty without explicit reasons for invoking Section 74, which

warranted reconsideration. Court's Decision After careful consideration of the arguments and evidence presented, the Madras High Court set aside the impugned order dated 28.06.2023. The court directed Jayasri Traders to remit 10% of the cess demand within two weeks and allowed the petitioner to submit a detailed reply to the show cause notice. Upon verification of the payment and receipt of the petitioner's reply, the Assistant Commissioner was instructed to provide a fair opportunity for personal hearing and issue a fresh order within three months. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT An order dated 28.06.2023 is assailed in this writ petition on the ground that the materials placed on record by the petitioner were not duly considered. 2. The petitioner had purchased a car and availed of Input Tax Credit (ITC) in relation thereto. Upon realizing that ITC should not have been availed of in respect of such purchase, the petitioner paid the tax dues under Form GST DRC 03 on 12.09.2023. This was communicated to the respondent in reply dated 12.06.2023 to show cause notice dated 03.05.2023. The impugned order was issued in these facts and circumstances. 3. Learned counsel for the petitioner submits that proceedings were initiated under Section 74 of applicable GST enactments and 100% penalty was imposed in spite of the petitioner remitting the requisite tax amount prior to the issuance of the impugned order. Therefore,

he submits that the matter requires re-consideration. On instructions, he submits that the petitioner agrees to remit 10% of the cess demand under the impugned order as a condition for remand. 4. Mr. V. Prasanth Kiran, learned Government Advocate, accepts notice for the respondents. He points out that principles of natural justice were complied with and that the petitioner's reply was taken into consideration. 5. The petitioner placed on record evidence of payment of a sum of Rs.4,78,573/- on 12.09.2023 with regard to the wrongful availment of Input Tax Credit. In those circumstances, by relying on a circular issued by the CBIC, the petitioner contends that interest should not be levied. On perusal of the impugned order, it is evident that the tax dues towards SGST and CGST were discharged by the petitioner. It also appears that 100% penalty was imposed under Section 74 without recording any reasons for invoking Section 74. In these circumstances, the matter requires re-consideration by putting the petitioner on terms. 6. Therefore, impugned order dated 28.06.2023 is set aside on condition that the petitioner remits 10% of the cess demand under the impugned order within two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a detailed reply to the show cause notice during the aforesaid period. Upon receipt thereof and on being satisfied that 10% of the cess amount was received, the first respondent

is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply. 7. W.P.No.13530 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.14680 and 14681 of 2024 are closed.

Judgements (11)

HC Directs Re-adjudication of E-way Bill Generation by Job Worker Based on Transaction Value

Case Law Details

Case Name : Gopal Nondy Vs Assistant Commissioner of State Tax (Calcutta High Court)

Appeal Number : WPA 13141 of 2024

Date of Judgement/Order : 13/06/2024

Related Assessment Year :

Courts : All High Courts Calcutta High Court Download Judgment/Order Gopal Nondy Vs Assistant Commissioner of State Tax (Calcutta High Court) In the case of Gopal Nondy Vs Assistant Commissioner of State Tax (Calcutta High Court), the petitioner, proprietor of Arpan Enterprise, challenged an order under Section 107 of the WBGST / CGST Act, 2017 concerning the detention and subsequent penalty on a consignment received from M/s Apex Auto Private Limited. The consignment, transported from Jamshedpur to West Bengal, was intercepted

and detained due to alleged defects in documentation, specifically the absence of an e-way bill. The petitioner argued that as a job worker under a contract with Apex Auto, the transaction value did not require an e-way bill as per Section 15 of the said Act, since it fell below Rs. 50,000. The petitioner also cited Trade Circular No. 30/2018, which exempts job workers from certain documentation requirements post job work completion. The Court noted discrepancies in how the value of goods was determined by the tax authorities, emphasizing that the transaction value should have been considered as per Section 15(1) of the Act. It directed the appellate authority to re-evaluate the case, instructing the petitioner to disclose all relevant job work documents within three weeks for proper assessment of transaction value. If the documents were not disclosed in time, the appeal would proceed based on available information. Ultimately, the Court set aside the appellate authority's decision, remanding the case for a fresh determination based on disclosed documents. It clarified that failure to provide necessary documents within the stipulated period would result in the appeal being decided based on existing records. FULL TEXT OF THE JUDGMENT/ORDER OF CALCUTTA HIGH COURT 1. Affidavit of service filed in Court today is retained with the records. 2. The present writ petition has been filed, inter alia, challenging the order dated 27th

December 2023 passed by the appellate authority under Section 107 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act"). 3. The petitioner is the proprietor of Arpan Enterprise and is registered under the provisions of the said Act. The petitioner claims to have received certain orders from M/s Apex Auto Private Limited having its place of business outside the State of West Bengal at Jamshedpur (hereinafter referred to as the "principal") for executing certain job work in respect of certain "Railway Component" (hereinafter referred to as the "consignment"). Pursuant to and in furtherance of the aforesaid contract executed between the petitioner on one hand the said principal, the petitioner received 22 pieces of consignment aggregating an invoice value of Rs.5,92,623.20/- from the said principal against two separate purchase orders dated 4th November 2022 and 21st November 2022 respectively. The aforesaid consignment was transported from Jamshedpur to the petitioner's place of business in the State of West Bengal through a transporter namely, CARCA Rapid Solutions Private Limited under two separate e-way bills both dated 23rd November 2022, for invoice amount of Rs.96,509.30/- and Rs.4,96,113.90/-respectively aggregating to Rs.5,92,623.20/-. 4. It is the petitioner's case that when the petitioner was in the process of returning the consignment upon executing the job work and had loaded the same in a vehicle, the same was

intercepted and detained on 24th/26th November, 2022 within the State of West Bengal at Nimpara, Paschim Medinipur by the respondent no. 1. As would appear from the order of detention dated 26th November 2022, the consignment was detained only on the ground that the documents tendered were found to be defective and that no e-way bill was produced for movement of the goods in question. On a physical verification conducted on the said date, no other discrepancy apart from what was indicated in the detention order was identified by the respondents. The same was followed by an order under Section 129(3) of the said Act dated 27th November 2022, where under the proper officer had determined the penalty payable by the petitioner. 5. Records would reveal that the petitioner had obtained release of the aforesaid consignment by making payment of penalty in terms of Section 129(1)(a) of the said Act and consequent thereon an order dated 29th November 2022 was passed, releasing the consignment and the conveyance which had been so detained. The petitioner has subsequently preferred an appeal challenging the said order dated 29th November 2022, determining penalty payable by the petitioner in terms of Section 129 of the said Act. The said appeal was rejected on 27th December 2023 by confirming the order dated 29th November 2022 passed by the proper officer. 6. Das, learned advocate appearing for the petitioner by drawing

attention of this Court to the purchase order appearing at page 24 of the writ petition submits that it is not in dispute that the petitioner had been entrusted to carry out certain job works on contractual basis. By placing reliance on Section 15 of the said Act, he submits that value of the taxable supply is required to be determined in terms of the said Section and since, the petitioner was carrying out job work, the petitioner had indicated the value of the supply of goods in the invoices on the basis of the transaction as is required to be done in terms of Section 15 of the said Act. He submits that since, the transaction value did not exceed Rs.50,000/-, the petitioner was, therefore, not required to generate e-way bill. This aspect was completely over-looked both by the proper officer as also by the appellate authority while passing the orders impugned.

7. By placing reliance on a trade circular no. 30/2018 dated 17th September 2018 it is submitted that after executing the job work, when the job workers returns the goods to the principal, such goods are required to be accompanied by a challan and no other documents. By further drawing attention of this Court to clause 9.4 of the said circular it is submitted that in respect of supply of job work services, although job workers are liable to pay GST, such payment is required to be made on the basis of the invoice at the time of supply of such services and the time of supply of services is required to be determined in terms of

Section 13 read with Section 31 of the said Act. He submits that the proper officer at the first instance had committed an irregularity while determining the value of the supply of goods in respect of the job work on the basis of the value of the goods and not on the basis of the transaction, for execution of the job work. 8. By drawing attention of this Court to Rule 138 of CGST/WBGST Rules 2017 (hereinafter referred to as the "said Rules") it is submitted that an e-way bill is required to be generated provided the consignment value exceeds Rs.50,000/-. Admittedly, according to the petitioner in this case, since the consignment value did not exceed Rs.50,000/-, no e-way bill was generated. There is no irregularity on the part of the petitioner in not generating the e-way bill and the consignment not being accompanied by an e-way bill. This aspect was not properly considered both by the proper officer as also by the appellate authority. In the facts as noted above, it is submitted that this Court may be pleased to set aside the orders impugned and direct the respondents, either to refund or to adjust the penalty already paid by the petitioner against future levy of GST. 9. Mr. Siddiqui, learned advocate appearing for the respondents on the other hand submits that the arguments canvassed by the petitioner before this Court are not supported by proper disclosure. The job work contract has not been disclosed and as such, in absence of such job work

contract, the proper officer had determined the value of the consignment on the basis of the value of goods and not on the basis of the contract. He, however, acknowledges the fact that the aforesaid issue requires proper consideration on the basis of appropriate disclosure to be made by the petitioner. 10. Heard the learned advocates appearing for the respective parties and considered the materials on record. 11. In this case, it may be noticed that the petitioner is a job worker. From a perusal of Explanation-2 of Rules 138 of the said Rules, it would appear that for the purpose of the said Rule, the consignment value of the said goods shall be the value determined in accordance with the provisions of Section 15 of the said Act, so declared in an invoice, a bill of supply or delivery challan as the case may be. To more fully appreciate the same, Rule 138 (1) of the said Rules and Section 15 of the said Act is extracted hereinbelow:- "138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees— (i) in relation to a supply; or (ii) for reasons other than supply; or (iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such

other information as may be required on the common portal and a unique number will be generated on the said portal: Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal: Provided further that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal: Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment: Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment. Explanation 2.- For the purposes of this rule, the consignment

value of goods shall bethevalue, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods."
xxx xxx xxx Section 15 : Value of taxable supply. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. (2) The value of supply shall include– (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier; (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both; (c) incidental expenses, including commission and packing,

charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services; (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and the State Governments. Explanation.–For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy. (3) The value of the supply shall not include any discount which is given– (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and (b) after the supply has been effected, if– (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply. (4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed. (5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the

