

# **GST UPDATE**

## **(November, 2020)**

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

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## **(I) GIST OF GST NOTIFICATIONS**

### **1. CBIC notifies date of applicability of amendment in Section 39- CGST Act 2017**

Central Government hereby appoints the 10<sup>th</sup> day of November, 2020, as the date on which the new provisions of section 39 of the Central Goods and Services Tax Act, 2017 shall come into force, which were introduced by Finance (No. 2) Act, 2019 (23 of 2019). Section 39 deals with provisions related to Furnishing of returns.

**[Notification No. 81/2020-Central Tax dated 10.11.2020]**

### **2. CBIC notifies New rules for Inward/Outward Supplies, GST Returns & New form GSTR 2B**

CBIC has vide Notification No. 82/2020–Central Tax dated 10th November, 2020 amended/substituted and inserted GST Rules as follows:-

1. Substituted **rule 59 related to Form and manner of furnishing details of outward supplies** with effect from the 1st day of January, 2021
2. Substituted **rule 60 related to Form and manner of ascertaining details of inward supplies** with effect from the 1st day of January, 2021.
3. Inserted Sub Rule (6) to rule 61 with effect from 10th November, 2020 which related to Filing of GSTR 3B Return.
4. Substituted **rule 61 related to Form and manner of furnishing of return** with effect from the 1st day of January, 2021.
5. Inserted Rule 61A related to Manner of opting for furnishing quarterly return with effect from 10th November, 2020.
6. Amended **Rule 62 related to Form and manner of submission of statement and return**, with effect from 10th November, 2020.
7. Inserted new Instruction to filing of FORM GSTR-1, in the Instructions which related mentioning of HSN code .
8. Notified new FORM-2B – Auto-drafted ITC Statement- under 60(7).

**[Notification No. 82/2020-Central Tax dated 10.11.2020]**

### **3. CBIC notifies time limit for furnishing FORM GSTR-1**

The time limit for furnishing the details of outward supplies in FORM GSTR-1 of the CGST Rules, 2017, for each of the tax periods Extended till 11th day of the month succeeding such tax period.

The time limit for furnishing the details of outward supplies in FORM GSTR-1 of the **CGST Rules, 2017** for the class of registered persons required to furnish quarterly

return under proviso to section 39(1) of the **CGST Act, 2017** Extended till 13th of the month succeeding such tax period.

**[Notification No. 83/2020-Central Tax dated 10.11.2020]**

#### **4. CBIC notifies new rules for Monthly/Quarterly filing of GSTR 1**

Class of persons for QRMP Scheme

- A registered person whose aggregate turnover crosses five crore rupees during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.
- Taxpayers who have furnished the return for the tax period October 2020 on or before 30th November 2020, it shall be deemed that they have opted under sub-rule (1) of rule 61A of the said rules for the monthly or quarterly, as follows:
  - √ Turnover upto 1.5 cr and GSTR-1 on Quarterly basis in CFY- Quarterly
  - √ Turnover upto 1.5 cr and GSTR-1 on Monthly basis in CFY- Monthly
  - √ Turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year- Monthly

The registered person may change the default option electronically, on the common portal, during the period from the 5th day of December, 2020 to the 31st day of January, 2021.

This is effective from 01.01.2021.

**[Notification No. 84/2020-Central Tax dated 10.11.2020]**

#### **5. CBIC notifies procedure for those opting to file GSTR 3B Quarterly**

Special procedure for making payment under QRMP Scheme

- Taxpayer who have opted to furnish a return for every quarter, shall deposit 35% of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly, or the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly.
- However, no such amount may be required to be deposited-
  - (a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability;
  - (b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability;

- Registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.
- This is a effective from 01.01.2021.

**[Notification No. 85/2020-Central Tax dated 10.11.2020]**

#### **6. CBIC rescinds notification related to due dates of filing GSTR-3B**

**Notification No. 76/2020- Central Tax dated 15.10.2020** relating to GSTR-3B for October, 2020 to March, 2021 has been rescinded w.e.f. 10.11.2020.

**[Notification No. 86/2020-Central Tax dated 10.11.2020]**

#### **7. Due date for filing ITC-04 for July 2020 to September 2020 extended**

The time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2020 to September, 2020 has been extended till the 30th day of November, 2020.

The **Notification No. 87/2020-Central Tax** shall be deemed to have come into force with effect from the 25th day of October, 2020.

**[Notification No. 87/2020-Central Tax dated 10.11.2020]**

#### **8. GST E-invoicing mandatory from 01.01.2021 if TO exceeds Rs. 100 Crores**

CBIC notifies that E-invoicing is mandatory from 01.01.2021 for every taxpayer (other than SEZ unit) whose aggregate turnover (TO) in any of the Financial Year from 17-18 exceeds Rs. 100 Crores.

From 01-01-2021, e-invoicing mandatory for taxpayers with aggregate turnover more than Rs. 100 Cr.

E-Invoicing in terms of rule 48(4) of the CGST Rules, 2017 in respect of supply of goods or services or both to a registered person (B2B) made mandatory for registered persons with aggregate turnover exceeding Rs. 100 crore w.e.f 1st January 2020.

**[Notification No. 88/2020-Central Tax dated 10.11.2020]**

#### **9. CBIC waives Penalty for non compliance to GST Invoice QR code provisions**

CBIC has vide Notification No 89/2020 dated 29.11.2020 waived Penalty for non compliance to QR code provisions if complied by April 01, 2021 for default during the period December 1,2020 to March 31,2021.

**[Notification No. 89/2020-Central Tax dated 29.11.2020]**



## **(II) PUNJAB GST NOTIFICATIONS**

PUNJAB GOVT. GAZ. (EXTRA), NOVEMBER 5, 2020 589  
(KRTK 14, 1942 SAKA)

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**PART III**  
**GOVERNMENT OF PUNJAB**  
**DEPARTMENT OF EXCISE AND TAXATION**  
**(EXCISE AND TAXATION-II BRANCH)**

**NOTIFICATION**

The 2nd November, 2020

**No. S.O. 50/P.A.5/2017/S.128/Amd./2020.**-In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, No.S.O.7/P.A.5/2017/S.128/2018, dated the 7th February, 2018 published in the Punjab Government Gazette (Extraordinary), Part III, dated the 16th February, 2018, namely:-

**AMENDMENT**

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

"Provided also that late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of State tax payable in the said return is nil, for the registered persons who failed to furnish the return in **FORM GSTR-4** for the quarters from July, 2017 to March, 2019 by the due date but furnishes the said return between the period from 22nd day of September, 2020 to 31st day of October, 2020."

2. This notification shall be deemed to have come into force on and with effect from 21st September, 2020.

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

*2147/11-2020/Pb. Govt. Press, S.A.S. Nagar*

**PART III**  
**GOVERNMENT OF PUNJAB**  
**DEPARTMENT OF EXCISE AND TAXATION**  
**(EXCISE AND TAXATION-II BRANCH)**

**NOTIFICATION**

The 2nd November, 2020

**No. S.O. 51/P.A.5/2017/S.128/2020.**-In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) ( hereafter in this notification referred to as the said Act) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to waive the amount of late fee payable under section 47 of the said Act which is in excess of two hundred and fifty rupees, for the registered persons who fail to furnish the return in **FORM GSTR-10** by the due date but furnishes the said return between the period from 22nd day of September, 2020 to 31st day of December, 2020."

2. This notification shall be deemed to have come into force on and with effect from 21st September, 2020.

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

*2147/11-2020/Pb. Govt. Press, S.A.S. Nagar*

**PART III**  
**GOVERNMENT OF PUNJAB**  
**DEPARTMENT OF EXCISE AND TAXATION**  
**(EXCISE AND TAXATION-II BRANCH)**  
**NOTIFICATION**

The 17th November, 2020

**No. S.O. 54/P.A.5/2017/S.172/2020.**-WHEREAS, sub-section (1) of section 44 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) (hereafter in this Order referred to as the said Act) provides that every registered person, other than an Input Service Distributor, a person paying Tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty- first day of December following the end of such financial year;

AND WHEREAS, for the purpose of furnishing of the annual return electronically for every financial year as referred to in sub-section (1) of section 44 of the said Act, certain technical problems are being faced by the taxpayers as a result whereof, the said annual return for the period from the 1st July, 2017 to the 31st March, 2018 could not be furnished by the registered persons, as referred to in the said sub-section (1) and because of that, certain difficulties have arisen in giving effect to the provisions of the said section.

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the said Act and all other powers enabling him in this behalf, the Government of Punjab, on recommendations of the Council, is pleased to make the following Order, to remove the difficulties, namely:-

1. (1) This Order may be called the Punjab Goods and Services Tax (Removal of Difficulties) Order, 2020.

(2) This order shall be deemed to have come into force with effect from the 26th day of December, 2019.

2. In the Punjab Goods and Services Tax Act, 2017, in section 44, in the Explanation, for the figures, letters and word "31st December, 2019", the figures, letters and word "31 st January, 2020" shall be substituted.

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

**PART III**

**GOVERNMENT OF PUNJAB**

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

**NOTIFICATION**

The 17th November, 2020

**No. S.O. 55/P.A.5/2017/S.128/Amd./2020.**-In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in Government of Punjab, Department of Excise and Taxation, Notification No. S.O.13/P.A.5/2017/S.128/2018, dated the 27th February, 2018 namely:-

**AMENDMENT**

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

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who failed to furnish the details of outward supplies in **FORM GSTR-1** for the months or quarters from July, 2017 to November, 2019 by the due date but furnishes the said details in **FORM GSTR-1** between the period from 19th December, 2019 to 10th January, 2020."

2. This notification shall be deemed to have come into force with effect from the 19th day of December, 2019.

**A VENU PRASAD,**

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

### **(III) CENTRAL TAX NOTIFICATIONS**

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

**Government of India  
Ministry of Finance  
(Department of Revenue)  
Central Board of Indirect Taxes and Customs  
Notification No. 81/2020 – Central Tax**

**New Delhi, the 10<sup>th</sup> November, 2020**

S.O. .... (E).— In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 10<sup>th</sup> day of November, 2020, as the date on which the provisions of section 97 of the said Act shall come into force.

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

(Pramod Kumar)  
Director, Government of India

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

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

**Notification No. 82 /2020 – Central Tax**

**New Delhi, the 10<sup>th</sup> November, 2020**

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

**1. Short title and commencement.** - (1) These rules may be called the Central Goods and Services Tax (Thirteenth Amendment) Rules, 2020.

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

**2.** In the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), for rule 59, the following rule shall be substituted with effect from the 1<sup>st</sup> day of January, 2021 namely: -

**“59. Form and manner of furnishing details of outward supplies.-** (1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in **FORM GSTR-1** for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) The registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this notification referred to as the “IFF”) electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1<sup>st</sup> day of the month succeeding such month till the 13<sup>th</sup> day of the said month.

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in **FORM GSTR-1** for the said quarter.

(4)The details of outward supplies of goods or services or both furnished in **FORM GSTR-1** shall include the–

- (a) invoice wise details of all -
  - (i) inter-State and intra-State supplies made to the registered persons; and
  - (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;
- (b) consolidated details of all -
  - (i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the –

- (a) invoice wise details of inter-State and intra-State supplies made to the registered persons;
- (b) debit and credit notes, if any, issued during the month for such invoices issued previously.”.

3. In the said rules, for rule 60, the following rule shall be substituted with effect from the 1<sup>st</sup> day of January, 2021, namely: -

“**60. Form and manner of ascertaining details of inward supplies.**- (1)The details of outward supplies furnished by the supplier in **FORM GSTR-1** or using the IFF shall be made available electronically to the concerned registered persons (recipients) in **Part A** of **FORM GSTR-2A**, in **FORM GSTR-4A** and in **FORM GSTR-6A** through the common portal, as the case may be.

(2)The details of invoices furnished by a non-resident taxable person in his return in **FORM GSTR-5** under rule 63 shall be made available to the recipient of credit in **Part A** of **FORM GSTR 2A** electronically through the common portal.