Government on the recommendations of the Council shall be determined in such manner as may be prescribed. Explanation–For the purposes of this Act,– (a) persons shall be deemed to be related persons if– (i) such persons are officers or directors of one another's businesses; (ii) such persons are legally recognised partners in business; (iii) such persons are employer and employee; (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them; (v) one of them directly or indirectly controls the other; (vi) both of them are directly or indirectly controlled by a third person; (vii) together they directly or indirectly control a third person; or (viii) they are members of the same family; (b) the term "person" also includes legal persons; (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related. 12. Although, it has been strenuously argued by Mr. Das that the value of the goods ought to be the transaction value, however, I notice that in terms of Section 15 of the said Act where the value of supply of goods or services cannot be determined under sub-Section (1) of the said Section the same shall be determined as may be prescribed. In the instant case, I find that the petitioner chose not to disclose the contract in question, though a reflection

thereof is available in the purchase order. 13. Records, however, do not reveal that the proper officer had proceeded to ignore the transaction value by recording that the same is not possible to be determined in accordance with Section 15(1) of the said Act. In fact, the aforesaid aspect has not been considered either by the proper officer or by the appellate authority. As to whether or not the petitioner is required to generate e-way bill, would however depend on the determination of the transaction value in respect of the goods in question and the same would be required to be gone into on the basis of the facts. 14. Since admittedly, the aforesaid aspect has not been considered either by the proper officer or by the appellate authority, I remand back the matter to the appellate authority for re-determination of the aforesaid issue. I, further direct the petitioner to disclose all documents in connection with the job work for the proper officer to identify the transaction value of the goods/consignment. Such disclosure must be made by the petitioner within a period of 3 weeks the date of communication of this order. The appellate authority, on the basis of the disclosure made by the petitioner, shall decide the appeal in accordance with the observations and directions made hereinabove within 3 weeks from the date of communication of this order on the basis of the disclosures to be made by the petitioner. 15. As a sequel thereto, the order dated 27th

December 2023 passed by the appellate authority is set aside. 16. It is made clear that if the petitioner fails to disclose the documents within the time as specified above, the appellate authority shall hear out and dispose of the appeal on merits in accordance with law. 17. With the above observations and directions, the writ petition being WPA 13141 of 2024 is accordingly disposed of. 18. Since, I have not called for any affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents. 19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

Judgements (12)

Asian GPR Multiplex Guilty of Profiteering: CCI

Case Law Details

Case Name : Principal Commissioner Vs Asian GPR Multiplex (Competition Commission of India)

Appeal Number : Case No. 04/2024

Date of Judgement/Order : 24/06/2024

Related Assessment Year :

Courts : Competition Commission of India Download Judgment/Order

Principal Commissioner Vs Asian GPR Multiplex (Competition Commission of India) The Competition Commission of India (CCI) recently adjudicated on a case involving Asian GPR Multiplex and allegations of GST profiteering. The investigation, initiated under Rule 129(6) of the CGST Rules, 2017, examined whether the multiplex passed on the benefits of reduced GST rates on movie tickets to customers. The case originated from an application alleging that Asian GPR Multiplex did not lower ticket prices despite a reduction in GST rates from 28% to 18% effective January 1, 2019. The Director-General of Anti-Profiteering (DGAP) conducted a thorough investigation,

analyzing pre- and post-GST rate reduction pricing of movie tickets. According to the DGAP's report, Asian GPR Multiplex was found to have increased base ticket prices post-GST rate reduction, thereby not passing on the full benefit of the tax reduction to consumers. The investigation period spanned from January 1, 2019, to June 30, 2019, during which the multiplex allegedly profiteered Rs. 48,25,970. The Respondent contested these findings, arguing that ticket prices were adjusted within permissible limits set by regulatory authorities and citing precedents where similar cases did not attract Section 171 of the CGST Act, 2017. After careful consideration of submissions from both parties and a thorough review of evidence, the CCI upheld the findings of the DGAP. It concluded that Asian GPR Multiplex had indeed contravened Section 171 by not reducing ticket prices commensurate with the GST rate reduction. The case underscores the importance of ensuring that GST benefits reach consumers as intended, highlighting regulatory oversight in pricing practices post-GST changes. This order by the CCI sets a precedent for cases involving GST profiteering, emphasizing compliance with statutory provisions to protect consumer interests and maintain fair market practices. PlayUnmute Loaded: 1.03% Fullscreen FULL TEXT OF THE ORDER OF COMPETITION COMMISSION OF INDIA 1 The present Report dated 10.12.2019 has been received from the Director-General of Anti-

Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case and findings of investigation conducted by the DGAP are as under:- a. A reference has been received from the Standing Committee on Ant-profiteering on 02.07 2019, to conduct a detailed investigation in respect of an application dated 29.03.2019. filed by the Applicant No. 1 under Rule 128 of the Central Goods and Services Tax Rules, 2017. alleging profiteering by the Respondent with respect to supply of Services by way of admission to exhibition of cinematography films" by not passing on the benefit of reduction in the GST rate on the aforesaid movie admission tickets, from 28% to 18% wel. 01.01.2019, vide Notification No. 27/2018-Central tax (Rate) dated 31.12.2019 and instead, increased the base price to maintain the same arm-tax selling vice as detailed in Table-'A below:- Table-A b. The Applicant No. 1 had enclosed copies of tickets pre & post 01.01,2019, copy of letter dated 27.03.2019 of the Respondent confirming non-reduction of the prices of tickets along with his application In Anti-Profiteering Application Form ('APAF-1 form). c. The above application was examined by the Standing Committee on Anti-profiteering and was forwarded to the DGAP to conduct a detailed investigation in the matter Accordingly, the DGAP decided to initiate an investigation and collect evidence necessary to determine whether the benefit of

reduction in rate of tax had been passed on by the Respondent to the recipients in respect of supply of 'Services by way of admission to exhibition of cinematography films' supplied by the Respondent. d. The DGAP issued a Notice on 08.07.2019 under Rule 129 of the CGST Rules, 2017 to the Respondent calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in rate of tax had not been passed on to the recipients by way of commensurate reduction in vices and if so. to suo moto determine the quantum thereof and indicate the same in Ns reply to the Notice as well as furnish all supporting documents. Vide the said Notice. the Respondent was also given an opportunity to inspect the non-confidential evidences/information during 17.07.2019 to 19.07 2019, which were furnished by the Applicant No 1. The Respondent did not avail the same opportunity. Vide email dated 01.11 2019, the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply during 06.11.2019 to 08.11.2019, which were furnished by the Respondent. However. the Applicant No. 1 did not avail of the opportunity. e. The period covered by the current investigation was from 01.01.2019 to 30.06.2019. f. The main issues to be looked into were whether the rate of GST on the `Services by way of admission to exhibition of cinematography films where price of admission ticket was above one hundred rupees' was reduced from 28% to 18% w.e.f.

01.01.2019 and 'Services by way of admission exhibition of cinematograph films where price of emission ticket was one hundred rupees or less' was reduced from 18% to 12% w.e.f. 01 01.2019, If so, whether the benefit of such reduction in the rate of GST was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act. 2017 g. The Applicant No. 1 vide its application had annexed copy of admission ticket where the price was Rs.175/- including taxes. The Respondent had also informed vide letter dated 27.08.2019 that he had only two rate of admission tickets ie. RS. 150/- (Regular seats) and 175/- (Premium Seats) only. Hence, the investigation was limited to reduction in rate of GST from 28% to 18% only. h. From the 1 able-'A'- above it was apparent that the Respondent had increased the base price of admission ticket i.e Premium Seats' from Rs. 136.72 to 148.31 and Rs. 117.19 to 127.12 for Regular seats'. Therefore. in terms of Section 171 of the CGST Act, 2017, benefit of GST rate reduction from 28% to 1B% in respect of "Services by way of admission to exhibition of cinematography Mins", was not passed on to the recipients. i. On the basis of aforesaid pre/ post reduction in GST rates and the details of outward supplies for the period 01.12.2018 to 30.06.2019 submitted by the Respondent, it was observed that profiteering during the period from January, 2019 to June 2019 from the sale of tickets in two categories mentioned in table 'A' above amounts to Rs.

3.63.299/- for 'Premium Seats' and Rs. 44,62,671/- for Regular seats'. The total amount of net higher sale realization due to increase in the base price of the movie ticket, despite the reduction in GST rate from 28% to 18% or in other words. the profiteered amount comes to Rs. 48,25,970/-. The details of the computation are given in the Table 'B' below:- 2. The DGAP has concluded that the allegation of profiteering by way of increasing the base prices of the tickets (Services) and by way of not reducing the selling prices of the tickets (Services) commensurately. despite the rate reduction In GST rate on 'Services by way of admission to exhibition of cinematography films where price of admission ticket was above one hundred rupees" was reduced from 28% to 18% w.e.f. 01.01.2019, was not passed on to the recipients appeared to be correct The DGAP has slated that the total amount of profiteering covering the period from 01.01.2019 to 30.06.2019, was Rs. 48,25,970/-. The recipients of the services were not identifiable as no such details of the consumers have been provided. On the basis of the details of outward supplies of the product submitted by the Respondent. the DGAP has noticed that the Respondent has sold admission ticket in the State of Telangana only. 3. The above Report of the DGAP dated 10.12.2019 was considered by the erstwhile NAA and it was decided to allow the Respondent and the Applicant No. 1 to file their consolidated written

submissions in respect of the above Report of the DGAP Notice dated 16 12.2019 was also issued to the Respondent directing him to explain why the above Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the Act should not be fixed. Meanwhile, the Respondent had filed Writ Petition (Civil) No. 258812020 before the Hon'ble High Court of Telangana challenging the notice dated 16.12.2019. The proceedings were stayed for four weeks by the Hon'ble Court in the present case. vide order dated 11.02.2020. The Hon'ble Court vide order dated 03.06.2021 disposed of the aforesaid Writ Petition directing the Respondent to submit his explanation in response to the erstwhile Authority's notice dated 16,12.2019. Accordingly, the Respondent vide his letter dated 23.01.2020 has filed his written submissions on the DGAP's Report dated 10.12.2019 and stated:- a. That Rule 128 provides that the Standing Committee had to take a decision within a period Of 2 months from the date of written application. In the instant case. the written application was made on 29.03.2019 and the Standing Committee referred the case to DGAP on 02.07.2019. almost 3 months after the date of Application by the Applicant No. 1 and therefore the entire proceeding are not maintainable in terms of Rule 128 of the CGST Rules, 2017 and the investigation was time barred. b. There was reduction in the profits due to introduction of GST The

Respondent stated that the State Government had been regulatng the ticket prices through Government Orders. The last GO Ms.100 dated 26.04.2013 was challenged before the Hon'ble High Court of Andhra Pradesh in the case of Ramaknshna Galena' vs. Slate of Telangana being Writ Petition (civil) No. 1946/2014 vide order dated 31 10.2016, quashed the GO Ms.100 dated 26.04.2013 and also allowed theatre owners to charge a higher price on cinema tickets after informing the concerned authorities about the hiked prices Pursuant to the said Order of the Hong High Court. the Respondent increased the prices of tickets from Rs.125 to Rs.150 for Regular Seats' and from Rs.150 to Rs.175 for 'Premium Seats' after informing the same to the Commissioner of Police who was the licensing authority. Thereafter. the Government of Telangana issued a GO Ms.75 dated 23.06.2017 wherein the maximum rates for movie tickets was fixed at Rs.200 for Regular seats and Rs.300 for Premium seats Inclusive of all taxes. The prices determined by the Government of Telangana included an Entertainment Tax of 15% for Telugu films and 18% for non-Telugu films. c. That the DGAP while arriving at the profiteered amount had compared the base prices of the tickets with Vie point of reference being the date from which the GST Rate was reduced from 28% to 18% However it was pertinent to also take into consideration the lack of Change In base price from the period when GST was

introduced. d. That the DGAP had arrived at the profiteered amount or Rs 48,25.970/- by basing the calculation on Rs.117.19 as the commensurate base price for Regular Seats and Rs.136.72 as the commensurate base price for Premium Seats which was the same base price that was charged when the rate of lax was 28% However. the calculation should have been based on the base price of Rs 130.43 for Regular Seats and Rs 152.17 for Premium Seats. A table has been provided by the Respondent below: e. That when the base prices of Rs.130.43 for Regular Seats and Rs.152 17 for Premium Seats was taken into consideration for calculating the amount profiteered, if any, it would be evident that there was no violation of Section 171 In tact, the tax element that was borne by the Respondent had increased from Re. 19.56 to Rs.22 88 per unit in case of 'Regular Seats' and from Rs. 22.82 to 26.69 per unit In case of Premium Seats'. In essence, the Respondent had suffered losses to the extent of Rs.3.32 per unit in case of Regular Seats and Rs 1.87 per unit in case of 'Premium Seats'. f. That the DGAP tailed to appreciate that in the case of Kerala Screening Committee on Anti Profiteering Vs. Ms. Saint Gobain India Pvt. Ltd. (Case No.32/2019), it was held that Section 171 of CGST Act. 2017 would not apply where GST applicable was higher than the tax in Pre GST regime. g. That the DGAP faded to appreciate that in the case of ASV & Co. vs. Professional Colrain (2019) (NM). It was

observed that there was no reduction in the rate of tax on supply of Courier Service' after the Implementation of GST, instead there was increase in the rate of tax from 15% in pre-GST regime to 18% in post-GST regime. NM went onto hold that "the fact that the Respondent had increased his base price for providing courier service had no relevance in view of the fact that there has been no reduction in the rate of tax nor increased benefit on account of Input Tax Credit was available and hence the provisions of Section 171 of CGST Act, 2017 cannot be invoked in this case' h. The DGAP failed to appreciate that in the case of State Level Screening Committee on Anti-Profiteering, Kerala vs. Ramroj Handlooms (2019) (NM), it was held that 'there was no reduction el the rate of tax on the product with effect from 01.07.2017 and that the rate of fax in the post-GS7 era has also been increased from CST al the rate of 2 pet cent to IGS7 at the rate of 5 per cent therefore. the allegation of profiteering is not sustainable in terms of section 171 as there has been no reduction in the rate of tax'. i. The DGAP failed to appreciate that your goodselves in the case of State Level Screening Committee on Anti-Profiteering Kerala vs Panasonic India Pvt. Ltd. (2019) 20 GS7L 375 have held that when the rate of tax in the post-GST era has been increased from 26.79% to 28%. the allegation of profiteering would not be sustainable in terms of Section 171 of the CGST Act, 2017 j. The DGAP failed to appreciate

that in the following orders. NAA had held a similar view that Section 171 could not be said to be attracted when the pre-GST rate of tax was lesser than the GST rate: i. Kerala Stale Screening Committee on Anti-Profiteering vs. Sudersans (2019) 103 taxmann.com 68 (NM) ii. Kerala State Screening Committee on Anti-Profiteering vs. Emke Silks 8 Garments (P.) Ltd. (2019) 103 taxmann.com 28 (NAA) iii. Kerala State Screening Committee on Anti-Profiteering vs. Pulimoottill Silks(2019) 102 taxmann.com 84 (NAA) k. That the DGAP Report should not be accepted as the amounts of profiteering arrived at, are incorrect There had been no undue profits made by the Respondent as a result of the rate reduction from 28% to 18% w.e.f. from 01.01.2019. The price had been maintained at the same rates only with the intention of not shifting the burden of increased tax rates onto the ultimate customer. 4. A supplementary Report was sought from the DGAP on the above submissions of the Respondent under Rule 133(2A) of the Rules. The DGAP filed his clarifications raised by the Respondent vide letter dated 19.02 2020. wherein, it was stated that:- a. For the contention made by the Respondent that the Investigation was time barred, the DGAP clarified that the complaint dated 29.03 2019 against the Respondent was sent by Principal Commissioner. Medchal and was received in DGAP on 18.04.2019 and then forwarded to the Standing Committee. The Standing Committee in its meeting held on 15.05.2019

forwarded the minutes of the meeting dated 15.05.2019 which were received in DGAP on 02.07.2019. It would be seen that the period between 18.04 2019 and 15.05.2019 was less than two months and thus within time limit. b. For the averment made by the Respondent that there was reduction in his profits due to introduction of GST. the DGAP has clarified that this issue had been discussed in pare 17 of DGAP's Report in which it was shown that the Respondent had a base price (exclusive of taxes) of Rs. 136 721- and Rs. 117.19/- for the Premium and Regular class tickets respectively before the GST rate reduction on 01.01.2019 which was raised to Rs. 148.31/-and Rs. 127 12/- respectively. c. For the contention raised by the Respondent that the DGAP has not considered the lack of change in base price from when GST Was introduced, the DGAP stated that it does not interfere in the commercial decision of a Respondent, the DGAP's investigation starts only when Section 171 of CGST Act, 2017 was attracted i.e. when the Government issued notification leading to 'any reduction in rate of tax on supply of goods and service or the benefit of input fox credit" was issued. In the instant case Notification No. 27/2018 Central Tax (Rate dated 31.12.2018 was effective tom 1.01.2019 and therefore was applicable w.e.f. 01.01.2019 only. Hence, this contention of the Respondent did not hold any merit d. That the case pertains to the reduction of rate in GST regime. Thus there was no

comparison of Pre and Post GST tax rate and hence not applicable in the instant case. Therefore. the case law of Kerala Screening Committee on anti-profiteering v. M/s Saint Gobain India Pvt Ltd case no. 32/2019 referred by the Respondent is of no help to the Respondent. e. That the instant case pertains to the reduction of rate of tax from 28% in 18% in the GST regime. Whereas in the case cite° above there was no reduction of rate of tax wet 01.07.2017 end therefore there was no question of passing on the benefit of reduction of tax rate on supply of goods or services Hence, the case laws of ANV' & Co V. Professional Couriers , State Level Screening Committee on Anti-Profiteering V. Ram Raj Handlooms *fend by the Respondent are of no help to him. f. For the averment made by the Respondent that the price at which the ticket had been sold has been maintained constant throughput the pre-GST and post-GST era, the DGAP submitted that the Respondent ought to have reduced the price when there was a rate reduction in GST era effective from 01.01.2019 in terms of Section 171 of CGST Act, 2017. 5. Hearing in the matter was held by the Commission on 09.05.2024 It was attended by Sh. Vaibhav Gagger. Advocate, Sh. Swapnil Srivastava, Adviocate, Sh. Wdur Mohan. Advocate and Sh. Somdev Advocate for the Respondent and Sh. Sanjay Kumar Chatter, Assistant Commissioner and Sh. Awanindra Kumar, Inspector were present on the behalf of

DGAP None appeared on behalf of the Applicant No. 1. 1 re Respondent was heard and during the course of the hearing, the Counsel advanced their arguments before the Commission. The Counsel also requested one weeks' time to submit written submissions along with relevant documents. The Commission considered the request of the Respondent and decided to grant one weeks' time to submit written submissions along with relevant documents. 6 The Respondent vide his letter dated 16 05 2024 filed his additional written submissions and stated:. a. That the DGAP failed to take Into consideration that the prices being charged by the Respondent is within the maximum permissible limit set by the Regulating Authority i.e., the licensing authority which is a specialized body. The Respondent relied upon Hon'ble Supreme Court of India's judgment dated 05 12.2018 in Competition Commission of India v. Bhani Ainel Lid. & Ors b. That the DGAP has Misconstrued the scope and ambit of Section 171 of the CGST Act, 2017 The Respondent relied upon the decision of the Hon'ble High Court of Delhi in the case of Reckitt Benckiser India Private Limited & Ors. v. onion of India & Ors. c. That the DGAP has gone beyond the purview of the Complaint made by the Applicant. d That the Standing Committee considered the DGAP's Report beyond the mandatory statutory period. e. Rule 133(3) mentions a 'recipient' to whom the benefit was not passed and not 'receipt'. Section

2(93) of the CGST Act defines a 'recipient'. Hence, the profiteered amount has to be determined in relation to a 'recipient' only. 7. This Commission has carefully perused all the submissions and the documents placed on record and the arguments advanced by the Respondent. The Commission needs to determine as to whether there was any reduction in the GST rate and whether the benefit of reduction in the rate of tax was passed on or not to the recipients as provided under Section 171 of the CGST Act, 2017. Section 171 of the CGST Act provides as under.- '(1) Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices (2). The Control Government may, on recommendations of the Council. by notification, constitute an Authority. or empower an existing Authority constituted under any law for the tune being in tome, to examine whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction hi the price of the goods or services or both supplied by him. (3). The Authority referred to in sub-section (2) shall exorcise such powers and discharge such functions as may be prescribed: (3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comas to the conclusion that any registered person has profiteered under subsection (1).

such person shall be liable to pay penalty equivalent to ten percent of the amount so profiteered: PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the Order by the Authority . Explanation:- For the purpose of this section, the expression 'profiteer's? shall mean the amount determined on account of not passing 016 benefit of reduction in rate of lax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services of both." 8. This Commission further finds that the Central and the State Governments had reduced the rates of GST on 'Services by way of admission to exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% w e.f. 01.01 2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12 2018. the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 111 of the above Act. 9. The Commission finds that, one of the contentions of the Respondent was that that the entire proceeding are not maintainable in terms of Rule 128 of the CGST Rules. 2017 as the investigation was time barred. In this regard, it is to mention that the complaint dated 2903.2019 sent by Principal Commissioner, Medchal was received in DGAP on 18.04.2019 and then forwarded to the Standing Committee. The Standing

Committee in its meeting held on 15.05.2019 forwarded the minutes of the meeting dated 15.05 2019 which were received in MAP on 02 07.2019 It would be seen that me period between 18.04.2019 and 15.05 2019 was less than two months and thus within time limit and therefore. the above contention of the Respondent is not tenable. 10. The Respondent further contended that there was reduction in his profits due to introduction of GST. In this regard, the Commission finds that upon perusal of table 'A above it is evident that the Respondent had a base price (exclusive of taxes) of Rs. 136.72)- and Rs. 117 19/- for the Premium and Regular class tickets respectively before the GST rate reduction on 01.01.2019 which was raised to Rs. 148.31/s and Rs. 127.12/- respectively. 11. The Respondent further contended that the licensing authority under the Telangana Cinema (Regulation) Act, 1955 had been regulating the ticket prices through Government Orders. The last GO Ms.100 dated 2604.2013 was challenged before the Hon'ble High Court of Andhra Pradesh in in the case of Ramakrishna Gilterrati vs Stale of Telangane, wherein the Hon'ble Court vide order dated 31.10.2016 allowed theatre owners to charge a higher price on cinema tickets after informing the Concerned authorities about the hiked prices. The Respondent has also contended that the DGAP failed to take into consideration that the prices being charged by the Respondent is within the maximum permissible

limit set by the Regulating Authority. The Commission finds that the licensing authority only fixes the maximum price at which a movie ticket can be sold. Levy of GST is fixed by the GST Council which is a Constitutional body and all the State Governments are part of the GST Council. Section 171 of the CGST Act 2017 and Rules made thereunder is limited to the extent of passing of benefit of rate reduction which the Respondent has to comply with. The fixing of the prices by the State Government or the licensing authority does not grant a waiver horn applicability or the GST Act. The reliance on the judgement of Competition Commission of India v. Bharti Airtel Ltd. & Ors. by the Respondent is completely misplaced as the facts and circumstances of the said case are different and distinct from facts of the case at hand. In the said judgement the Hon'ble Supreme Court has acknowledged the exclusive jurisdiction of the Competition Commission of India arising under the Competition Act, 2002. Further. arguendo, even if it is assumed that the said judgement is applicable to the present case, there are no jurisdictional facts which need to be ascertained from the Licensing Authority. The Respondent should have kept his base prices same to transfer the benefit of rate reduction to the consumers. Instead, he increased the base prices of tickets thereby wrongly appropriating the benefit of rate reduction. Therefore. the above contention of the Respondent cannot be accepted. 12.