(3)The details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** under rule 65 shall be made available to the recipient of credit in **Part B** of **FORM GSTR 2A** electronically through the common portal.

(4)The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in **FORM GSTR-7** shall be made available to the deductee in **Part C** of **FORM GSTR-2A** electronically through the common portal

(5)The details of tax collected at source furnished by an e-commerce operator under section 52 in **FORM GSTR-8** shall be made available to the concerned person in **Part C** of **FORM GSTR 2A** electronically through the common portal.

(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in **Part D** of **FORM GSTR-2A** electronically through the common portal.

(7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in **FORM GSTR-2B**, for every month, electronically through the common portal, and shall consist of -

(i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in **FORM GSTR-1**, between the day immediately after the due date of furnishing of **FORM GSTR-1** for the previous month to the due date of furnishing of **FORM GSTR-1** for the month;

(ii) the details of invoices furnished by a non-resident taxable person in **FORM GSTR-5** and details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** and details of outward supplies furnished by his supplier, required to

furnish return for every quarter under proviso to sub-section (1) of section 39, in **FORM GSTR-1** or using the IFF, as the case may be,-

(a) for the first month of the quarter, between the day immediately after the due date of furnishing of **FORM GSTR-1** for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;

(b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;

(c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of **FORM GSTR-1** for the quarter;

(iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

(8) The Statement in **FORM GSTR-2B** for every month shall be made available to the registered person,-

(i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in **FORM GSTR-1** by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;

(ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in **FORM GSTR-1** by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.”

4. In the said rules, in rule 61, after sub-rule (5), the following sub-rule shall be inserted, namely: -

“(6) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the twentieth day of the month succeeding such tax period:

Provided that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in **FORM GSTR-3B** of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:

Provided further that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in **FORM GSTR-3B** of the said rules for the months of October, 2020 to March, 2021



shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month.”

5. In the said rules, for rule 61, the following rule shall be substituted with effect from the 1<sup>st</sup> day of January, 2021, namely: -

“**61. Form and manner of furnishing of return.**-(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under –

(i) sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month:

(ii) proviso to sub-section (1) of section 39, for each quarter, or part thereof, for the class of registered persons mentioned in column (2) of the Table given below, on or before the date mentioned in the corresponding entry in column (3) of the said Table, namely:–

**Table**

<b>S. No.</b>	<b>Class of registered persons</b>	<b>Due Date</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	twenty-second day of the month succeeding such quarter.
2.	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	twenty-fourth day of the month succeeding such quarter.

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in **FORM GSTR-3B**.

(3) Every registered person required to furnish return, every quarter, under clause (ii) of sub-rule (1) shall pay the tax due under proviso to sub-section (7) of section 39, for each of the first two months of the quarter, by depositing the said amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in **FORM GST PMT-06**, for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner:

Provided also that while making a deposit in **FORM GST PMT-06**, such a registered person may –

(a) for the first month of the quarter, take into account the balance in the electronic cash ledger.

(b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.

(4) The amount deposited by the registered persons under sub-rule (3) above, shall be debited while filing the return for the said quarter in **FORM GSTR-3B**, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been filed.”.

6. In the said rules, after rule 61, the following rule shall be inserted, namely: -

**“61A. Manner of opting for furnishing quarterly return.-** (1) Every registered person intending to furnish return on a quarterly basis under proviso to sub-section (1) of section 39, shall in accordance with the conditions and restrictions notified in this regard, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1<sup>st</sup> day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised:

Provided that where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless the said registered person,–

(a) becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or

(b) opts for furnishing of return on a monthly basis, electronically, on the common portal:

Provided further that a registered person shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.

(2) A registered person, whose aggregate turnover exceeds 5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds 5 crore rupees.

7. In the said rules, in rule 62,

(i) in sub-rule (1), the words, figures, letters and brackets “or paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be omitted;

(ii) in sub-rule (4), the words, figures, letters and brackets “or by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be omitted;

(iii) in the explanation to sub-rule (4), the words, figures, letters and brackets “or opting for paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019.” shall be omitted;

(iv) sub-rule (6) shall be omitted.

7. In **FORM GSTR-1**, in the Instructions, after serial number 17, the following instruction shall be inserted, namely:-

“18. It will be mandatory to specify the number of digits of HSN code for goods or services that a class of registered persons shall be required to mention as may be specified in the notification issued from time to time under proviso to rule 46 of the said rules.

8. After **FORM-2A**, the following **FORM** shall be inserted, namely: –

**“FORM-2B**  
[See rule 60(7)]  
**Auto-drafted ITC Statement**  
(From *FORM GSTR-1, GSTR-5, GSTR-6 and Import data received from ICEGATE*)

Year	YYYY-YY
Month	

1. GSTIN	
2(a). Legal name of the registered person	
2(b). Trade name, if any	
2(c). Date of generation	DD/MM/YYYY HH:MM

**3. ITC Available Summary**

(Amount in ₹ in all sections)

S.no.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
<b>Credit which may be availed under FORM GSTR-3B</b>							
<b>Part A ITC Available - Credit may be claimed in relevant headings in GSTR-3B</b>							

I	<b>All other ITC - Supplies from registered persons other than reverse charge</b>	<b>4(A)(5)</b>					If this is <b>positive</b> , credit may be availed under Table 4(A)(5) of FORM GSTR-3B. If this is <b>negative</b> , credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.
Details	B2B - Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
II	<b>Inward Supplies from ISD</b>	<b>4(A)(4)</b>					If this is <b>positive</b> , credit may be availed under Table 4(A)(4) of FORM GSTR-3B. If this is <b>negative</b> , credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.
Details	ISD - Invoices						
	ISD - Invoices (Amendment)						
III	<b>Inward Supplies liable for reverse charge</b>	<b>3.1(d) 4(A)(3)</b>					These supplies shall be <b>declared</b> in Table 3.1(d) of FORM GSTR-3B for payment of tax. Credit may be <b>availed</b> under Table 4(A)(3) of FORM GSTR-3B on payment of tax.
Details	B2B - Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
IV	<b>Import of Goods</b>	<b>4(A)(1)</b>					If this is <b>positive</b> , credit may be availed under Table 4(A)(1) of FORM GSTR-3B. If this is <b>negative</b> , credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.
Details	IMPG - Import of goods from overseas						
	IMPG (Amendment)						
	IMGSEZ - Import of goods from SEZ						
	IMGSEZ (Amendment)						

Part B ITC Reversal - Credit shall be reversed in relevant headings in GSTR-3B							
I	Others	4(B)(2)					If this is <b>positive</b> , Credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. If this is <b>negative</b> , then credit may be reclaimed subject to reversal of the same on an earlier instance.
Details	B2B - Credit notes						
	B2B - Credit notes (Amendment)						
	B2B - Credit notes (Reverse charge)						
	B2B - Credit notes (Reverse charge) (Amendment)						
	ISD - Credit notes						
	ISD - Credit notes (Amendment)						

#### 4. ITC Not Available Summary

(Amount in ₹ in all sections)

S.no.	Heading	GSTR-3B Table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
<b>Credit which may not be availed under FORM GSTR-3B</b>							
<b>Part A ITC Not Available</b>							
I	All other ITC - Supplies from registered persons other than reverse charge	NA					Such credit shall not be taken in FORM GSTR-3B
Details	B2B - Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
II	Inward Supplies from ISD	NA					Such credit shall not be taken in FORM GSTR-3B
Details	ISD - Invoices						
	ISD Amendment - Invoices						

III	Inward Supplies liable for reverse charge	3.1(d)					These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. However, credit will not be available on the same.
Details	B2B - Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
<b>Part B ITC Reversal</b>							
I	Others	4(B)(2)					Credit shall be <b>reversed</b> under Table 4(B)(2) of FORM GSTR-3B.
Details	B2B - Credit notes						
	B2B - Credit notes (Amendment)						
	B2B - Credit notes (Reverse charge)						
	B2B - Credit notes (Reverse charge) (Amendment)						
	ISD - Credit notes						
	ISD - Credit notes (Amendment)						

Instructions:

1. Terms Used :-
  - a. ITC – Input tax credit
  - b. B2B – Business to Business
  - c. ISD – Input service distributor
  - d. IMPG – Import of goods
  - e. IMPGSEZ – Import of goods from SEZ

2. **Important Advisory:**
- a) **FORM GSTR-2B** is a statement which has been generated on the basis of the information furnished by your suppliers in their respective **FORMS GSTR-1, 5 and 6**. It is a static statement and will be made available once a month. The documents filed by the supplier in any **FORMS GSTR-1, 5 and 6** would reflect in the next open **FORM GSTR-2B** of the recipient irrespective of supplier's date of filing. Taxpayers are advised to refer **FORM GSTR-2B** for availing credit in **FORM GSTR-3B**. However, in case for additional details, they may refer to their respective **FORM GSTR-2A** (which is updated on near real time basis) for more details.
  - b) Input tax credit shall be indicated to be non-available in the following scenarios: -
    - i. Invoice or debit note for supply of goods or services or both where the recipient is not entitled to input tax credit as per the provisions of sub-section (4) of Section 16 of CGST Act, 2017.
    - ii. Invoice or debit note where the Supplier (GSTIN) and place of supply are in the same State while recipient is in another State.
 However, there may be other scenarios for which input tax credit may not be available to the taxpayers and the same has not been generated by the system. Taxpayers, should self-assess and reverse such credit in their **FORM GSTR-3B**.

3. It may be noted that **FORM GSTR-2B** will consist of all the **FORM GSTR-1s, 5s and 6s** being filed by your suppliers, generally between the due dates of filing of two consequent GSTR-1 or furnishing of IFFs, based on the filing option (monthly or quarterly) as chosen by the corresponding supplier. The dates for which the relevant data has been extracted is specified in the CGST Rules and is also available under the "View Advisory" tab on the online portal. For example, **FORM GSTR-2B** for the month of February will consist of all the documents filed by suppliers who choose to file their **FORM GSTR-1** monthly from 00:00 hours on 12<sup>th</sup> February to 23:59 hours on 11<sup>th</sup> March.
4. It also contains information on imports of goods from the ICEGATE system including data on imports from Special Economic Zones Units / Developers.
5. It may be noted that reverse charge credit on import of services is not part of this statement and will be continued to be entered by taxpayers in Table 4(A)(2) of **FORM GSTR-3B**.
6. Table 3 captures the summary of ITC available as on the date of generation of **FORM GSTR-2B**. It is divided into following two parts:
  - A. Part A captures the summary of credit that may be availed in relevant tables of **FORM GSTR-3B**.
  - B. Part B captures the summary of credit that shall be reversed in relevant table of **FORM GSTR-3B**.
7. Table 4 captures the summary of ITC not available as on the date of generation of **FORM GSTR-2B**. Credit available in this table shall not be availed as credit in **FORM GSTR-3B**. However, the liability to pay tax on reverse charge basis and the liability to reverse credit on receipt of credit notes continues for such supplies.
8. Taxpayers are advised to ensure that the data generated in **FORM GSTR-2B** is reconciled with their own records and books of accounts. Taxpayers shall ensure that
  - a. No credit shall be taken twice for any document under any circumstances.
  - b. Credit shall be reversed wherever necessary.
  - c. Tax on reverse charge basis shall be paid.
9. Details of invoices, credit notes, debit notes, ISD invoices, ISD credit and debit notes, bill of entries etc. will also be made available online and through download facility.
10. There may be scenarios where a percentage of the applicable rate of tax rate may be notified by the Government. A separate column will be provided for invoices / documents where such rate is applicable.
11. Table wise instructions:

<u>Table No. and Heading</u>	<u>Instructions</u>
Table 3 Part A Section I All other ITC - Supplies from registered persons other than reverse charge	<ol style="list-style-type: none"> <li>i. This section consists of the details of supplies (other than those on which tax is to be paid on reverse charge basis), which have been declared and filed by your suppliers in their <b>FORM GSTR-1 and 5</b>.</li> <li>ii. This table displays only the supplies on which input tax credit is available.</li> <li>iii. Negative credit, if any may arise due to amendment in B2B- Invoices and B2B - Debit notes. Such credit shall be reversed in Table 4(B)(2) of <b>FORM GSTR-3B</b>.</li> </ol>
Table 3 Part A Section II Inward Supplies from ISD	<ol style="list-style-type: none"> <li>i. This section consists of the details of supplies, which have been declared and filed by an input service distributor in their <b>FORM GSTR-6</b>.</li> <li>ii. This table displays only the supplies on which ITC is available.</li> <li>iii. Negative credit, if any, may arise due to amendment in ISD Amendments - Invoices. Such credit shall be reversed in table 4(B)(2) of <b>FORM GSTR-3B</b>.</li> </ol>
Table 3 Part A Section III Inward Supplies liable for reverse charge	<ol style="list-style-type: none"> <li>i. This section consists of the details of supplies on which tax is to be paid on reverse charge basis, which have been declared and filed by your suppliers in their <b>FORM GSTR-1</b>.</li> <li>ii. This table provides only the supplies on which ITC is available.</li> <li>iii. These supplies shall be declared in Table 3.1(d) of <b>FORM GSTR-3B</b> for payment of tax. Credit may be availed under Table 4(A)(3) of <b>FORM GSTR-3B</b> on payment of tax.</li> </ol>
Table 3 Part A Section IV	<ol style="list-style-type: none"> <li>i. This section provides the details of IGST paid by you on import of goods from overseas and SEZ units / developers on bill of entry and amendment thereof. These details are updated on near real time basis from</li> </ol>

Import of Goods	<p>the ICEGATE system.</p> <p>ii. This table shall consist of data on the imports made by you (GSTIN) in the month for which <b>FORM GSTR-2B</b> is being generated for.</p> <p>iii. The ICEGATE reference date is the date from which the recipient is eligible to take input tax credit.</p> <p>iv. The table also provides if the Bill of entry was amended.</p> <p>v. Information is provided in the tables based on data received from ICEGATE. Information on certain imports such as courier imports may not be available.</p>
Table 3 Part B Section I Others	<p>i. This section consists of the details of credit notes received and amendment thereof which have been declared and filed by your suppliers in their <b>FORM GSTR-1 and 5</b></p> <p>ii. Such credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. If this value is negative, then credit may be reclaimed subject to reversal of the same on an earlier instance.</p>
Table 4 Part A Section I All other ITC - Supplies from registered persons other than reverse charge	<p>i. This section consists of the details of supplies (other than those on which tax is to be paid on reverse charge basis), which have been declared and filed by your suppliers in their <b>FORM GSTR-1 and 5</b>.</p> <p>ii. This table provides only the supplies on which ITC is not available.</p> <p>iii. This is for information only and such credit shall not be taken in <b>FORM GSTR-3B</b>.</p>
Table 4 Part A Section II Inward Supplies from ISD	<p>i. This section consists of the details supplies, which have been declared and filed by an input service distributor in their <b>FORM GSTR-6</b>.</p> <p>ii. This table provides only the supplies on which ITC is not available.</p> <p>iii. This is for information only and such credit shall not be taken in <b>FORM GSTR-3B</b>.</p>
Table 4 Part A Section III Inward Supplies liable for reverse charge	<p>i. This section consists of the details of supplies liable for reverse charge, which have been declared and filed by your suppliers in their <b>FORM GSTR-1</b>.</p> <p>ii. This table provides only the supplies on which ITC is not available.</p> <p>iii. These supplies shall be declared in Table 3.1(d) of <b>FORM GSTR-3B</b> for payment of tax. However, credit will not be available on such supplies.</p>
Table 4 Part B Section I Others	<p>i. This section consists details the credit notes received and amendment thereof which have been declared and filed by your suppliers in their <b>FORM GSTR-1 and 5</b></p> <p>ii. This table provides only the credit notes on which ITC is not available.</p>
	<p>iii. Such credit shall be reversed under Table 4(B)(2) of <b>FORM GSTR-3B</b>.</p>

[F. No. CBEC-20/06/09/2019-GST]

(Pramod Kumar)  
Director, Government of India

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), *vide* notification No. 3/2017-Central Tax, dated the 19<sup>th</sup> June, 2017, published *vide* number G.S.R. 610 (E), dated the 19<sup>th</sup> June, 2017 and was last amended *vide* notification No. 72/2020-Central Tax, dated the 30<sup>th</sup> September, 2020, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), *vide* number G.S.R. 603(E), dated the 30<sup>th</sup> September, 2020.

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

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

**Corrigendum**

**New Delhi, the 13<sup>th</sup> November, 2020**

G.S.R...(E):- In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No. 82/2020-Central Tax, dated the 10<sup>th</sup> November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 698(E), dated the 10<sup>th</sup> November, 2020, :

- at page 21, in lines 9,10,and 11, for the words, figures, letters and brackets “notification No. 72/2020-Central Tax, dated the 30th September, 2020, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 603(E), dated the 30th September, 2020. ” read “notification No. 79/2020-Central Tax, dated the 15<sup>th</sup> October, 2020, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 639(E), dated the 15<sup>th</sup> October, 2020”.

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

(Pramod Kumar)  
Director, Government of India

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

**Government of India**  
**Ministry of Finance**  
**(Department of Revenue)**  
**Central Board of Indirect Taxes and Customs**  
**Notification No. 83/2020 – Central Tax**

**New Delhi, the 10<sup>th</sup> November, 2020**

G.S.R.....(E).– In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 74/2020-Central Tax, dated the 15<sup>th</sup> October, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 634 (E), dated the 15<sup>th</sup> October, 2020, and notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 75/2020-Central Tax, dated the 15<sup>th</sup> October, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 635 (E), dated the 15<sup>th</sup> October, 2020, except as respects things done or omitted to be done before such supersession, the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), for each of the tax periods, till the eleventh day of the month succeeding such tax period:

Provided that the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of the said rules for the class of registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 of the said Act, shall be extended till the thirteenth day of the month succeeding such tax period.

2. This notification shall come into force with effect from the 1<sup>st</sup> day of January, 2021.

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

(Pranod Kumar)  
Director, Government of India



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

**Government of India**  
**Ministry of Finance**  
**(Department of Revenue)**  
**Central Board of Indirect Taxes and Customs**  
**Notification No. 84/2020 – Central Tax**

**New Delhi, the 10<sup>th</sup> November, 2020**

G.S.R. ....(E).— In exercise of the powers conferred by proviso to sub-section (1) of section 39 read with proviso to sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies the registered persons, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), having an aggregate turnover of up to five crore rupees in the preceding financial year, and who have opted to furnish a return for every quarter, under sub-rule (1) of rule 61A of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules) as the class of persons who shall, subject to the following conditions and restrictions, furnish a return for every quarter from January, 2021 onwards, and pay the tax due every month in accordance with the proviso to sub-section (7) of section 39 of the said Act, namely: —

(i) the return for the preceding month, as due on the date of exercising such option, has been furnished:

(ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.

(2) A registered person whose aggregate turnover crosses five crore rupees during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

(3) For the registered person falling in the class specified in column (2) of the Table below, who have furnished the return for the tax period October, 2020 on or before 30<sup>th</sup> November, 2020, it shall be deemed that they have opted under sub-rule (1) of rule 61A of the said rules for the monthly or quarterly furnishing of return as mentioned in column (3) of the said Table:-

**Table**

<b>Sl. No.</b>	<b>Class of registered person</b>	<b>Deemed Option</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished <b>FORM GSTR-1</b> on quarterly basis in the current financial year	Quarterly return
2.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished <b>FORM GSTR-1</b> on monthly basis in the current financial year	Monthly return
3.	Registered persons having aggregate turnover more	Quarterly return

	than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	
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(4) The registered persons referred to in column (2) of the said Table, may change the default option electronically, on the common portal, during the period from the 5th day of December, 2020 to the 31<sup>st</sup> day of January, 2021.

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

(Pramod Kumar)  
Director, Government of India

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

**Government of India**  
**Ministry of Finance**  
**(Department of Revenue)**  
**Central Board of Indirect Taxes and Customs**  
**Notification No. 85/2020 – Central Tax**

**New Delhi, the 10<sup>th</sup> November, 2020**

G.S.R.....(E). — In exercise of the powers conferred by section 148 read with sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons, notified under proviso to sub-section (1) of section 39 of the said Act, who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, follow the special procedure such that the said persons may pay the tax due under proviso to sub-section (7) of section 39 of the said Act, by way of making a deposit of an amount in the electronic cash ledger equivalent to, -

(i) thirty five per cent. of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or

(ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly:

Provided that no such amount may be required to be deposited-

- (a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability ;
- (b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability:

Provided further that registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.

*Explanation-* For the purpose of this notification, the expression “a complete tax period” means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

2. This notification shall come into force with effect from the 1<sup>st</sup> day of January, 2021.

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

(Pramod Kumar)  
Director, Government of India

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

**Government of India  
Ministry of Finance  
(Department of Revenue)  
Central Board of Indirect Taxes and Customs  
Notification No. 86/2020 – Central Tax**

**New Delhi, the 10<sup>th</sup> November, 2020**

G.S.R.....(E).– In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations on the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 76/2020-Central Tax, dated the 15<sup>th</sup> October, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 636 (E), dated the 15<sup>th</sup> October, 2020, except as respects things done or omitted to be done before such rescission.

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

(Pramod Kumar)  
Director, Government of India

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

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

**Corrigendum**

**New Delhi, the 13<sup>th</sup> November, 2020**

G.S.R...(E):- In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No. 86/2020-Central Tax, dated the 10<sup>th</sup> November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 702(E), dated the 10<sup>th</sup> November, 2020, :

- at page 25, in line 33, for the words “Central Government” read “Commissioner”.

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

(Pramod Kumar)  
Director, Government of India

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

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

**Notification No. 87/2020 – Central Tax**

**New Delhi, the 10<sup>th</sup> November, 2020**

G.S.R..... (E):- In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017, the Commissioner, with the approval of the Board, hereby extends the time limit for furnishing the declaration in **FORM GST ITC-04**, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2020 to September, 2020 till the 30<sup>th</sup> day of November, 2020.

2. This notification shall be deemed to have come into force with effect from the 25<sup>th</sup> day of October, 2020.

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

(Prmod Kumar)  
Director, Government of India

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

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

**Notification No. 88/2020 – Central Tax**

**New Delhi, the 10<sup>th</sup> November, 2020**

G.S.R.....(E). - In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21<sup>st</sup> March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21<sup>st</sup> March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1<sup>st</sup> day of January, 2021, for the words “five hundred crore rupees”, the words “one hundred crore rupees” shall be substituted.

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

(Pramod Kumar)  
Director, Government of India

Note: The principal notification No. 13/2020 – Central Tax, dated the 21<sup>st</sup> March, 2020 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 196(E), dated 21<sup>st</sup> March, 2020 and was last amended *vide* notification No. 70/2020-Central Tax, dated the 30<sup>th</sup> September, 2020, published *vide* number G.S.R. 596(E), dated the 30<sup>th</sup> September, 2020.

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

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

**Notification No. 89/2020 – Central Tax**

**New Delhi, the 29<sup>th</sup> November, 2020**

G.S.R.....(E). - In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby waives the amount of penalty payable by any registered person under section 125 of the said Act for non-compliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 197(E), dated the 21st March, 2020, between the period from the 01<sup>st</sup> day of December, 2020 to the 31<sup>st</sup> day of March, 2021, subject to the condition that the said person complies with the provisions of the said notification from the 01<sup>st</sup> day of April, 2021.