The Commission further finds that the Respondent also contended that the DGAP has not considered the lack of change in base price from the period when GST was introduced. The Respondent also contended that the DGAP should have considered the base price of tickets which was applicable before Introduction of GST i.e. Rs 130.43 for regular tickets and Rs. 152.17 for premium tickets. In this regard, it is to mention that the DGAP starts investigating only when Section 171 of CGST Act, 2017 was attracted i.e. when the Government issued notification leading to "any reduction NI rate of tax on supply of goods and service or the benefit of input fax credit". In the instant case Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018 was effective form 01.01.2019 and therefore was applicable w.e.f. 01.01.2019 only. Therefore the above contention of the Respondent is not tenable and hence denied 13. The Commission further finds that the Respondent in his submission also reffered to various case laws of NM namely Kemie Screening Committee on Mn Profiteering Vs Ms. Saint Gobeln India Pvt. Ltd (2019), ASV 8 Co. vs. Professional Couriers (2019), Slato Love! Screening Committee on Anti-Profiteering, Kerala vs. Ramraj Handlooms (2019). In this regard it is to mention that the present case pertains to reduction of rate of tax from 28% to 18% in GST regime, however. in the case laws referred above, there was no reduction of rate of tax w.e.f. 01.07.2017 and therefor's,

there was no question of passing on the benefit of reduction of tax rate on supply of goods or services. Thus. the above case laws cited by the Respondent are not relevant. Reduction of tax and increase in tax are not the same and each has its own legal implications and consequences under the law and hence. cannot be compared. 14. The Respondent has also averred that the DGAP has misconstrued the scope and ambit of Section 171 of the CGST Act, 2017. In this regard. the Commission finds that Section 171 of the CGST Act, 2017 mandates that any benefit of reduction in the rate of tax or the benefit of ITC which accrues to a supplier must be passed on to the recipients of supply, as both are concessions given by the Government and the suppliers are not entitled to appropriate such benefits by increasing their profit margin at the cost of the consumers. Such benefit must go to the consumers. The DGAP has to adopt a mathematical methodology to arrive at the amount profiteered. An amount which ought to have been charged by the supplier from the recipient after factoring the benefit of ITC or reduction in rate of tax, is to be determined by the OGAP in the course of such calculation of profiteered amount Therefore, In view of the above, the OGAP has not miscontured the ambit of Section 171 of the CGST Act, 2017 For the above contention the Respondent retied upon the decision of the Hon’bte High Court of Delhi in the case of Peckitt Benckiser India Private Limited 8

Ors. v. Union of India 8 Ors. However, the Respondent has failed to bring on record any factor necessitating the setting off of price reductions. Therefore. the case law sought to be relied upon is of no help to the Respondent. 15. The Commission finds that the Respondent also contended that DGAP has gone beyond the purview of the Complaint made by the Applicant No. 1. In this regard It is to mention that Section 171 (2) of the CGST Act, 2017 states that 'the Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input fax credits availed by any registered person or the reduction 14 Me tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him'. Therefore, the above Section has already given powers to this Commission to expand the scope of the investigation to all the supplies made by a registered person. The Section empowers this Commission to examine if the benefit of input tax credit and reduced tax rates have boon passed on by him or not. Since, the Section doesn't mention about any particular recipient it implies that all the supplies made by a registered person to all recipients need to be examined from the perspective of passing on the benefit to each recipient. Therefore, in view of the above, the contention raised by the Respondent is not tenable and

denied Further, tax policies are made keeping in view the larger interest of the society and nation and any violation of the same entails potential to larger harm Individual applicant may be a trigger for investigation and once the proceedings are initiated, it is bound to consider all the taxes which have not been paid or misappropriated at the cost of society. 16. The argument advanced by the Respondent that Rule 133(3) mentions a 'recipient' and not 'recipients' is baseless as the same is contrary to Section 13(2) of General Clauses Act. 1897 which states words in singular shall include the plural. 17. The Commission finds that, as per the details and calculations in Tables 'A' & above. the Respondent had been profiteering by way of increasing the base prices of the tickets (Services) arid by not reducing the selling price of the tickets (Services) commensurately, despite reduction in GST rate on 'Services by way of admission to exhibition of cinematograph films' where price of ticket was one hundred rupees or above, from 28% to 18% wet. 01.01 2019. From the Table 'EC above, it was evident that the base prices of the admission tickets was indeed increased. as a result of which the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction In prices charged The total amount of profiteering covering the period of 01.01.2019 to 30.06.2019 13 Rs. 46,25,970/-. 18. This Commission, based on the facts discussed above, finds that the

Respondent had resorted to profiteering by way of either increasing the base price of the service while maintaining the same selling price or by way of not reducing the selling price of the service commensurately, despite a reduction in CST rate, on `Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees' from 28% to 18% wet. 01.01.2019 upto 30.06 2019. On this account, the Respondent profiteered to the tune of 48,25,970/- (including GST) from the recipients. Thus the profiteered amount was determined as Rs. 48.25.970/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017 Further, as per the provisions of Rule 133 (3) (a) of the CGST Rules. 2017. the Respondent is directed to reduce the prices of his tickets, keeping in view the reduction in the rate of tax so that the benefit would be passed on to the recipients The Respondent is also directed to deposit the profiteered amount of Rs. 48,25,970/- along with the interest, which is to be calculated @ 18% from the date, when the above amount was collected by him, from the recipients. RI the above amount is deposited Since the recipients, in this case, are not identifiable, the Respondent is directed to deposit the amount of profiteering in two equal parts, of Rs. 24.12.985/- in the Central Consumer Welfare Fund and Rs. 24,12.985/- In the Telangana State Consumer Welfare Fund as per the provisions of Rule 133 (3) (c) of the CGST Rules,

2017, along wth interest @ 18%. The above amount shall be deposited within a penod of 3 months from the date of receipt of this Order failing which the same shall be recovered by the jurisdictional Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017 19. It is also evident from the above narration of facts that the Respondent has denied benefit of rate reducton to his customers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act. However. perusal of the provisions 01 Section 171 (3A), under which liability for penalty anses for the above violation, shows that it has been inserted in the CGST Act, 2017 w e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not In operation during the period from 01.07.2017 to 30.06.2019 when the Respondent had committed the above violation. Hence, the penalty prescribed under Section 171 (3A) carnet be imposed on the Respondent retrospectively for the said period. 20. Further, the Commission, as per Rule 136 of the CGST Rules 2017. directs the juridictional Commissioners of CGST/SGST Telangana to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent is deposited in the respective CWFs as ordered by this Commission. A Report in compliance of this Order shall be submitted to this Commission by the UGAP within a period of 4

months from the date of receipt of this Order. 21. A copy of this order be suppled to all the interested parties free of cost and foe of the case be consigned after completion

Circular 1

Time of Supply for Spectrum Usage and Similar Services under GST

On June 26, 2024, the Ministry of Finance issued CGST

Circular No. 222/16/2024-GST to address the time of supply for GST payment on spectrum allocation services when telecom operators opt for deferred payment. The circular clarifies that the Department of Telecommunications (DoT) provides spectrum allocation as a continuous supply of services. For GST purposes, if a telecom operator chooses to pay in installments, GST will be due as per the installment schedule outlined in the Frequency Assignment Letter. The time of supply for such services is determined by Section 13(3) of the CGST Act, which considers the earlier of the payment date recorded in the recipient's books or the date debited in their bank account, or sixty days after the invoice date. The Frequency Assignment Letter is not considered an invoice but a bid acceptance document. The circular further states that GST is payable either upfront or in installments as specified, ensuring consistent application of these rules across field formations. This clarification also applies to other cases where natural resources are allocated by the government under similar

deferred payment terms, reinforcing the definition of continuous supply of services. This guidance aims to streamline GST compliance for spectrum usage and similar services, promoting clarity and uniformity in tax administration. F. No. CBIC-20001/4/2024-GST Government of India Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 222/16/2024-GST Dated the 26th June, 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification on time of supply of services of spectrum usage and other similar services under GST -reg. Representations have been received from the trade and the field formations seeking clarification regarding the time of supply for payment of GST in respect of supply of spectrum allocation services in cases where the successful bidder for spectrum allocation (i.e. the telecom operator) opts for making payments in instalments under deferred payment option as per Frequency Assignment Letter (FAL) issued by Department of Telecommunication (DoT), Government of India. 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central

Goods and Services Tax Act, 2017 (hereinafter referred to As "CGST Act"), hereby clarifies the issues as under: S. No. Issue Clarification In cases of spectrum allocation where the successful bidder (i.e. the 'telecom operator') opts for making payments in instalments as mentioned in the Notice Inviting Application (NIA) and Frequency Assignment Letter (FAL) issued by Department of Telecommunications (DoT), Government of India, what will be the time of supply for the purpose of payment of GST on the said supply of spectrum allocation services. Under the spectrum allocation model followed by DoT, bidder (the telecom operator) bids for securing the right to use spectrum offered by the government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/ telecom operator. The GST is to be discharged on the supply of spectrum allocation services by the recipient of services (the telecom operator) on reverse charge basis [Notification No. 13/2017-Central Tax (Rate) dated 28thJune, 2017 referred]. 2.1 In respect of the said supply of spectrum allocation services, if the telecom operator chooses the option to make payment in installments, the payment has to be made spread over the contract period in installments and payment for each installment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract. The same is a 'continuous supply of

services' as defined under section 2(33) of the CGST Act, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations. 2.2 As per section 13(1) of CGST Act, the liability to pay tax on supply of services shall arise at the time of supply. In case of forward charge supplies, the time of supply of services is governed by section 13(2) of CGST Act, which is the earlier of date of issue of invoice by the supplier or date of provision of service or the date of payment, as the case maybe. 2.3 However, in respect of supply of services, on which tax is paid or liable to be paid on reverse charge basis, as per Section 13(3) of CGST Act, 2017, the time of supply of services shall be the earlier of the following dates, namely:- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier. 2.3.1 Some of the field formations are considering the Frequency Assignment Letter issued by DoT as akin to any other document, by whatever name called, in lieu of an invoice mentioned in clause (b) of section 13(3) of CGST Act and are demanding interest on instalments paid after 60 days

from the date of issue of the same. 2.3.2 It is observed that Frequency Assignment Letter is in the nature of a bid acceptance document intimating the telecom operator that the result of the auction has been accepted by the competent authority and the details of blocks and spectrum allotted to the telecom operator. The Frequency Allotment Letter also mentions the options and the amounts to be paid by the telecom operator in each of the two options. 2.4 Further, as per section 31(5)(a) of CGST Act, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment. In the instant case, the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the Notice Inviting Applications read with the Frequency Assignment Letter. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator. 3. In the light of above, it is clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment is made by the telecom operator in specified installments, GST would be payable as and when the payments are due or made, whichever is earlier.

4. It is also clarified that the similar treatment regarding the time of supply, as is discussed in the above paras, may apply in other cases also where any natural resources are being allocated by the government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time. 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) Principal Commissioner (GST)

Circular (2)

GST on HAM Model for NHAI Projects: Time of Supply Clarified

CGST Circular No. 221/15/2024, issued on June 26, 2024, clarifies the time of supply for GST purposes concerning the construction and maintenance services of National Highway Projects under the Hybrid Annuity Mode (HAM) model by NHAI. The HAM model involves the concessionaire undertaking the Design, Build, Operate, and Transfer (DBOT) of highways, with payments staggered over the contract period. The circular explains that such contracts fall under the 'Continuous supply of services' as per Section 2(33) of the CGST Act. According to Section 13(2) of the CGST Act, read with Section 31(5), the time of supply is determined by the date of invoice issuance or payment receipt, whichever is earlier, if the invoice is issued within the specified period or upon event completion as stipulated in the contract. If the invoice is not issued as specified, the time of supply defaults to the date of service provision or payment receipt, whichever comes first. Additionally, the interest component included in annuity

payments from NHAI to the concessionaire is taxable under Section 15(2)(d) of the CGST Act. This clarification ensures uniformity in GST implementation for HAM projects across field formations. F. No. CBIC-20001/4/2024-GST Government of India Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 221/15/2024-GST Dated the 26th June, 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model -reg. Representations have been received from the trade and the field formations seeking clarification regarding the time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Mode (HAM) model, where certain portion of Bid Project Cost is received during construction period and remaining payment is received through deferred payment (annuity) spread over years. 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field

formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under: PlayUnmute Loaded: 0.52% Fullscreen S. No. Issue Clarification 1. Under HAM model of National Highways Authority of India (NHAI), the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15- 17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model? Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire. 2.1 A HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on

the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same. 2.2 In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act 2.3 As per clause (a) of Section 13(2) of CGST Act, the time of supply in respect of a supply of services shall be the date of issue of Invoice, or date of receipt of payment, whichever is earlier, in cases where invoice is issued within the period prescribed under section 31 of CGST Act. Further, as per clause (b) of Section 13(2) of CGST Act, in cases where invoice is not issued within the period prescribed under section 31, the time of supply of service shall be date of provision of the service or date of receipt of payment, whichever is earlier. However, as per section 31(5) of CGST Act, in cases of continuous supply of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date

or the date of completion of that event. 2.4 Accordingly, as per section 13(2) of CGST Act, read with section 31(5) of CGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per clause (b) of section 13(2), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act. 3. In the light of above, it is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax

liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier. 4. It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act. 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) Principal Commissioner (GST)

Circular (3)

Place of Supply for Custodial Services Provided by Banks to Foreign Portfolio Investors

On June 26, 2024, the Ministry of Finance issued CGST Circular No. 220/14/2024-GST to clarify the place of supply for custodial services provided by banks to Foreign Portfolio Investors (FPIs). Previously, some field formations viewed these services as falling under Section 13(8)(a) of the IGST Act, treating the location of the service provider (banks) as the place of supply. The circular clarifies that custodial services, defined by SEBI regulations as including safekeeping of securities and incidental services, are not services provided to 'account holders' as per Section 13(8)(a). Instead, these services should be determined under the default provision of Section 13(2) of the IGST Act, which considers the location of the service recipient. This decision aligns with previous interpretations from the Service Tax regime, where custodial services were not deemed services to account holders but were treated under the default rule for place of provision. This clarification ensures consistent application of GST provisions across field formations, aiding banks and FPIs in compliance with GST laws regarding

custodial services. F.No. CBIC-20001/4/2024-GST Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi Circular No 220/14/2024-GST Dated the 26th June, 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/ Sir, Subject: Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors-reg Representations have been received seeking clarification on the Place of Supply in cases of Custodial Services provided by Banks to Foreign Portfolio Investors (hereinafter referred to as "FPIs"), as a view is being taken by some field formations that the Place of Supply in case of 'custodial service' would be determined as per Section 13(8)(a) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"), i.e. the location of the service provider (banks or financial institutions). 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issue as under: Issue Clarification Whether the activity of providing Custodial

Services by banks or financial institutions to FPIs will be treated as services provided to account holder' under Section 13(8)(a) of the IGST Act, 2017? Further, how the place of supply of the said services shall be determined? According to the Securities and Exchange Board of India (Custodian of Securities) Regulations 1996, 'Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes- maintaining accounts of securities of a client; collecting the benefits or rights accruing to the client in respect of securities; keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and maintaining and reconciling records of the services referred above. As per Regulation 20(1) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, an FPI is allowed to invest only in the following securities, namely- (a) shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India; (b) units of schemes launched by mutual funds under Chapter V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996; (c) units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999; (d)

derivatives traded on a recognized stock exchange; (e) units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board; (f) Indian Depository Receipts; (g) any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time; and (h) such other instruments as specified by the Board from time to time. Various banks enter into custodial agreements with the Foreign Portfolio Investors (FPIs) for the provision of such custodial services. The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs. As per clause (a) of sub-section (8) of section 13 of IGST Act, Place of Supply of services supplied by banking company or a financial institution or a non-banking company to account holders shall be the location of the supplier of services. As per Explanation (a) of Section 13(8) of IGST Act, 'account' means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account. It is mentioned that the provisions similar to above provisions under IGST Act existed during the Service Tax regime. The place of provision of service under Service Tax was governed by the Service Tax Place of Provision of Supply Rules, 2012. Provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules,

2012 were identical to that of section 13(8)(a) of the IGST Act. The Education Guide under the Service Tax Law clarified the scope of the term “account holder” and the services provided by banks to account holders as well as the services which are not provided to account holders, as below: “Question: 5.9.2 What is the meaning of “account holder”? Which accounts are not covered by this rule? Answer: “Account” has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule. Question:5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)? Answer: Following are examples of services that are provided by a banking company or financial institution to an “account holder”, in the ordinary course of business :- i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc; ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc. Question:5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule? Answer: Following are examples of services

that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:- i) financial leasing services including equipment leasing and hire purchase; ii) merchant banking services; iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing; iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise." Accordingly, as per clarification given in Education Guide under Service Tax Regime, the custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder. As the provisions of section 13(8)(a) of the IGST Act are similar to the provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012, the clarification given in the Education Guide under Service Tax Regime is equally applicable under GST

Regime. Accordingly, it is clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered under Section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under Section 13(8)(a) of the IGST Act but has to be determined under the default provision i.e., sub-section (2) of section 13 of the IGST Act. 2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow. (Sanjay Mangal) Principal Commissioner (GST)

Circular (4)

Input Tax Credit on Ducts & Manholes Used in Optical Fiber Cable Networks

Circular No. 219/13/2024-GST issued by the GST Policy Wing addresses the availability of input tax credit (ITC) on ducts and manholes used in the network of optical fiber cables cables (OFCs) for telecommunication services under section 17(5) of the CGST Act, 2017. The clarification responds to concerns raised by the Cellular Operators Association of India (COAI) regarding the denial of ITC by some tax authorities, citing these components as immovable property ineligible for credit. The circular interprets section 17(5) and its Explanation, which excludes ITC for goods used in constructing immovable property other than plant and machinery. It asserts that ducts and manholes integral to OFC networks qualify as "plant and machinery" under the Act, essential for transmitting telecommunication signals. Not being explicitly excluded under the Act's definitions, these components are deemed eligible for ITC, ensuring uniformity in tax treatment across jurisdictions and discouraging unnecessary litigation in the telecommunications sector. F.No. CBIC-20001/4/2024-GST

Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 219/13/2024-GST Dated 26th June, 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables cables (OFCs) in terms of section 17(5) of the CGST Act, 2017 – reg. Representations have been received from Cellular Operators Association of India (COAI) submitting that input tax credit (ITC) is being denied by some tax authorities on ducts and manholes used in network of optical fiber cables cables (OFCs)on the ground that the same is blocked as per section 17(5) of the Central Goods & Services Tax Act, 2017 (herein after referred to as the 'CGST Act"), being in nature of immovable property (other than Plant and Machinery). It has been requested to issue clarification in respect of availability of ITC on ducts and manholes used in network of optical fiber cables cables (OFCs), so as to prevent unwarranted litigation in the telecommunication sector across the country. 2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by

section 168 (1) of the CGST Act, hereby clarifies the issue as below. Issue Clarification Whether the input tax credit on the ducts and manholes used in network of optical fiber cables cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section (5) of section 17 of the CGST Act, read with Explanation to section 17 of CGST Act ? 1. Sub-section (5) to Section 17 of the CGST Act provides that input tax credit shall not be available, inter alia, in respect of the following: i. works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; or ii. goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. 2. Explanation in section 17 of CGST Act provides that the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises. 3. Ducts and manholes are basic components for the optical fiber

cable cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Moreover, ducts and manholes used in network of optical fiber cables cables (OFCs) have not been specifically excluded from the definition of "plant and machinery" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises. 4. Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act. 3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of

the Board. Hindi version would follow. (Sanjay Mangal) Pr. Commissioner (GST)

Circular (5)

GST on Loans Provided by Overseas Affiliate to Indian Affiliate or Related Persons

CGST Circular No. 218/12/2024, issued on June 26, 2024, addresses the taxability of loans provided by overseas affiliates to Indian affiliates or by a person to a related person. The circular clarifies that, as per Section 7(1)(c) of the CGST Act and Schedule I, the act of providing loans between related entities qualifies as a supply of services. However, services related to extending loans, deposits, or advances, where consideration is solely interest or discount, are exempt from GST under Notification No. 12/2017-Central Tax (Rate). The circular specifies that if no additional charges such as processing fees are levied, there is no taxable supply of services. Conversely, if any additional fees are charged, they are considered taxable. Furthermore, the circular elucidates that related parties often do not undergo the same extensive loan processing as independent lenders, and thus, any fee for such services would be subject to GST. The document aims to standardize GST treatment for loan transactions between related entities, ensuring consistent implementation across field formations. F. No. CBIC-20001/4/2024-GST Government of India Ministry of Finance (Department of Revenue) Central Board of Indirect

Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 218/12/2024-GST Dated the 26th June 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person- reg. Representations have been received from trade and industry seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount, and whether any GST is applicable on the same. 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under: S. No. Issue Clarification Clarification regarding taxability of the transaction of providing loan by an overseas entity to its Indian related entity or by a person in India to a related person 1 Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration

in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not. 1. As per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST. 2. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate). Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST. 3. It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the

loan in such cases, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. The processing fee/ service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified at serial number 42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC. 4. It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the

borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST. 5. However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing. 6. Even in case of loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/

independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan. 7. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of Central Goods and Services Tax Rules, 2017. 8. However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person

availing the loan. 3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 4. Difficulties, if any, in implementing this Circular may please be brought to the notice of the Board. Hindi version would follow. (Sanjay Mangal) Principal Commissioner (GST)

Circular (6)

GST on Loans Provided by Overseas Affiliate to Indian Affiliate or Related Persons

CGST Circular No. 218/12/2024, issued on June 26, 2024, addresses the taxability of loans provided by overseas affiliates to Indian affiliates or by a person to a related person. The circular clarifies that, as per Section 7(1)(c) of the CGST Act and Schedule I, the act of providing loans between related entities qualifies as a supply of services. However, services related to extending loans, deposits, or advances, where consideration is solely interest or discount, are exempt from GST under Notification No. 12/2017-Central Tax (Rate). The circular specifies that if no additional charges such as processing fees are levied, there is no taxable supply of services. Conversely, if any additional fees are charged, they are considered taxable. Furthermore, the circular elucidates that related parties often do not undergo the same extensive loan processing as independent lenders, and thus, any fee for such services would be subject to GST. The document aims to standardize GST treatment for loan transactions between related entities,

ensuring consistent implementation across field formations. F. No. CBIC-20001/4/2024-GST Government of India Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 218/12/2024-GST Dated the 26th June 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person- reg. Representations have been received from trade and industry seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount, and whether any GST is applicable on the same. 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under: S. No. Issue Clarification Clarification regarding taxability of the transaction of providing loan by an overseas entity to its Indian related entity or by a

person in India to a related person 1 Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not. 1. As per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST. 2. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate). Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST. 3. It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other

than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. The processing fee/ service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified at serial number 42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC. 4. It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as

well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST. 5. However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing. 6. Even in case of

loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan. 7. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of Central Goods and Services Tax Rules, 2017. 8. However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the

consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan. 3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 4. Difficulties, if any, in implementing this Circular may please be brought to the notice of the Board. Hindi version would follow. (Sanjay Mangal) Principal Commissioner (GST)

Circular (7)

ITC Entitlement for Insurance Companies on Motor Vehicle Repair Expenses under Reimbursement Claims

The Ministry of Finance

issued CGST Circular

No. 217/11/2024-GST on June 26, 2024,

to clarify the entitlement of input tax credit (ITC) for insurance companies on expenses incurred for motor vehicle repairs under the reimbursement mode of insurance claim settlement. The circular addresses concerns raised by field formations regarding ITC availability when insurance companies reimburse policyholders for repair costs paid to non-network garages. According to the circular, insurance companies are entitled to ITC for repair services received in reimbursement mode, as the insurance company is considered the recipient of the repair service under Section 2(93) of the CGST Act. The insurance companies are liable to pay the approved claim cost, making them eligible for ITC on the invoices issued in their

name. However, ITC is only available to the extent of the approved claim cost reimbursed to the insured. If a garage issues separate invoices for the approved claim cost and additional charges borne by the insured, ITC is available to the insurance company only on the approved claim cost. If the invoice is not issued in the name of the insurance company, ITC is not available. This clarification ensures uniform application of GST provisions across field formations, aiding compliance for insurance companies involved in motor vehicle insurance and repair claim settlements. F. No. CBIC-20001/4/2024-GST Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 217/11/2024-GST Dated the 26thJune, 2024 To, The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All) The Principal Directors General / Directors General (All) Madam/Sir, Subject: Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement-reg. The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policy holders and settle the claims in two modes i.e., Cashless

or Reimbursement. 1.2 Under both modes of settlement, the insurance company accounts for repair liability (as assessed by the Surveyor/ Loss Assessor) as claim cost and is liable to make payment of approved repair charges to the garage. In both the cases, the invoices are generally issued by the garages in the name of Insurance companies. While in case of Cashless Mode, the insurance companies directly make the payment of approved repair charge to the Network Garage, in case of Reimbursement mode, the payment is first made by the Insured to the Non-Network Garage, which is subsequently reimbursed by the insurance company to the Insured, to the extent of approved repair/ claim cost. Accordingly, the insurance companies may be availing input tax credit (ITC) on the tax paid in respect of such repair services provided by the garages in Cashless Mode of claim settlement as well as in Reimbursement Mode of claim settlement on the basis of the invoices issued by the garages in their name. 1.3 It has been represented by the insurance companies that in case of reimbursement mode of claim settlement, some field formations are raising objections on availment of ITC by insurance companies in respect of repair invoices issued by the non-network garages on insurance companies. It is being claimed by the said field formations that in case of reimbursement mode of claim settlement, there is no credit

facility offered by the garages to the Insurance Companies and therefore, the supply of repair service is made by the garage to the insured and not to the insurer. Accordingly, it is being claimed that ITC of repair invoices, in such cases, should not be available to the insurance companies. 1.4 Request has been received seeking clarity on availability of ITC in respect of repair expenses incurred in case of reimbursement mode of claim settlement. 2. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies the following: S. No. Issue Clarification 1 The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders and settle the claims in two modes i.e., Cashless or Reimbursement. Whether ITC is available to insurance companies in respect of repair expenses reimbursed by the insurance company in case of reimbursement mode of claim settlement. Under reimbursement mode of claim settlement, the insured avails repair services from non-network garages with which the insurance companies do not have routine business relationship. The said garages issue the invoice in the

name of the insurance company while not extending credit facility for the repair costs. Accordingly, the policy holder/ insured makes payment of such repair services, and subsequently, the insurance company reimburses the approved claim cost to the insured. Section 17(5) of the CGST Act provides that ITC in respect of services of repair of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him. Section 16 of CGST Act provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of the said Act, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. Further, section 2(93) of CGST Act defines "recipient" of supply of goods or services or both, as the person who is liable to pay the consideration, where such consideration is payable for the said supply of goods or services or both. Moreover, as per section 2(31) of CGST Act, "consideration" includes any payment made or to be made in relation to supply of the goods or services or both, whether by the recipient or by any other person. In reimbursement mode of claim settlement, the

payment is made by the insurance company for the approved cost of repair services through reimbursement to the insured. Further, irrespective of the fact that the payment of the repair services to the garage is first made by the insured, which is then reimbursed by the insurance company to the insured to the extent of the approved claim cost, the liability to pay for the repair service for the approved claim cost lies with the insurance company, and thus, the insurance company is covered in the definition of "recipient" in respect of the said supply of services of vehicle repair provided by the garage under section 2(93) of CGST Act, to the extent of approved repair liability. Moreover, availment of credit in respect of input tax paid on motor vehicle repair services received by the insurance company for outward supply of insurance services for such motor vehicles is not barred under section 17(5) of CGST Act. Accordingly, it is clarified that ITC is available to Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement. 2. Where the invoice raised by the garage also includes an amount in excess of the approved claim cost, the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions viz. the compulsory deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of

salvage of the damaged parts of the motor vehicles, etc. The remaining amount is to be paid by the insured to the garage. What is the extent of ITC available to the insurer in such cases? In cases where the garage issues two separate invoices in respect of the repair services, one to the insurance company in respect of approved claim cost and second to the customer for the amount of repair service in excess of the approved claim cost, input tax credit may be available to the insurance company on the said invoice issued to the insurance company subject to reimbursement of said amount by insurance company to the customer. However, if the invoice for full amount for repair services is issued to the insurance company while the insurance company makes reimbursement to the insured only for the approved claim cost, then, the input tax credit may be available to the insurance company only to the extent of reimbursement of the approved claim cost to the insured, and not on the full invoice value. 3. Whether ITC is available to the insurer where the invoice for the repair of the vehicle is not in name of the insurance company. In such a case, condition of clause (a) and (aa) of section 16(2) of CGST Act is not satisfied and accordingly, input tax credit will not be available to the insurance company in respect of such an invoice 3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 4. Difficulty, if

any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow. Sanjay Mangal Principal Commissioner (GST)

Circular (8)

GST liability and ITC Clarifications for Warranty/ Extended Warranty

CGST Circular No. 216/10/2024, issued on June 26, 2024, provides detailed clarifications on GST liability and input tax credit (ITC) availability in warranty and extended warranty scenarios, building on Circular No. 195/07/2023-GST. The circular clarifies that the rules for GST and ITC reversal, previously applied to part replacements under warranty, also apply when entire goods are replaced. When distributors replace parts or goods from their own stock and later receive replenishments from manufacturers without extra cost, no GST is due on such replenishments, nor is ITC reversal required. Additionally, the circular addresses the nature of extended warranty supplies. If the extended warranty is agreed upon at the time of the original sale and provided by a different supplier than the goods, it is treated as a separate supply, not as part of a composite supply. When extended warranty agreements are made after the original sale, they are treated as distinct service supplies. These clarifications ensure consistent application of GST laws, minimizing disputes and ensuring compliance across various warranty scenarios. F. No. CBIC-20001/4/2024-GST Government of India Ministry of Finance Department of Revenue

Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 216/10/2024-GST Dated 26th June, 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification in respect of GST liability and input tax credit (ITC) availability in cases involving Warranty/ Extended Warranty, in furtherance to Circular No. 195/07/2023-GST dated 17.07.2023-reg. Reference is invited to Circular No. 195/07/2023-GST dated 17.07.2023 (herein after referred to as "the said circular") clarifying certain issues regarding GST liability and availability of input tax credit (ITC) in respect of warranty replacement of parts and repair services during warranty period. Representations have been received from trade and industry requesting for some further clarifications in related matters. 2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods & Services Tax Act, 2017 (herein after referred to as the "CGST Act"), hereby clarifies the following issues as below. 3. Clarification regarding GST liability as well as liability to reverse input tax credit in respect of cases where goods as such or the parts are replaced under warranty: 3.1 Table in Para 2 of Circular No. 195/07/2023-GST dated