[F. No-CBEC-20/16/38/2020-GST]

(Pramod Kumar)  
Director, Government of India



## **(IV) CGST CIRCULARS**

Circular No. 143/13/2020- GST

**CBEC-20/01/08/2020 -GST**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**GST Policy Wing**

New Delhi, dated the 10<sup>th</sup> November, 2020

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

Madam/Sir,

**Subject: Quarterly Return Monthly Payment Scheme - Reg.**

As a trade facilitation measure and in order to further ease the process of doing business, the GST Council in its 42<sup>nd</sup> meeting held on 05.10.2020, had recommended that registered person having aggregate turnover up to five (5) crore rupees may be allowed to furnish return on quarterly basis along with monthly payment of tax, with effect from 01.01.2021. Government has issued following notifications to implement the Scheme of quarterly return filing along with monthly payment of taxes (hereinafter referred to as “QRMP Scheme/ Scheme”):

<b>Sl. No.</b>	<b>Notification</b>	<b>Remarks</b>
1.	Notification No. 81/2020 – Central Tax, dated 10.11.2020.	Notifies amendment carried out in sub-section (1), (2) and (7) of section 39 of the CGST Act vide Finance (No.2) Act, 2019.
2.	Notification No. 82/2020 – Central Tax, dated 10.11.2020.	Makes the Thirteenth amendment (2020) to the CGST Rules 2017.
4.	Notification No. 84/2020 – Central Tax, dated 10.11.2020.	Notifies class of persons under proviso to section 39(1) of the CGST Act.
5.	Notification No. 85/2020 – Central Tax dated 10.11.2020.	Notifies special procedure for making payment of tax liability in the first two months of a quarter

2. Various issues related to notifications issued to implement the QRMP Scheme have been examined. In order to explain the Scheme in simple terms and in order to ensure uniformity in implementation across field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies various issues in succeeding paragraphs.

### 3. Eligibility for the Scheme

In terms of notification No. 84/2020- Central Tax, dated 10.11.2020, a registered person who is required to furnish a return in **FORM GSTR-3B**, and who has **an aggregate turnover of up to 5 crore rupees in the preceding financial year**, is eligible for the QRMP Scheme. It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 01.01.2021. Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

### 4. Exercising option for QRMP Scheme

**4.1** Facility to avail the Scheme on the common portal would be available throughout the year. In terms of rule 61A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as CGST Rules), a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

***For example:** A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1<sup>st</sup> of May to 31<sup>st</sup> of July.*

*If he is exercising his option on 27<sup>th</sup> July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24<sup>th</sup> July.*

**4.2** Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

**4.3** For the first quarter of the Scheme i.e. for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, it has been decided that all the registered persons, whose aggregate turnover for the FY 2019-20 is up to 5 crore rupees and who have furnished the return in FORM GSTR-3B for the month of October, 2020 by 30<sup>th</sup> November, 2020, shall be migrated on the common portal as below. Therefore, taxpayers are advised to furnish the return of October, 2020 in time so as to be eligible for default migration. The taxpayers who have not filed their return for October, 2020 on or before 30<sup>th</sup> November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the **FORM GSTR-3B** as due on the date of exercising option has been filed.

Sl. No.	Class of registered person	Default Option
1	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished <b>FORM GSTR-1</b> on quarterly basis in the current financial year	Quarterly return
2	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished <b>FORM GSTR-1</b> on monthly basis in the current financial year	Monthly Return
3	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial	Quarterly return

	year	
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Above default option has been provided for the convenience of registered persons based on their anticipated behaviour. However, such registered persons are free to change the option as above, if they so desire, from 5<sup>th</sup> of December, 2020 to 31<sup>st</sup> of January, 2021. It is re-iterated that any taxpayer whose aggregate turnover has exceeded 5 crore rupees in the financial year 2020-21, shall opt out of the Scheme.

4.4 Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

4.5 All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option as in para 4.1.

4.6 It is also clarified that such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

4.7 It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

5. **Furnishing of details of outward supplies under section 37 of the CGST Act.**

5.1 The registered persons opting for the Scheme would be required to furnish the details of outward supply in **FORM GSTR-1** quarterly as per the rule 59 of the CGST Rule.

5.2 For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward **supplies to a registered person**, as he may consider necessary, between **the** 1<sup>st</sup> day of the succeeding month till the 13<sup>th</sup> day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month. It may be noted that after 13<sup>th</sup> of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1<sup>st</sup> day of the month till 13<sup>th</sup> day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the **FORM GSTR-2A** and **FORM GSTR-2B** of the concerned recipient.

*For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself. Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in **FORM GSTR-1** of the said quarter. The two invoices furnished in IFF shall be reflected in **FORM GSTR-2B** of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in **FORM GSTR-1** shall be reflected in **FORM***

**GSTR-2B** of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1<sup>st</sup> August till 13<sup>th</sup> August. Similarly, for the month of August, the said facility will be available from 1<sup>st</sup> September till 13<sup>th</sup> September.

**It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.**

5.3 The details of invoices furnished using the said facility in the first two months are not required to be furnished again in **FORM GSTR-1**. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in **FORM GSTR-1** for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in **FORM GSTR-1** only, without using the IFF.

## 6. Monthly Payment of Tax

6.1 The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month. While generating the challan, taxpayers should select “Monthly payment for quarterly taxpayer” as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months -

- (a) **Fixed Sum Method:** A facility is being made available on the portal for generating a pre-filled challan in **FORM GST PMT-06** for an amount equal to thirty five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly. For easy understanding, the same is explained by way of illustration in table below:

- i. In case the last return filed was on quarterly basis for Quarter Ending March, 2021:

Tax paid in Cash in Quarter (January - March, 2021)		Tax required to be paid in each of the months – April and May, 2021	
CGST	100	CGST	35
SGST	100	SGST	35
IGST	500	IGST	175
Cess	50	Cess	17.5

- ii. In case the last return filed was monthly for tax period March, 2021:

Tax paid in Cash in March, 2021		Tax required to be paid in each of the months – April and May, 2021	
CGST	50	CGST	50
SGST	50	SGST	50
IGST	80	IGST	80
Cess	-	Cess	-

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

**(b) Self-Assessment Method:** The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in **FORM GST PMT-06**. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in **FORM GSTR-2B**, for every month.

6.2 The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.

6.3 It is clarified that in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

6.4 Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

**7. Quarterly filing of FORM GSTR-3B**

Such registered persons would be required to furnish **FORM GSTR-3B**, for each quarter, on or before 22<sup>nd</sup> or 24<sup>th</sup> day of the month succeeding such quarter. In **FORM GSTR-3B**, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's **FORM GSTR-3B**. However, any amount left after filing of that quarter's **FORM GSTR-3B** may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in **FORM GSTR-3B** for the relevant tax period.

**8. Applicability of Interest**

**8.1. For registered person making payment of tax by opting Fixed Sum Method**

i. No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as detailed in para 6.1(a) above by the due date. In other words, if while furnishing return in **FORM GSTR-3B**, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made /received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.

ii. In case such payment of tax by depositing the system calculated amount in **FORM GST PMT-06** is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing **FORM GST PMT-06** till the date of making such payment.

iii. Further, in case **FORM GSTR-3B** for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

**Illustration 1 –**

*A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under **fixed sum method**. He therefore pays Rs. 35/- each on 25<sup>th</sup> February and 25<sup>th</sup> March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was Rs. 40/- and for February it was Rs. 42/-. No interest would be payable for the lesser amount of tax (i.e. Rs. 5 and Rs. 7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.*

**Illustration 2 –**

*A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25<sup>th</sup> February and 25<sup>th</sup> March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was Rs. 125 but he files the return on 30<sup>th</sup> April. Interest would be payable at applicable rate on Rs. 55 [Rs. 125 – Rs. 70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly GSTR 3B and 30<sup>th</sup> April*

**8.2 For registered person making payment of tax by opting Self-Assessment Method**

Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter.

**8.3** Interest payable, if any, shall be paid through **FORM GSTR-3B**.

**9. Applicability of Late Fee** - Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return / details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

**10.** It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Hindi version will follow.

**11.** Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board.

(Yogendra Garg)  
Principal Commissioner  
[y.garg@nic.in](mailto:y.garg@nic.in)

## **(V) ADVANCE RULINGS**

### **1. AAAR cannot answer on correctness of GST liability based on illustrative invoices**

Case Name : **In re Apsara Co-operative Housing Society Ltd. (GST AAAR Maharashtra)**

Appeal Number : Order No. MAH/AAAR/RS-SK/28/2020-21

Date of Judgement/Order : 05/11/2020

The Maharashtra Appellate Authority for Advance Ruling upheld the Ruling passed by the Maharashtra Advance Ruling Authority, vide their Order No. GST-ARA-21/2019-20/B-34 dated 17.03.2020 and stated that the activities carried out by the Appellant would amount to supply in terms of Section 7(1)(a) of the CGST Act, 2017, and the same would be liable for GST subject to the condition that the monthly subscription/contribution charged by the society from its members is more than Rs. 7500/- per month per member and the annual aggregate turnover of the society by way of supplying of services and goods is also Rs. 20 lakhs or more. Further, their second question regarding correctness of the GST liability on the basis of the illustrative invoices cannot be answered on account of the above stated reasons.

### **2. No GST if Entire Sales Consideration received after obtaining Occupancy Certificate by applicant of his Share in property under JDA**

Case Name : **In Re Sri. B.R. Sridhar (GST AAR Karnataka)**

Appeal Number : Advance Ruling No. KAR ADRG 55/2020

Date of Judgement/Order : 07/11/2020

Whether the total amounts received by the Owner towards the advances or sale consideration of the flats fallen to his share of 40% in terms of the Joint Development Agreement dated 19.05.2016 and the subsequent Area Sharing Agreement dated 03.01.2018, are not amenable for payment of GST, since applicant has sold or agreed to sell or gifted, the flats after obtaining Occupancy Certificate dated 26.08.2019 and that Applicant has not received any part of the sale consideration prior to the said date of occupancy certificate, thus falling under Entry No.5 of Schedule III of CGST Act read with **Notification No.11/2017-Central Tax (Rate) dated 28.06.2017** and the corresponding provisions of SGST Act.

The amounts received by the applicant, either by himself or through his agents, towards sale of their share of flats are not exigible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate dated 26.08.2019, as the said activities are treated neither supply of goods nor supply of service in terms of schedule III of the CGST Act 2017 subject to Clause 5(b) of the Schedule-II of the CGST Act, 2017.

### **3. Type-3 test by 'NCS Pearson Inc' classifiable as OIDAR service: AAAR**

Case Name : **In re Principal Commissioner of Central Tax Vs. NCS Pearson Inc (GST AAAR Karnataka)**

Appeal Number : Order No. KAR/AAAR/07/2020-21

Date of Judgement/Order : 13/11/2020

The Appellate Authority Allow the Appeal filed by the Principal Commissioner of Central Tax, Bangalore West Commissionerate and set aside the ruling give by the Authority for Advance Ruling in **KAR ADRG 37/2020 dated 22-05-2020** with regard to the classification of the Type-3 test. The Appellate Authority hold that service provided for the Type-3 test is classifiable as an OIDAR service. The appeal filed by the Department is disposed off on the above terms.

### **4. GST on conservancy service to Defence establishments**

Case Name : **In re Lokenath Builders (GST AAR West Bengal)**

Appeal Number : Order No. 12/WBAAR/2020-21

Date of Judgement/Order : 13/11/2020

The applicant's supply to Bagrakot Military Station and Sukna Military Station, as described in para 3.5, is exempt from the payment of GST under SI No. 3 of **Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017** (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time.