17.07.2023 clarifies regarding GST liability as well as liability to reverse ITC, only in cases involving replacement of 'parts' and not if goods as such are replaced under warranty. Request has been made to also issue a clarification in respect of cases where the goods as such are replaced under warranty. 3.2 In cases where warranty is provided by the manufacturer/ suppliers to the customers in respect of any goods, and if any defect is detected in the said goods during the warranty period, the manufacturer may be required to replace either one or more parts or the goods as such, depending upon the extent of damage/ defect noticed in the said goods. However, Table in Para 2 of the said circular only clarifies in respect of the situations involving replacement of part/ parts and does not specifically refer to the situation involving replacement of goods as such. It is clarified that the clarification provided in Para 2 of the said circular is also applicable in case where the goods as such are replaced under warranty. 3.3 Accordingly, wherever, 'any part,' 'parts' and 'part(s)' has been mentioned in Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023, the same may be read as 'goods or its parts, as the case may be'. 4. Clarification in respect of cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from

the manufacturer: 4.1 Sr. No. 4 of Para 2 of the said Circular clarifies about the GST liability as well as liability to reverse ITC in cases where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer. However, it does not cover the scenario where the distributor replaces the goods to the customer as part of warranty out of his own stock on behalf of the manufacturer to provide prompt service to the customer, and then raises a requisition to the manufacturer for the goods replaced by him under warranty. The manufacturer, thereafter, provides the said goods to the distributor vide a delivery challan, as replenishment for the goods provided as replacement to the customer by the distributor. Request has been made to issue clarification in respect of such a scenario also. 4.2 In cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer, the key aspects, viz.(i) distributor providing replacement out of his own stock; (ii) manufacturer replenishing the distributor for the said replacement; and (iii) the replacement being made at no additional cost on the distributor, are all covered in the scenario specified in point (b) of Sr. No.4 of Para 2 of the said Circular. Therefore, GST liability as well as liability to reverse ITC in cases covered by the said

scenario should be similar to that in respect of the scenario covered in point (b) of S. No. 4 of Para 2 of the above circular. 4.3 Accordingly, to specifically clarify in respect of such a scenario, in column 3 of the table in Para 2 of the said circular, against S. No. 4, after point (c), point (d)shall be inserted as below: "(d) There may be cases where the distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor." 5. (i) Nature of supply of extended warranty, at the time of original supply of goods, as a separate supply from supply of goods, if the supply of extended warranty is made by a person different from the supplier of the goods; (ii) Nature of supply of extended warranty, made after original supply of goods: 5.1 It has been represented that in respect of cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty

is different from the supplier of goods, the extended warranty should be treated as a separate and independent transaction from the supply of goods, whereas Sr. No. 6 of Para 2 of the said Circular has treated it to be in the nature of composite supplies, the principal supply being the supply of goods. Request has been made to issue a suitable clarification in the matter. 5.1.1 There may be cases where the supplier of the goods may be the dealer while the supplier of extended warranty may be the OEM or third party. In such cases, the supplies being made by different suppliers cannot be treated as part of the composite supply. It is, therefore, clarified that in cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the supply of extended warranty and supply of goods cannot be treated as the composite supply. In such cases, supply of extended warranty will be treated as a separate supply from the original supply of goods. 5.2 It has also been represented that in cases where extended warranty is sold subsequent to the original supply of goods, the same should be considered as supply of services only whereas the said Circular clarifies that GST on the same would be payable depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services). Request has

been made to issue a revised clarification in respect of the same. 5.2.1 Supply of extended warranty is an assurance to the customers by the manufacturer/ third party that the goods will operate free of defects during the extended warranty coverage period, and in case of any defect attributable to faulty material or workmanship at the time of manufacture, the same will be repaired/ replaced by the said manufacturer/ third party. Further, whether the goods will later on require replacement of parts or just repair service or neither during the said extended warranty period, is also not known at the time of sale/ supply of extended warranty. Thus, extended warranty is in the nature of conveying of an "assurance" and not an actual replacement of part or repairs. 5.3 Accordingly, it is clarified that in cases, where supply of extended warranty is made subsequent to the original supply of goods, or where supply of extended warranty is to be treated as a separate supply from the original supply of goods in cases referred in Para 5.1.1 above, the supply of extended warranty shall be treated as a supply of services distinct from the original supply of goods, and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services. 5.4 Accordingly, in Sr. No. 6 of Table in para 2 of the said Circular, in column No. 3 of the table, the following shall be substituted: "(a) If a customer enters into an agreement of extended warranty with the

supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services. (b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of services distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services." 6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow. (Sanjay Mangal) Principal Commissioner (GST)

Circular (9)

GST on Salvage/Wreck Value in Claim Assessment of Damaged Motor Vehicle

Circular No. 215/9/2024-GST, issued by the GST Policy Wing on June 26, 2024, provides clarity on the taxability of salvage or wreck value in motor vehicle insurance claims. Insurance companies, when assessing claims, categorize vehicle damages into total loss or partial loss situations. The key issue addressed is whether GST applies to the salvage value deducted from the insurance claim. The circular explains that if the insurance company deducts the salvage value from the final claim amount, the ownership of the wreckage remains with the insured, and no GST liability arises for the insurance company. However, if the insurance company pays the full Insured Declared Value (IDV) without deducting the salvage value, the wreckage becomes the company's property, and GST must be applied to its sale. The circular ensures uniform implementation across all field formations and requests that suitable trade notices be issued to publicize its contents. F.No. CBIC-20001/4/2024-GST Government of India Ministry of

Finance (Department of Revenue) Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 215/9/2024-GST Dated the 26th June, 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification on taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle -reg. The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders. Such damages to the insured vehicle are classified in two categories: i. Total Loss/ Constructive Total Loss or Cash Loss; and ii. Partial Loss Situation 1.1 Representations have been received from the trade and field formations seeking clarification as to whether in case of motor vehicle insurance, GST is payable by the insurance company on salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle. 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby

clarifies the issues as under: S.No. Issue Clarification 1. Whether the insurance company is liable to pay GST on the salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle? Under GST law, supply is the relevant taxable event for levying tax. For an activity/transaction to be liable to GST, existence of 'supply' as defined under section 7 of CGST Act should be there. 2.1 Section 7 of CGST Act defines supply to mean 'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.' In the instant case, insurance companies are providing service of insuring the vehicle/ automobile for any damages and in return, charging consideration in the form of premium charged from the owner of the vehicle. It is also noted that in respect of insurance services being provided by the insurance companies, it is the responsibility of the insurance company to get the damaged vehicle repaired or to compensate the insured person against the damage caused to the vehicle, to the extent covered under the terms of the insurance. 2.2 Any Deduction made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer while signing the insurance contract. In cases where as per the policy contract, the insurance

company's liability to pay the insured is limited to Insured's Declared Value (IDV) of the vehicle less the value of salvage/ wreck in cases of total loss to the vehicle, if the insurance claim is settled by the insurance company as per the terms of the insurance contract by deducting value of salvage/ wreckage from the claim settlement amount, the salvage/ wreckage does not become property of insurance company, and the ownership for such wreckage/ salvage remains with the insured. However, in some cases, the insurance company may support sourcing of competitive quotes from various salvage/ wreckage buyers and the insured may select the best available offer for sale of wreckage or damaged car. The insured may also source quotes from open markets and dispose the wreckage or damaged car to such a buyer. In any case, the ownership of the wreckage vests with the insured and not with the insurance company. The same can be disposed by the insured either directly, or through the garage, or may not be disposed at all, as per his wish and choice. The deduction of the value of salvage from the insurance settlement amount, is as per the terms of the insurance contract, and cannot be said to be consideration for any supply being made by insurance company. Accordingly, in such cases, there does not appear to be any supply of salvage by insurance company and as such, there does not appear to be any liability under GST on the part

of insurance company in respect of this salvage value. 2.3 However, in situations where the insurance contract provides for settlement of claim on full IDV, without deduction of value of salvage/ wreck, the insured will be paid for full claim amount without any deductions on account of salvage value. In such a situation, the salvage becomes the property of Insurance Company after settling the claim for the full amount and the insurance company is obligated to deal with the same or dispose of the same. In such cases, the outward GST liability on disposal/sale of the salvage is to be discharged by the insurance companies. 3. Therefore, in cases where due to the conditions mentioned in the contract itself, general insurance companies are deducting the value of salvage as deductibles from the claim amount, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same. However, in cases, where the insurance claim is settled on full claim amount, without deduction of value of salvage/ wreckage (as per the terms of the contract), the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer. 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) Principal Commissioner (GST)

Circular (10)

Requirement to Reverse ITC for Life Insurance Premium Portion Not included in Taxable Value

Circular No. 214/8/2024-GST issued by the GST Policy Wing clarifies the treatment of input tax credit (ITC) concerning life insurance premiums not included in the taxable value under Rule 32(4) of the CGST Rules. The circular responds to queries regarding whether such premiums should be categorized as exempt or non-taxable supplies, necessitating the reversal of ITC. It defines 'life insurance business' under the Insurance Act, 1938, emphasizing policies that combine risk cover with investment components. The value of such services is determined by deducting the investment portion from the gross premium, ensuring clarity on taxable versus non-taxable supplies. Importantly, the circular concludes that premiums not included in taxable value do not qualify as exempt supplies under GST law, thus ITC reversal is not required as per Rule 42 or 43 of the CGST Rules. F.No. CBIC-20001/4/2024-GST Government of India Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs GST Policy Wing ***** Circular No. 214/8/2024-GST Dated the 26th June, 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of

Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification on the requirement of reversal of input tax credit in respect of the portion of the premium for life insurance policies which is not included in taxable value-reg. Representations have been received from the trade and field formations seeking clarification on the issue as to whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") applicable for life insurance business, will be treated as pertaining to an exempt supply/ non-taxable supply and whether the input tax credit availed in respect of such amount shall be required to be reversed or not. 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies the issues as under: S.No. Issue Clarification 1. Whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules applicable for life insurance business, shall be treated as pertaining to a non-taxable supply/ exempt supply for the purpose of reversal of Input tax credit as per section 17(1) of CGST Act read with Rule

42 & 43 of CGST Rules. 'Life insurance business' has been defined in Section 2(11) of the Insurance Act, 1938 as below: "2(11) life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include– (a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance, (b) the granting of annuities upon human life ; and (c) the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons ; Explanation. — For the removal of doubts, it is hereby declared that life insurance business shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section. 2. Life insurance companies are providing service of insuring the life of the insured and in return, are charging consideration in the form of premium from the insured. A

number of life insurance companies are providing policies which may consist of a component of investment in addition to the component for the risk cover of the life insurance and accordingly, in such cases, the premium charged also includes the component which is allocated for investment or saving on behalf of the policy holder. As per definition of 'Life insurance business' provided in Section 2(11) of the Insurance Act, 1938, life insurance business includes any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer. Accordingly, such life insurance policies, which also include a component of investment along with the component of risk cover for life insurance, are also covered under life insurance business. 2.1 It is mentioned that value of supply of services in relation to life insurance business is to be determined as per provisions of sub-rule (4) of rule 32 of CGST Rules. The said sub-rule provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment/savings on behalf of the policy holder from the gross premium charged from the policy holder. The said sub-rule also provides for determination of value of supply of such services based on certain percentage of the gross premium in other situations.

However, where the entire premium is only towards the risk cover in life insurance, the value of supply is not required to be determined under the said sub-rule as in such cases whole of the consideration i.e. gross premium is towards life insurance services. 2.2 As per section 2(47) of the CGST Act, exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services TaxAct, 2017 (hereinafter referred to as the "IGST Act"), and includes non-taxable supply. The said definition of exempt supply has the following three limbs: – (a) Supply of service which is nil rated; (b) Supply of service which is wholly exempted from tax under section 11 of CGST Act or under Section 6 of IGST Act; or (c) Supply of service which is nontaxable supply. 2.2.1. Further, as per section 2(78) of CGST Act, non-taxable supply means a supply of goods or services or both which is not leviable to tax under the CGST Act or under the IGST Act. 2.2.2 It is mentioned that there is no doubt about taxability of supply of service of providing life insurance services by the insurance company to the insured/ policy holder but the only issue is regarding the treatment of the amount of premium which is not included in the taxable value of supply, as determined under the provisions of Rule 32(4) of CGST Rules. The service of providing life insurance cover is neither nil rated, nor there is any

notification issued under section 11 of CGST Act by virtue of which the said service or any portion of the said service has been exempted from GST. 2.2.3 It is also mentioned that the supply can be considered as a non-taxable supply only when it is not leviable to tax under the CGST Act or under the IGST Act. It is not a case where the tax is not leviable on the supply of life insurance services provided by life insurance companies to the insured/policy holder. The value of the said supply of service in respect of life insurance business as determined under Rule 32(4) of CGST Rules, 2017 may not include some portion of gross premium as per methodology provided in the said rule. This portion of premium which is not includible in taxable value as per provisions of Rule 32(4) of CGST Rules is neither nil rated, nor wholly exempted from tax under section 11 of CGST Act and also not a non-taxable supply. Therefore, just because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion of consideration becomes attributable to a non-taxable or exempt supply. 2.2.4 Further, Rule 42 of the CGST Rules provides for reversal of input tax credit in certain scenarios. As per the said rule, only that input tax credit which attract the provisions of sub-section (1) and sub-section (2) of Section 17 of the CGST Act needs to be determined and reversed thereof. Further, subsection (1) and sub-section

(2) of Section 17 of the CGST Act restrict the amount of credit only in a case where the registered person uses the goods or services partly for business or other purposes or partly for making taxable supplies or exempt supplies. However, as discussed in Para 2.2.3 above, the portion of premium, which is not includible in taxable value of supply as per Rule 32(4) of CGST Rules, cannot be considered as pertaining to an exempt supply. 3. In view of this, it is clarified that the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, there is no requirement of reversal of input tax credit as per provisions of Rule 42 or rule 43 of CGST Rules, read with sub-section (1) and sub-section (2) of Section 17 of CGST Act, in respect of the said amount. 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) Principal Commissioner (GST)

Circular (11)

GST on ESOP/ESPP/RSU provided through overseas holding company

On June 26, 2024, the Ministry of Finance issued CGST Circular No. 213/07/2024-GST to clarify the GST implications of Employee Stock Option Plans (ESOP), Employee Stock Purchase Plans (ESPP), and Restricted Stock Units (RSU) provided by foreign holding companies to the employees of their Indian subsidiaries. The circular addresses concerns about whether such transactions constitute an import of financial services and thus attract GST under the reverse charge mechanism. It explains that securities, including shares, are neither goods nor services under the GST Act. Therefore, the transfer of shares from a foreign holding company to the employees of an Indian subsidiary, with the cost reimbursed on a cost-to-cost basis, does not attract GST. However, if the foreign holding company charges any additional fee, markup, or commission for facilitating this transaction, such charges will be considered as a supply of services and will be subject to GST, payable by the Indian subsidiary on a reverse charge basis. This clarification ensures uniform implementation of GST provisions across various field formations, alleviating confusion and ensuring

compliance with the GST Act regarding employee compensation through stock options and similar financial instruments. F. No. CBIC-20001/4/2024-GST Government of India Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs GST Policy Wing North Delhi, New Delhi ***** Circular No. 213/07/2024-GST Dated the 26th June 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company – reg. Representations have been received from the trade and field formations seeking clarification regarding the taxability of Employee Stock Option (ESOP)/Employee Stock Purchase Plan (ESPP)/ Restricted Stock Unit (RSU) provided by a company to its employees. 2.1 It has been represented that some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment. In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company, and the

cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company. 2.2 Doubts are being raised regarding taxability of such a transaction under GST, i.e. whether such transfer of shares/ securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imbursement of the cost of such shares/ securities by the Indian subsidiary company to the foreign holding company can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of Indian subsidiary company on reverse charge basis. 3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under. 4. The companies are providing option of allotment of securities/shares to their employees as a means of incentivization and the same is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Such specific terminology usage depends on the agreed-upon compensation terms between the employer and the employee.

ESPPs and ESOPs are typically presented as ‘options’ granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards. Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e. the allocation of securities or shares from the employer to employee as part of compensation package with the aim of motivating enhanced performance. 4.1 A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps: The domestic subsidiary company gives option/ facility of ESOP/ESPP/RSU to its employees as part of compensation package as per terms of employment. The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest. The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, to the employees of the domestic subsidiary company. The foreign holding company transfers the shares directly to the employees of the subsidiary company. The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to cost basis either through an actual remittance or through an equity transfer as prescribed by the

relevant Indian Accounting Standard. The employees hold the shares and may sell them at a later date, if they so choose. 4.2 The foreign holding company issues securities/shares as ESOP/SPP/RSU to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. However, Securities under GST Law are considered neither goods nor services in terms of definition of "goods" under clause (52) of section 2 of CGST Act and in terms of definition of "services" under clause (102) of the said section. Further, securities include 'shares' as per definition of "securities" under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. Accordingly, purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Therefore, in the absence of such transaction, falling under the supply of 'goods' or 'services' as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares. 4.3 Further, the companies offer ESOP/ESPP/RSU to their employees to motivate them to perform better, and to retain the employees, by aligning the interest of employees with that of company. The ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment. As per Entry 1 of Schedule III of the CGST Act, the services by an employee to the employer in the course of or in relation to his employment are

treated neither as supply of goods nor as supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/shares of the foreign holding company to the employees of domestic subsidiary company. 4.4 The foreign holding company directly transfers the shares/securities to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. Reimbursement of such securities/ shares is generally done by domestic subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission. Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither in nature of goods nor services, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST under CGST Act. 4.5 However, if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall be considered to be in nature of consideration for the supply of services of

facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of the latter. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company. 4.6 Accordingly, it is clarified that no supply of service appears to be taking place between the foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of domestic subsidiary company, and the domestic subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis. However, in cases where an additional amount over and above the cost of securities/shares is charged by the foreign holding company from the domestic subsidiary company, by whatever name called, GST would be leviable on such additional amount charged as consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic subsidiary company on reverse

charge basis in such a case on the said import of services. 5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow. (Sanjay Mangal) Principal Commissioner(GST

Circular (12)

Mechanism for providing evidence of compliance under Section 15(3)(b)(ii) of CGST Act

CGST Circular No. 212/6/2024, issued by the CBIC on June 26, 2024, addresses the mechanism for verifying compliance with conditions under Section 15(3)(b)(ii) of the CGST Act, 2017, concerning discounts offered through tax credit notes. The circular clarifies that discounts given post-supply are not included in the taxable value if the recipient reverses the input tax credit (ITC) attributable to the discount. However, there is currently no facility on the common portal for suppliers or tax officers to verify ITC reversal by recipients. Until such a system is available, suppliers must obtain a certificate from a Chartered Accountant (CA) or Cost Accountant (CMA), certifying the recipient's ITC reversal. This certificate should detail the credit notes, relevant invoice numbers, and the ITC reversal amount, including the FORM GST DRC-03/return through which the reversal was made. For tax amounts not exceeding Rs 5,00,000 annually, an undertaking from the recipient is sufficient. These certificates/undertakings serve as admissible evidence for Section 15(3)(b)(ii) compliance,

required during audits, scrutiny, or investigations. This circular ensures uniformity and clarity, mitigating disputes related to post-supply discounts and ITC reversal verification. F. No. CBIC-20001/4/2024-GST Government of India Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs GST Policy Wing North Block, New Delhi ***** Circular No. 212/6/2024-GST Dated the 26th June, 2024 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) The Principal Directors General/ Directors General (All) Madam/Sir, Subject: Mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers -reg. In cases where the discounts are offered by the suppliers through tax credit notes, after the supply has been effected, the said discount is not to be included in the taxable value only if the condition of clause (b)(ii) of sub-section (3) of section 15 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), for reversal of the input tax credit attributable to the said discount by the recipient, is satisfied. Representations have been received from the trade and the field formations mentioning that there is presently no facility available to the supplier as well as the tax officers on the common portal to verify whether the input tax credit attributable to the said discount has been reversed by the

recipient or not. Request has been made to provide a suitable mechanism for enabling the suppliers as well as tax officers to verify fulfilment of the condition of section 15(3)(b)(ii) of the CGST Act regarding proportionate reversal of input tax credit by the recipients in respect of such discounts given by the supplier by issuing tax credit notes after the supply has been effected. 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under: 2.1 Section 15 of the CGST Act provides for value of taxable supply of goods or services or both. Sub-section (3) of the said section provides that the value of supply shall not include discount given by the supplier, subject to certain conditions. As per clause (b) of the said sub-section, any discount which is given after the supply has been effected shall not be included in the value of the supply, only if it satisfies the following conditions: i. Such discount is established in terms of an agreement entered into at or before the time of such supply; ii. Such discount must be specifically linked to the relevant invoices iii. Input Tax Credit attributable to such discount on the basis of document issued by the supplier has been duly reversed by the recipient. 2.2 Accordingly, wherever any discount is offered by the supplier to the recipient, by issuance

of a tax credit note as per section 34 of the CGST Act, after the supply has been effected, the said discount can be excluded from the value of taxable supply only if the conditions of clause (b) of sub-section (3) of section 15 of the CGST Act are fulfilled. Such conditions inter alia includes the requirement of reversal of input tax credit by the recipient attributable to the said discount. 2.3 However, there is no system functionality/ facility presently available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of input tax credit by the recipient. 2.4 In view of the above, till the time a functionality/ facility is made available on the com mon portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier. 2.5 The said CA/CMA certificate may include details such as the details of the credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along

with the details of the FORM GST DRC-03/ return / any other relevant document through which such reversal of ITC has been made by the recipient. 2.6 Such certificate issued by CA or CMA shall contain UDIN (Unique Document Identification Number). UDIN of the certificate issued by CAs can be verified from ICAI website https://udin.icai.org/search-udin and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx. 2.7 In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding Rs 5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him, along with the details mentioned in Para 2.5 above. 2.8 Such certificates issued by the CA/CMA or the undertakings/ certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act, 2017. The supplier shall produce such certificates/undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc. Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of

CGST Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced by him to the tax authorities, the concerned taxpayer may procure and provide such certificates issued by CA/CMA or the undertakings/ certificates issued by the recipients of supply, as the case may be, to the concerned investigating/audit/adjudicating authority as evidence of requisite reversal of input tax credit by his recipients. 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) Principal Commissioner (GST)