## **(VI) COURT ORDERS/ JUDGEMENTS**

### **1. HC allows Appeal under PVAT on deposit of 10% total demand instead of 25%**

Case Name : **Kelmar (India) Exports Vs State of Punjab and others (Punjab and Haryana High Court)**

Appeal Number : CWP No. 17975 of 2020

Date of Judgement/Order : 02/11/2020

Admittedly, the first appeal was filed by the petitioner along with an application for waiving off pre-deposit amount of 25%. The appeal was dismissed by the Deputy Excise and Taxation Commissioner (Admin), Ludhiana Division, Ludhiana on the ground that the petitioner was directed to deposit 10% of the total demand instead of 25% under Section 62(5) of the PVAT Act by 21.03.2017. However, the petitioner did not comply with the directions. Thereafter, the VAT Appellate Tribunal also dismissed the appeal on the ground of non-depositing pre-deposit of 25% of the total demand. It was also directed to the petitioner to deposit 10% of the total demand within a period of two months but still that amount was not deposited. It was observed that the petitioner was having remedy under Article 226 of the Constitution of India for seeking any relaxation or waiving off the amount for hearing of the appeal. No doubt, any specific ground has not been taken for showing the financial hardship but it has been mentioned in second prayer that due to financial loss in business, the petitioner could not deposit the amount of 25% as pre-deposit. During the course of arguments, it has been submitted by learned counsel for the petitioner that the petitioner would deposit 10% of the total demand as directed by the Appellate Authority, in case, his appeal is heard on merits. Although, as per provisions of Section 62(5) of the PVAT Act, no appeal can be entertained unless the same is accompanied by satisfactory proof of the prior minimum payment of twenty-five percent of the total amount of additional demand created, penalty and interest, if any. It is not disputed that the Appellate Authority directed the petitioner to deposit 10% instead of 25% as pre-deposit for hearing of the appeal but the petitioner could not deposit the said amount as well. Now the petitioner is ready to deposit 10% of the total demand so that his appeal can be heard on merit.

Undisputedly, no relaxation can be given in view of ratio of judgment rendered in **M/s Tecnimont Pvt. Ltd.** case (supra) but the petitioner has to make out a case for financial hardship. Accordingly, by considering the interest of justice and also the fact that the petitioner is ready to deposit 10% as pre-deposit instead of 25% of the total demand before the Appellate Authority within some reasonable period for deciding his appeal on merits, hence and as such, by exercising the inherent powers as provided under Section 226 of the Constitution of India and keeping in view the peculiar facts and circumstances of the case and by considering the financial hardship of the petitioner, we dispose of the petition by directing the petitioner to file an appeal within a period of two weeks from the date of receipt of certified copy of the order and respondent No.2 i.e the Deputy Excise and Taxation Commissioner (Admin), Ludhiana Division, Ludhiana is directed to entertain the appeal and to decide the same in

accordance with law within a period of four weeks thereafter on depositing of 10% of the total demand.

## **2. HC Grants Interim Relief to Class A Contractor from Being exposed to Recovery of Tax Demand**

Case Name : **Sunil Kumar Agrawal Vs State of Chhattisgarh & Ors. (Chhattisgarh High Court)**

Appeal Number : WPT No. 99 of 2020

Date of Judgement/Order : 02/11/2020

In the instant case, the Contractor has been disallowed to interstate procure High Speed Diesel against C form at concessional Tax rate even though the High Speed Diesel procured interstate is used in the Mining activity of Coal i.e. extraction and removal of overburden for excavation of Coal by the miner. The petitioner has filed petition against this order for tax demand.

Chhattisgarh High Court Grants Interim Relief To Class A Contractor From Being Exposed To Recovery of Tax Demand under the VAT Act and Central Sales Tax Act.

## **3. HC Rejects proposed amendment in writ by Sun Pharma seeking Refund of Full CGST & 50% of IGST**

Case Name : **Sun Pharma Laboratories Limited Vs Union of India and Others (Sikkim High Court)**

Appeal Number : WP(C) No. 47 of 2018

Date of Judgement/Order : 02/11/2020

**The instant petition is filed to seek the refund of full Central Goods and Service Tax (CGST) and 50% of Integrated Goods and Service Tax (IGST) paid through the electronic cash ledger.**

Petitioner seeks to challenge the *vires* of Section 174(2)(c) of the **Central Goods and Services Tax Act, 2017** and **Notification No.21/2017-C.E., dated 18-07-2017**, on the ground that it takes away the vested rights of the Petitioner by reducing the exemption/benefits to the Petitioner. The prayers in the Writ Petition are confined to enabling the Petitioner to claim full refund of the CGST and 50% of the IGST paid through the electronic cash ledger. It cannot be said that the Petitioner was unaware of the provision of the statute the *vires* of which they now seek to assail, nor was it inserted at some point later in time to the filing of the Writ Petition. The question of the Petitioner's inability to raise the matter in spite of due diligence, before the matter was heard or was taken up for hearing, therefore, does not arise. In view of the questions involved in the instant Writ Petition it cannot be said that the amendments are necessary for determining the real question in controversy between the parties considering the prayers of the Petitioner referred above. The proposed amendments if permitted would in fact change the very nature and character of the Writ Petition and introduce an entirely different Cause of action, which is not permissible.

#### **4. GST: Non-Registration of Consignor can't be ground for detention**

Case Name : **Mohammed Shereef Vs State of Kerala (Kerala High Court)**

Appeal Number : WP (C).No. 23397 of 2020 (Y)

Date of Judgement/Order : 02/11/2020

**The issue under consideration is whether non-registration of the consignor or the alleged mis-classification of the goods under transportation can be a ground for detention under Section 129 of the GST Act?**

High Court states that it is not in dispute that there was a valid e-way bill covering the transportation in question and the said e-way bill clearly described the product as falling under HSN Code 910. No doubt, the consignor being an unregistered person, and the goods supplied by him to the petitioner being exempted goods, the transportation had to be covered not only by an e-way bill but also by a delivery challan, and since the transportation was not covered by a delivery challan, the respondents were justified in detaining the consignment. The question however arises as to what would be the liability of the petitioner who seeks to get a release of the goods that are detained under Section 129. In the instant case, if this Court ignores the classification issue as also the non-registration issue which are not relevant for the purposes of **Section 129** of the Act, then it is the provisions of Section 129(1)(b) that would apply for the purposes of determining the deposit that the petitioner would have to make for obtaining a clearance of the goods and the vehicle. On applying the said provision, the petitioner would have to pay the lesser of an amount equal to 5% of the value of the goods or Rs.25,000/-. In the instant case, the value of the goods being approximately Rs.10 lakhs, the lesser amount would be Rs.25,000/- which amount the petitioner would necessarily have to pay to obtain a release of the goods and the vehicle. HC therefore dispose the writ petition by directing the respondents to release the goods and the vehicle to the petitioner on the petitioner paying an amount of Rs.25,000/-, as required in terms of Section 129(1)(b) read with Section 129(3) of the GST Act.

#### **5. Rejection of Claims of Sales or Returns Merely on the Assumption of Failure to Produce Documentary Evidence Not Justified**

Case Name : **Kurlon Enterprises Limited Vs State Tax Officer (Madras High Court)**

Appeal Number : W.P.No. 2793, 2797, 2798 and 2800 of 2020

Date of Judgement/Order : 02/11/2020

**The issue under consideration is whether officers can reject claims of sales or returns merely on the assumption of failure to produce documentary evidence?**

High Court states that, it would suffice that proceedings initiating an assessment should commence prior to the date of expiry of limitation. In the present case, notices initiating proceedings for revision of assessments have admittedly been issued on 17.02.2017 in all cases, before the expiry of the period of limitation. This argument is thus rejected. Coming to the merits of the matter, there was a surprise inspection by

the Enforcement Wing Officials on 16.08.2016 in the business premises of the petitioner and pursuant to the audit of accounts, various defects were pointed out by the Officers. The petitioner has, on 03.08.2017 written to the respondent officer annexing sales returns statements, along with the invoice number and date of transaction for the four years in question. The communication states that copies of credit notes with sample sales return note as well as invoices were also annexed. Thereafter, under letter dated 29.11.2017, some more details have been annexed along with pen drive containing relevant documentation. The text of the communication indicates that sample bills have been furnished for the periods in question. It is not in dispute that these communications have, in fact, been received by the officers. Be that as it may, it was incumbent on the part of the Officer to have tabulated the materials filed by the assessee in the first instance and compare the same with the requirements of the aforesaid Rule and thereafter come to a conclusion as to whether the Rule stands satisfied. This exercise has not been done and the Officer merely rejects the petitioner's contention on the assumption that there is a failure to produce documentary evidence in support of the claim of sales/returns. HC is of the view that the exercise of reconciliation has not been conducted in the manner as required by law. The impugned assessments are thus set aside.

## **6. HC: Power To Conduct Service Tax Audit is saved under GST Act**

Case Name : **Vianaar Homes Private Limited Vs Assistant Commissioner CGST (Delhi High Court)**

Appeal Number : W.P. (C) 2245/2020

Date of Judgement/Order : 03/11/2020

**Conclusion:** Authorities had power under Section 174(2)(e) of the **CGST Act, 2017** to institute any investigation, inquiry, verification, assessment proceedings, adjudication, etc. under Rule 5A of the Service Tax Rules.

**Held:** Assessee-company was engaged in the business of construction of residential complexes since its incorporation. Assessee claimed to be a regular and timely taxpayer under both the Service Tax and GST regime. Officers of Central Goods and Service Tax, Audit-II visited the business premises of assessee, directed the production of certain documents and sought information in relation to the disputed period. In addition thereto, the officers also demanded information pertaining to several group companies of assessee. Despite assessee's compliance with the above and submission of the requisite information, the officers visited the business premises again on 17.02.2020 as well as 24.02.2020. Their conduct exhibited the intention to continue with the visits, conduct audit/verification proceedings, and give further directions for production of documents and information. Aggrieved with the aforesaid action, assessee had challenged, inter-alia the letter by virtue whereof the authorities had commenced the audit/verification, on the ground that the same was void ab initio, being wholly without jurisdiction as well as without any statutory or legal authority. The primary hypothesis for assailing the action of the authorities was founded on the premise that w.e.f. 01.07.2017, by the advent of the CGST Act, the authorities could not take recourse to a subordinate legislation (i.e. Rule 5A Service Tax Rules, 1994)

framed under Chapter V on the Finance Act, 1994, which, by virtue of Section 173 of CGST Act, stood omitted. The duty, tax etc. that was within contemplation of the saving clause was only that which falls within the ambit of section 72 & 73 of the Finance Act, 1994. The material question raised was whether the audit/verification contemplated under Rule 5A was saved despite the repeal of Chapter V. The court took into consideration the decision of the Apex Court in the case of State of Punjab v. Harnek Singh wherein it was held that while interpreting the words “anything duly done or suffered thereunder” used in clause (b) of Section 6 of GCA which were also found in Section 174(2)(b) of the CGST Act, had observed that these words used by the legislature in a saving clause were intended to provide, unless a different intention appeared, that the repeal of an Act would not affect anything duly done or suffered thereunder. Thus, the court having regard to the language used in the saving clause of the CGST Act as well as Sections 6 and 24 of the General Clauses Act, along with the legislative intent behind the repeal and enactment, held that Rule 5A of Service Tax Rules, 1944 framed under the repealed or omitted chapter V of the Finance Act, 1994, was saved. In the instant case, the repeal of the old Act and re-enactment of the new Act was simultaneous. However it did not mean that all investigations, enquiries, audits, assessment proceedings, adjudications and other legal proceedings which form the subject matter of the Service Tax Rules stood abrogated the moment the new law was enacted, or that the officers carrying out the above exercise were stripped of their power to continue with the same because the Service Tax Rules were purportedly not saved. The audit/verification was a process prior to adjudication. If audit/verification would lead to any tax not paid or short paid, the adjudicatory process would necessarily follow. It could therefore not be construed that the service tax should become due only consequent to the exercise of powers under sections 72 and 73 of the Finance Act, 1994. Assessee might be right to the extent of saying that the audit under Rule 5A was qualitatively and materially different from an audit under section 72A of the Finance Act, 1994. Having regard to the language used in the saving clause of the CGST Act as well as Sections 6 and 24 of the General Clauses Act, along with the legislative intent behind the repeal and enactment, it was held that Rule 5A of Service Tax Rules, 1944 framed under the repealed/omitted chapter V of the Finance Act, 1994, was saved.

## **7. HC Grants Bail to Person Alleged of Economic Offence under GST**

Case Name : **Narayan Kumar Khaitan Vs Union of India (Orissa High Court)**

Appeal Number : BLAPL No. 10089 of 2019

Date of Judgement/Order : 04/11/2020

**The instant petition is filed to seek bail against the offences alleged against petitioner which are punishable under Sections 132(1)(b) and 132(1)(l) of the Central Goods and Services Tax Act, 2017.**

High Court states that the petitioner has been indicted in a heinous and serious offence, i.e., economic offence causing loss of Rs.19 crores revenue to the Government Exchequer, as revealed from the materials produced and also his such alleged overt act contributed to frustrate the avowed object of bringing reform tax law

brought by the Union of India in the shape of G.S.T. and Rourkela is stated to be an epicentre of such fraudulent activities in India which has spreaded to other parts of the Country, this Court is not inclined to review its earlier order rejecting the prayer for bail of the petitioner only on the ground that the petitioner remained in custody for some times more. But, considering the fact that the petitioner is languishing in custody for more than two years and also the fact that due to spread of Pandemic **Covid-19** hardly any chance of the trial being concluded in near future, this Court directs the Court in seisin over the matter to release the petitioner on interim bail in the aforesaid case for a period of sixty days with the condition that he shall surrender to the custody of the Court concerned on 61<sup>st</sup> day of his release from custody.

### **8. Input tax credit denial merely on technical grounds not justified**

**Case Name : Heritage Lifestyles And Developers And Pvt. Ltd. Vs. Union Of India (Bombay High Court)**

Appeal Number : Writ Petition (ST.). No. 3705 of 2020

Date of Judgement/Order : 05/11/2020

This is a case, where admittedly Petitioner could not file GST TRAN-1 on or before 27.12.2017 but had manually applied for GST TRAN-1 on 7.5.2018 as per Circular dated 03.04.2018 within the timeline as per the date extended by this Court. Also admittedly the Respondents have found the Petitioner to be eligible for credit amounting to Rs. 78,62,466/-. But the credit for the same has been denied as the ITGRC found that the Petitioner has not tried to save or submit or file TRAN-1 before 27.12.2017. We are informed by the learned counsel for the Petitioner which is not controverted by the learned Sr. counsel for the Respondents that this information of rejection of the Petitioner's application for manual GST TRAN-1 has not been communicated to the Petitioner despite several reminders/communications from the Petitioner and it is only by way of the affidavit in reply filed to this Petition that the Petitioner has become aware of the rejection.

Be that as it may, it is true that the above circular has been issued keeping in mind cases where difficulties have been faced by a section of tax payers owing to technical glitches on the GST Portal. However, the facts of this case are peculiar in as much as the respondents themselves admitted that the Petitioner is eligible for input tax credit but have rejected the claim because the ITGRC has not approved it saying that the tax payer has neither tried for saving/submitting or filing TRAN-1. There is no further explanation or clarification on this issue by the Respondents except to state the ITGRC description viz. **"The tax payer has neither tried for saving/submitting or filing TRAN-1"**. Therefore it would be not necessary for us to even deal with the Circular under which the application for manual TRAN-1 has been made. When there is no dispute to the fact that the Petitioner is otherwise eligible for credit of Rs. 78,62,466/- then to deny the benefit of such Input credit merely on technical grounds cannot be justified. Merely on technical ground an admitted input credit is sought to be denied to the Petitioner. That according to us would be wholly unfair and a travesty of justice. It is in these facts and circumstances that we are compelled to invoke our writ jurisdiction in this case.

In view of our above discussion, as admittedly in this case the Respondents have found the Petitioner to be eligible for input credit amounting to Rs. 78,62,466/-, in our view the finding of the ITGRC would in the face of the admission by the Respondents to the amount of credit, would be a mere technicality which cannot come in the way of substantial justice.

Accordingly, we direct the Respondents to accept the TRAN-1 filed by the Petitioner and to give the due of input tax credit of Rs. 78,62,466/- in the electronic credit ledger/input tax credit of the Petitioner within two weeks from the date of this order.

### **9. SCN for Confiscation of Goods or Conveyance on Mere Suspicion Not Justified**

Case Name : **Anant Jignesh Shah Proprietor of M/S. Nakoda And Company Vs Union of India (Gujarat High Court)**

Appeal Number : Special Civil Application No. 12712 of 2020

Date of Judgement/Order : 06/11/2020

**The issue under consideration is whether show cause notice (SCN) for confiscation of goods or conveyance is justified on mere Suspicion under GST Act?**

High Court states that, the ground on which the authority proposes to confiscate the goods and the vehicle is not tenable in law. The show cause notice appears to have been issued on an assumption that the driver of the vehicle might have indulged in the past in contravention of the provisions of the Act and the Rules made thereunder. It appears the entire basis for the issue of the show cause notice is conjectures and surmises. The goods and the vehicle can be detained under **Section 129** of the Act only if such goods are transported in contravention of the provisions of the Act or the Rules made thereunder. HC specifically inquired with the learned Assistant Government Pleader as to whether any provision of the Act or the Rules could be said to have been contravened with regard to the transaction in question. Assistant Government Pleader, with his usual fairness pointed out that when the goods were in transit and detained, it cannot be said that there was any contravention of the provisions of the Act or the Rules. However, according to Assistant Government Pleader, the authorities have grave suspicion that the driver of the vehicle might have entered Ahmedabad on the same E-way bill and might have succeeded in getting out thereafter without payment of any tax. Thus, the case of the learned Assistant Government Pleader is one of evasion of tax for some transaction which is unknown. The show cause notice under Section 130 of the Act cannot be issued on a mere suspicion. There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated under Section 130 of the Act. In such circumstances referred to above, we are left with no other option but to quash and set aside the notice in Form GST MOV-10 dated 15th September, 2020.

## **10. GST Officials Cannot Use Physical Violence: HC**

Case Name : **Agarwal Foundries Private Limited Rama Towers Vs Union of India (Telangana High Court)**

Appeal Number : Writ Petition No.28268 of 2019

Date of Judgement/Order : 06/11/2020

No provision of any law is cited before us by the respondents to say that they are entitled to use physical violence against persons they suspect of being guilty of tax evasion while discharging their duties under the CGST Act, 2017.

Merely because the authorities under the **CGST Act, 2017** are not to be treated as police officials, they cannot claim any immunity if they indulge in acts of physical violence against persons they suspect of being guilty of tax evasion.

We would also point out that our country has enacted the Protection of Human Rights Act, 1993 for protection of human rights in the country in fulfillment of its obligations as a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16.12.1966. Under this Act, there are provisions for constitution of a National Human Rights Commission and also State Human Rights Commissions and their powers are set out with clarity under the Act. Reference can also be made to Section 30 of the said Act which provides for specification of a Court of Session in each District to be a Human Rights' Court by the State Government so that offences arising out of violation of human rights are tried and disposed of speedily.

In view of this statutory regime already in place, it would be futile for the respondents to claim any liberty to torture or use physical violence during the course of search, investigation or interrogation under the CGST Act, 2017 against persons suspected of tax evasion like the petitioners or their employees.

The learned Additional Solicitor General Sri Harpreet Singh, also fairly did not contend that officials of the GST Department / respondents have any privilege to use physical violence or torture against persons suspected of tax evasion, though he disputed that any such thing occurred.

However, in view of the material on record, we are constrained to observe that the possibility of the use of violence by respondent nos.5 to 9 against petitioner nos.2 to 4 and the other employees of petitioner no.1 cannot be entirely ruled out having regard to Ex.P.4, in particular.

In addition to the above, the summons **Annexure P-6** issued under Sec.70 of the CGST Act, 2017 to the 2nd petitioner by 4th respondent is also worth mentioning.

It bears a date 12.12.2019 and asks the 2nd petitioner to appear before 4th respondent at 00:30 hrs on 12.12.2019.

This prima-facie indicates that it was issued after midnight on the intervening night of 11.12.2019 and 12.12.2019 asking the 2nd petitioner to appear at the ungodly hour of 00:30 hrs on that day.



What was so important to be recorded at such a time, which cannot wait till the morning of 12.12.2019, is not disclosed by the respondents.

We are unable to accept this explanation offered by the respondents to justify the issuance of summons to the 2nd petitioner after the midnight of 11.12.2019 i.e., after 00:00 hrs on 12.12.2019 and asking him to appear before the 4th respondent at 00:30 hrs on 12.12.2019.

The Supreme Court in **D.K. Basu** (5 Supra) also held that even a prolonged interrogation by an investigative agency may take the colour of deprivation of personal liberty.

The respondents cannot say that detention of the 2nd respondent in the office of the 1st respondent till much after midnight on the intervening night of 11.12.2019 and 12.12.2019 is a routine thing. Prima-facie it amounts to deprivation of the liberty of the 2nd petitioner since he was forced to be present with the respondents 5 to 9 at that late hour on that night.

In our opinion, the respondents cannot contend that they will interrogate the persons suspected of committing any tax evasion as per their sweet will forceably keeping them in their custody for indefinite period. If it is done, it has to be construed as informal custody and the law relating to an accused in custody has to be expressly or impliedly applied. If accused can get all the benefits under Art.22 of the Constitution, a person in such informal custody can say that he is also entitled to get relief under Art.21 of the Constitution of India.

No doubt in **P.V.Ramana Reddy** (2 supra) a Division Bench of this court held that enquiry by officers of the GST Commissionerate is not a criminal proceeding, but it is a judicial proceeding; and under Sub-Section (1) of Section 70 of the CGST Act, 2017, the proper officer under the CGST Act has the power to summon a person either to give evidence or to produce a document; that if such person who is issued a summons gives false evidence or fabricates false evidence or intentionally offers any insult or causes any interruption to any public servant, under Sections 193 and 228 of the IPC, he would be liable for punishment; that though the High Court can entertain an application for pre-arrest protection under Article 226 of the Constitution of India, such power should be exercised by the High Court sparingly; that under Section 69 of the CGST Act there is power to order arrest in cases where the Commissioner has reasons to believe that a person has committed any offence specified in Clauses (a) to (d) of Sub-Section (1) of Section 132 of the said Act; that such power is confined to cognizable and non-bailable offences; under Sub-Section (3) of Section 69 bail can also be obtained by persons arrested in connection with non-cognizable and bailable offences; and Section 41 and Section 41A of CrPC would apply in the event the Commissioner intends to arrest any person; and that normally relief of protection against arrest ought not to be granted. It is also contended that the Commissioner exercising power under Section 69(1) is not a police officer.

The above decision in **P.V. Ramana Reddy** (1 supra) is binding on us. Following the principle laid down therein that the High Court can entertain an application for pre-arrest protection under Article 226 of the Constitution of India, but such power should be exercised by the High Court sparingly, we hold that having regard to the facts and

circumstances set out above, this case falls under the exceptional category and this Writ Petition is undoubtedly maintainable.

We therefore allow the Writ Petition with the following directions:

(a) the respondents shall not use any acts of violence or torture against petitioner nos.2 to 4 or their employees in furtherance of enquiry proceedings F.No. 574/CE/198/2019/INV initiated against the 1st petitioner;

(b) the enquiry in the above proceedings against the 1st petitioner shall not be handled by the 5th respondent, and he shall not participate in such enquiry, and it shall be transferred to another official to be designated by the 2nd respondent;

(c) any interrogation of petitioner nos.2 to 4 or their employees shall be between 10:30 a.m. and 05:00 p.m. on week days in the visible range of an Advocate appointed by them, who shall not be in hearing range;

(d) the petitioner nos.2 to 4 alone can be summoned to New Delhi for the purpose of the above enquiry by the respondents on one occasion for two to three days, and rest of their interrogation and those of their employees shall be conducted at Hyderabad by the respondents; and

(e) the respondents shall adhere to the provisions of the CGST Act, 2017 in conducting search, investigation or enquiry in relation to the alleged tax evasion by the petitioners.

(f) I.A.No.s 1, 2 & 3 of 2019 and I.A.No.1 of 2020 are accordingly disposed of.

(g) I.A.No.2 of 2020 is dismissed.

### **11. Mere noticing Conveyance at Wrong Destination Can't Said to be a Contravention of CGST Act**

Case Name : **Sree Rama Steels Vs Deputy State Tax Officer & 3 Others (Telangana High Court)**

Appeal Number : Writ Petition No. 4873 of 2020

Date of Judgement/Order : 06/11/2020

**The issue under consideration is whether 'Noticing the conveyance at a wrong destination' without anything more can be said to be a contravention of the CGST Act?**

High Court states that the show cause notice issued to the petitioner, the only reason assigned by the 1st respondent was that 'wrong destination is noticed'. In the statement allegedly recorded on 27.1.2020 at 7.50 am from the driver of the vehicle transporting the goods, it is recorded that he is transporting the goods from Chegunta in Medak to Katedan, Hyderabad. 'Noticing the conveyance at a wrong destination' without anything more cannot be said to be a contravention of the CGST Act/Telangana GST Act, 2017 and it is not a taxable event, for there could be several reasons for the same including the driver losing his way or stopping for repair or to answer a call of nature. Once the conveyance/vehicle driver had the tax invoice and the e-way bill, there is prima facie compliance with the provisions of the CGST Act and

Telangan GST Act and the rules made thereunder and it did not warrant initiating of proceedings under Sec.129 of the Telangan GST Act,2017. It is the case of petitioner that the purchaser of M/s.Laxmi Narasimha Constructions, Proddatur had requested the petitioner to deliver the goods at its job work site, i.e, M/s. JVS Switchgear LLP at Mailardevpally, Rajendranagar, Ranga Reddy District in the State of Telangana, for converting the same into electric Tower parts so that transportation charges and time would be saved by such delivery directly by the transporter. No doubt, in the e-Way Bill, the place of delivery of the goods at the Job work site of the purchaser from the petitioner i.e., M/s. JVS Switchgear LLP at Mailardevpally, Rajendranagar, Ranga Reddy District was not mentioned. But, in the Ex.P10 delivery challan dt.27.1.2020, the same was mentioned. According to 1st respondent, the vehicle being found at Katedhan, Hyderabad gave room for suspicion about the bona fides of the transaction instigating the 1st respondent to detain the vehicle. It was contended that the objections of petitioner were examined and found to be untenable for the reason that intention of petitioner was to unload the goods at Katedan, Hyderabad. According to him, there is a discrepancy of destination in the sense that the goods were being sent to a destination not mentioned in the invoice / e-Way Bill dt.26.01.2020. According to the 1st respondent, the e-Way Bill dt.27.01.2020 is issued subsequent to the detention of the vehicle and has to be therefore treated as a self-serving one and also as one created as an after-thought. HC are unable to accept the said contention. It is not as if when goods are in transit there is a prohibition of their sale by the purchaser to a third party. In fact the court can take judicial notice that it is quite a common thing and a well recognized trade practice.

## **12. Release Detained Vehicle & Goods After Obtaining Bond: Gujarat HC**

Case Name : **Majid Bilalbhai Akbani Proprietor of M/S Imran Impex Vs State of Gujarat (Gujarat High Court)**

Appeal Number : Special Civil Application No. 12754 of 2020

Date of Judgement/Order : 06/11/2020

**The instant petition is filed to seek to release of the detained goods and vehicles under Section 129(1) of the CGST Act.**

High Court states that, the bench after considering the fact noted that when the vehicle was intercepted, the driver was able to produce a valid E-way bill and also the invoice, at least, the goods and the conveyance should be ordered to be released subject to the final outcome of the confiscation. The court directed the respondent authority to release the vehicle and the goods after obtaining a bond of Rs.11,73,480 from the writ applicant.

## **13. Detention of goods & vehicle under GST: HC explains Provisions of Section 129 & 130**

Case Name : **Gokul P.G. Vs State of Kerala (High Court of Kerala at Ernakulam)**

Appeal Number : WP(C). No. 21907 of 2020 (K)

Date of Judgement/Order : 06/11/2020

Sections 129 and 130 are independent provisions, and that, while a detention of goods and vehicle under Section 129 could entail proceedings under Section 130, in situations where the detained goods/vehicle are not cleared by the owners thereof within a period of 14 days from the date of passing of the order under Section 129, it does not follow that in all cases where Section 130 of the GST Act is invoked, they have to be preceded by a detention of the goods/vehicle while in transit. As already noted, the proceedings under Section 130 can be invoked independent of any detention, and under the circumstances enumerated in the said Section, with the only rider that a precondition for the invocation of the provision is that there has to be material to suggest that the actions/omissions of the person were with an intention to evade payment of tax. In the instant case, while the material collected by the respondents, no doubt justify the detention of the goods and the vehicle, inasmuch as there was evidence to suggest that the transportation did not originate from Tamil Nadu, as was declared in the invoice/e-way bill that accompanied the transportation of the goods, and therefore, the said documents could be seen as invalid documents for the purposes of transportation of the goods, the respondents have not been able to establish an intention to evade tax which is a necessary precondition for invoking the provisions of Section 130 of the GST Act. In other words, while in the instant cases, the detention under Section 129 can be said to be justified, the further invocation of Section 130, in the absence of any material to suggest that there was an evasion of tax by the petitioners, cannot be said to be justified. In particular, it has to be noticed that the invoice raised by the petitioners admitted their liability to IGST, and while there is a presumption in favour of the petitioners with regard to tax compliance, there is no material produced by the respondents to rebut the said presumption that flows from the declaration in the invoice raised by the petitioners. That apart, even assuming that the goods in question were procured from Nellikuzhi, as suggested by the respondents, so long as the destination shown in the invoice and the e-way bill was Kalyan in the State of Maharashtra, the tax liability would have to be under the IGST Act, and the said tax liability was already declared by the petitioners in the tax invoice that was raised by them. Thus, the material available with the Department as of now, does not point to any intention to evade payment of tax on the part of the petitioners herein. The necessary ingredient of *mens rea* not having been established in these cases, I am of the view that the invocation of the provisions of Section 130 against the petitioners was not justified, more so when, the petitioners were not confronted with any material in the possession of the respondents that suggested an intention to evade payment of tax. As a matter of fact, in the notices served on the petitioners under Section 130 of the GST Act, there is no mention of any material that would point to a possible intention to evade payment of tax by the petitioners, and hence there could not have been an order confirming the proposed confiscation in terms of Section 130 of the GST Act.

Before parting with these cases, I must observe that, while it may be true that the invocation of Section 130 of the GST Act in these cases was not justified, the irregularity in the documents that accompanied the transportation surely make it out to be a case that justified a detention of the goods under Section 129 of the GST Act. In proceedings under Section 129 of the GST Act, there is no requirement for establishing *mens rea*, and hence, merely on detecting an irregularity in the

documents that are to accompany the transportation of goods, the respondents would be justified in detaining the goods and passing the necessary order under Section 129(3) of the GST Act. No doubt, in the instant cases, since the owner of the goods had approached this Court at the GST MOV-2 stage, the respondents did not get an opportunity to pass any order under Section 129(3), more so because, they had, in the intervening period, initiated proceedings under Section 130 of the GST Act. The proceedings under Section 130 having been found to be misconceived, I am of the view that the respondents must now be permitted to pass formal orders under Section 129(3), in respect of the detention that I have found to be justified on the facts and circumstances of these cases.

Resultantly, I quash the impugned orders passed against the petitioners under Section 130 of the GST Act in FORM GST MOV-11, and direct the respondents to pass orders based on the material available with them, and the statements taken from the petitioners under Section 129(3) of the GST Act. The petitioners are permitted to obtain a release of the goods and the vehicle on payment of the tax amount in cash and furnishing a bank guarantee for the penalty amounts confirmed against them. On the respondents passing the order under Section 129(3) of the GST Act, they will be free to invoke the bank guarantee for realisation of the penalty amounts.

The writ petitions are allowed as above. The Government Pleader is directed to communicate a gist of this judgment to the respondents so as to enable the petitioners to obtain immediate clearance of the goods and the vehicle, which have been detained for almost a month now.

#### **14. Refund for Export of Goods Can't be Rejected Merely for export of Goods through Foreign Post Office**

Case Name : **Medical Bureau Vs Commissioner of Central Goods And Services Tax Delhi North & Ors. (Delhi High Court)**

Appeal Number : W .P. (C) 3917/2020

Date of Judgement/Order : 10/11/2020

**The issue under consideration is whether the denial of the refund to the petitioner against exports of goods outside India on the sole ground that petitioner had exported goods through Foreign Post Offices is justified in law?**

HC states that **Circular No. 14/2018-Customs dated 04th June, 2018** does not determine the eligibility of allowing refunds of ITC on exports, but provides that such refunds are permissible, so as to dispel any doubts in the minds of exporters regarding their eligibility to claim refunds of ITC in case of exports through postal mode. The impugned circular mentions that to facilitate refund of ITC, data will be captured and uploaded through an off-line utility (ICAN-lite) provided by DG (Systems) and it was issued with the objective and purposes of prescribing customs compliances for the exports done under postal mode and not to clarify on the eligibility or otherwise of refunds on such exports. The subject sentence in the circular cited by the adjudicating authorities, "Any IEC holder exporting goods through the FPO, will be eligible for zero rating of exports, by way of IGST refund or discharge of LUT. Those who do not wish

to avail this facility or fall in the category of Exempted/Non-Taxable are also permitted to export under the same procedure.”, was to make it amply clear that, refund of ITC would also be available, for exports through the postal mode, if otherwise eligible. That, the deponent respectfully submits, the said circular is not intended to be a clarification, much less determination, of the refund issue. The refunds shall be examined with reference to their compliance with the extant provisions, including law and procedures relating to GST & Customs.” Keeping in view of the aforesaid counter-affidavit, the admitted position is that the Circular No.14/2018-Customs dated 04th June, 2018 is neither clarificatory nor it determines the eligibility of allowing refund of Input Tax Credit on exports. In any event, the new procedure cannot be made applicable from a retrospective date. Consequently, the impugned orders passed by respondent are set aside and the matter is remanded back to the Original Adjudicating Authority.

### **15. HC Allows Petitioner Retrospective Registration under Tamil Nadu GST**

**Case Name : Tvl. Lourdes Matha Cashew Industries Vs Union of India (Madras High Court)**

Appeal Number : W.P.(MD)No.15796 of 2020 and W.M.P.(MD)No.13241 of 2020

Date of Judgement/Order : 10/11/2020

In present case, the petitioner was issued a provisional Registration Certificate under the Goods and Service Act by the respondent authority. According to him, he had taken steps for migration from the Tamil Nadu Value Added Tax regime to the Tamil Nadu Goods and Service Tax regime. He submitted a letter to the respondent authority pointing out the difficulties faced by him with regard to the migration from Tamil Nadu Value Added Tax regime to the Tamil Nadu Goods and Service Tax regime. However, according to him, there was no positive response from the Department. It is his case that he was compelled to apply for a fresh application for registration, as the provisional Registration Certificate issued to him earlier, got lapsed. It is his case that his fresh application was processed and valid Registration Certificate was issued by the respondent authority under the Tamil Nadu Goods and Service Tax Act.

High Court states that the petitioner relied upon two decisions of the Hon'ble High Court of Kerala in his representation, which according to him, enables the respondent to validate the petitioner's registration from 01.07.2017 itself. The grounds raised by the petitioner in his representation, will have to be considered by the respondents on merits and in accordance with law and in the light of the decisions referred to by the petitioner. For the foregoing reasons, this Court directs the respondents to consider the petitioner's representation, dated 14.09.2020 seeking for validation of his registration from 01.07.2017 itself and pass final orders on merits and in accordance with law and in the light of the decisions referred to by the petitioner in his representation, dated 14.09.2020, after giving sufficient opportunity to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

## **16. Provisional bank account attachment during pendency of Section 67 search proceedings – SC stays Gujarat HC decision**

Case Name : **Union of India & Anr. Vs Kushal Ltd. & Anr. (Supreme Court of India)**

Appeal Number : Special Leave to Appeal (C) No. 10070/2020

Date of Judgement/Order : 16/11/2020

The Supreme Court has stayed the Gujarat High Court decision in the case of ***Kushal Ltd. v. Union of India***, wherein the High Court had set aside the provisional attachment of the bank account of the assessee observing that there was absence of pendency of any proceedings under Section 62, 63, 64, 67, 73 or 74 of the **CGST Act, 2017**. Observing that search proceedings were conducted on 27 September 2018 with subsequent visit by the department on 1 April 2019 and that there was no search thereafter, the High Court had held that therefore the search proceedings had ended. The High Court was of the opinion that pursuant to the search, inquiry or other proceedings may have been undertaken, however, such inquiry or other proceedings were not under Section 67 and hence, it cannot be said that any proceedings were pending under Section 67.

## **17. Physically record statement in alleged GST evasion case: HC directs Byju's CFO**

Case Name : **P V Rao Vs Senior Intelligence Officer, Directorate General Of GST Intelligence & Ors. (Delhi High Court)**

Appeal Number : W.P.(C.) No. 8975/2020

Date of Judgement/Order : 18/11/2020

The present petition is filed to seek a writ of Mandamus to direct Respondent No. 1, the Senior Intelligence Officer, Director General of GST Intelligence (DGGSTI) to allow the Petitioner to tender his statement and adduce evidence through video conferencing, in relation to a summon issued under Section 70 of the CGST Act, 2017.

High Court states that, the Petitioner has been most uncooperative during the investigation. The Petitioner was afforded ample opportunities to record his statement when the officers had visited the business premises of the Company, at which stage, the Petitioner evaded the recording of his statement on one pretext or the other. Further argued that the investigations are at the initial stage and documents/data relating to the case are sensitive and incriminating in nature. Detailed clarifications are required to be sought from the witness which will only be feasible in case he physically joins the investigation for recording of his statement. The revenue submitted that if the Petitioner's statement was recorded through video conferencing, he can have a support system helping him and clarifications/answers can be motivated and influenced, which may adversely affect the ongoing investigation. The concept of balance of convenience, therefore, cannot be tilted in favour of the Petitioner to be allowed to appear through video conferencing, merely because travelling from Bengaluru to New Delhi would be a risk factor for the Petitioner of contracting COVID-19. This mere apprehension of contracting COVID-19 does not persuade us to grant

the relief sought for by the present Petitioner. For the foregoing reasons, HC do not find any merit in the present petition. Hence they dismissed it.

### **18. GST order passed is bad in law if mandatory procedures not followed**

Case Name : **Shri Shyam Baba Edible Oils Vs Chief Commissioner and another (Madhya Pradesh High Court)**

Appeal Number : W.P. No. 16131 of 2020

Date of Judgement/Order : 19/11/2020

In the case of Shri Shyam Baba Edible Oils Vs Chief Commissioner and another it was held by Madhya Pradesh High Court that If mandatory procedures as per rule not followed the orders passed are bad in law under GST.

It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed as is the case herein.

In view of above discussion, this Court has no manner of doubt that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the impugned demand dated 18.09.2020 vide Annexure P/2 pertaining to financial year 2018-2019 and tax period April, 2018 to March, 2019 deserves to be and is struck down.

Accordingly, instant petition stands allowed with liberty to the revenue to follow the procedure prescribed under Rule 142 of CGST Act by communicating the show-cause notice to the petitioner by appropriate mode thereafter to proceed in accordance with law.

### **19. Section 142(1) obliges SCN under GST to be uploaded on website: HC**

Case Name : **Ram Prasad Sharma Vs. Chief Commissioner and another (Madhya Pradesh High Court)**

Appeal Number : W.P. No. 16119/2020

Date of Judgement/Order : 19/11/2020

Petitioner has drawn the attention of this Court to the provision of Rule 142(1) of CGST Act to contend that the said provision statutorily obliges the revenue department to communicate show-cause notice/order by uploading the same on the website of revenue so that the aggrieved person can have access to the same and be aware of reasons behind the demand to enable the aggrieved person to avail alternative remedy before the higher forum under CGST Act.

A bare perusal of the aforesaid provision reveals that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.



The State in its reply has provided no material to show that show-cause notice/order No.10 dated 10.06.2020 was uploaded on website of revenue. In fact, learned AAG, Shri Mody, fairly concedes that the show-cause notice/order was communicated to petitioner by Email and was not uploaded on website of the revenue.

It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed as is the case herein.

In view of above discussion, this Court has no manner of doubt that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the impugned demand dated 18.09.2020 vide Annexure P/2 pertaining to financial year 2019-2020 and tax period April, 2019 to July, 2019 deserves to be and is struck down.

## **20. HC Grant Petitioner Opportunity to file Representation Regarding Refund of Excess Payment of Tax**

Case Name : **Sun Pharma Laboratories Limited Vs Union of India (Sikkim High Court)**

Appeal Number : WP(C) No. 09/2020

Date of Judgement/Order : 19/11/2020

The present petition is filed to seek refund of excess payment of tax, if payment was made through ITC.

High Court states that it is the positive case of the petitioner that excess payment of tax had not been carried forward to the subsequent months. The Appellate Authority, in the context of a claim for refund for excess payment of tax, may be justified to look into contemporaneous materials, but in such a circumstance, it will be imperative and mandatory for the Appellate Authority to afford an opportunity to the petitioner (appellant) to furnish its comments on the aspects on which the Appellate Authority would like to examine the matter by way of further enquiry. It appears from a reading of the order dated 11.09.2019 of the Appellate Authority that only argument that was advanced by the petitioner (appellant) was with regard to the finding recorded by the Adjudicating Authority and on no other point. The Appellate Authority, in the instance case, was required to grant the petitioner an opportunity to explain its stand on **GSTR-1 and GSTR-3B** as also the Circulars. We are of the opinion that the impugned order militates against the principles of natural justice. Accordingly, the order dated 11.09.2019 is set aside and quashed. In that view of the matter, the petitioner is permitted to file a representation dealing with the aspects and such representation would be filed within a period of eight weeks from today before the Appellate Authority. After the representation is filed, an opportunity shall be granted to the representative/counsel for the petitioner for hearing and thereafter, the Appellate Authority shall pass a fresh order with expedition and without any delay regarding the claim made by the petitioner for refund. The writ petition is allowed with the above directions and observations.

**21. Show Cause Notices to Taxpayers Under GST Act Mandatory to Upload on Website – Mere E-Mail is not Suffice**

Case Name : **Akash Garg Vs State of M.P. (Madhya Pradesh High Court)**

Appeal Number : W.P. No. 16117/2020

Date of Judgement/Order : 19/11/2020

The Honourable Madhya Pradesh Court in case of **Akash Garg Vs State of M.P., vide order dated 19.11.2020** held that statutory procedure prescribed for communicating show-cause notice or order under Rule 142(1) of **CGST Act** is required to be followed mandatorily by the revenue. Rule 142 prescribes the manner to upload show-cause notices on Website. Thus, a mere e-mail of show-cause notices to the taxpayer would not suffice. Upload of such notices on the website is mandatory.

**22. No GST on value of by-products i.e., broken rice, bran & husk by treating as part of milling charges: HC**

Case Name : **Shiridi Sainadh Industries Vs Deputy Commissioner ST INT (Andhra Pradesh High Court)**

Appeal Number : W.P.No. 45971 of 2018

Date of Judgement/Order : 20/11/2020

Writ Petition is allowed and the impugned Assessment Order passed by the 1<sup>st</sup> respondent vide Ref. No.CGST/ 2017-18/05 dated 29.10.2018 in so far as it relates to the levy of **GST on the value of by-products i.e., broken rice, bran and husk treating them as part of the consideration paid to the petitioner for milling of the paddy, is set aside.**

**23. Rajasthan HC grants bail to person accused of wrongfully availing ITC under GST**

Case Name : **Subhash Chandra Tyagi Vs Directorate General Of Goods And Service Tax (Rajasthan High Court)**

Appeal Number : S.B. Criminal Miscellaneous Bail Application No. 13338/2020

Date of Judgement/Order : 24/11/2020

The present bail application has been filed under Section 439 Cr.P.C. The petitioner has been arrested in connection with Criminal Complaint No. DGGI /320/ Gr.I/ INV/ GST/ SCT/ 15/2019 registered at Chief Metropolitan Magistrate (Economic Offences Court), District Jaipur for the offence(s) under Section(s) 132 of **Central Goods & Services Tax Act, 2017** (for short- 'GST Act, 2017') and later on for the offence under Section 132 (1) (i) (iv) of GST Act, 2017.

It is contended by the learned counsel for the petitioner that the petitioner has falsely been implicated in this case. She submitted that the companies, said to be fake, have been closed after obtaining NOC from the competent authority. Learned counsel for

the petitioner contended that an amount of Rs. 2.6 crore has already been recovered from the petitioner. She submitted that the petitioner is in judicial custody since 08.01.2020, complaint has already been filed against him on 05.03.2020, the investigation against co-accused persons is said to be pending, the offence is compoundable and is punishable with maximum sentence of 5 years. She submitted that the petitioner has no criminal antecedents and prays for his release on bail.

Per contra, opposing the bail application, learned counsel for the complainant submitted that there are grave allegations against the petitioner of fraudulently obtaining input tax credit and passing of forged GST credit to the tune of Rs. 33.50 crore. He submitted that the investigation is still pending and hence, the petitioner does not deserve indulgence of bail.

Taking into consideration the submissions advanced by learned counsels for the respective parties, the nature of allegations against the petitioner, his length of custody, the pendency of investigation, the offence being compoundable and the severity of punishment under Section 132 of the CGST Act; but, without expressing any opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail.

Accordingly, the bail application is allowed and it is directed that accused-petitioner **Subhash Chandra Tyagi S/o Late Shri Chiranji Lal** shall be released on bail under Section 439 Cr.P.C. in connection with afore-mentioned FIR registered at concerned Police Station, provided he furnishes a personal bond in the sum of Rs.1,00,000/- (Rupees One Lac only) together with two sureties in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each to the satisfaction of the trial Court with the stipulation that he shall comply with all the conditions laid down under Section 437(3) Cr.P.C.

#### **24. Provisional attachment order valid if Assessee not filed objection against Notice**

Case Name : **R.J. Exim And Another Vs Principal Commissioner Central Goods And Service Tax (Allahabad High Court)**

Appeal Number : WRIT TAX No. 608 of 2020

Date of Judgement/Order : 24/11/2020

From the perusal of Section 74(5) of the Act, it is evident that a person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax and interest under Section 50 and penalty @ 15% of such tax on the basis of own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The intimation dated 22.07.2020 issued by the proper officer to the petitioners is referable to Section 74(5) of the Act and Rule 142(1A) of the Rules. The proper officer afforded opportunity to the petitioners to file an objection, but the petitioners have not filed any objection.

The impugned Provisional attachment order has been issued by the competent authority under Section 83 of the Act for the purpose of protecting interest of the

Government revenue. Against the order of Provisional attachment under Section 83(1) of the Act, the petitioners have an opportunity to file an objection under sub-Rule 5 of Rule 159 of the Rules. It has been admitted before us by learned counsel for the petitioners that the petitioners have not filed any objection against the impugned provisional attachment dated 22.07.2020. Therefore, the impugned orders cannot be said to suffer from any manifest error of law.

**25. Lack of legally trained mind, manifest arbitrariness in revocation of GST registration: HC**

**Case Name : Ansari Construction Vs Additional Commissioner Central Goods And Services Tax (Allahabad High Court)**

Appeal Number : Writ Tax No. 626 of 2020

Date of Judgement/Order : 24/11/2020

In the present case along with the application, the petitioner had filed a statement to the effect that all the requisite returns have been filed and the dues are cleared and thus it was incumbent upon the Department to have verified the correctness of averments made in the application. I am sorry to observe that the Department miserably failed to verify the facts from their own records and proceeded to issue a show cause notice which is contained in Annexure 4 to the writ petition and quoted herein above. The manner in which the show cause notice has been issued is wholly unacceptable as it does not record any shortcoming on the part of the assessee. It is not conceivable as to what was required in the show cause notice.

A perusal of the said show cause notice clearly highlights the fact that serious quasi-adjudicatory functionaries are being discharged by persons who do not have a legally trained mind and are entrusted in discharging functions affecting huge revenues. The order dated 30.1.2020 passed by the Assistant Commissioner rejecting the application of the petitioner is wholly arbitrary and demonstrates the lack of legally trained mind as there appears to be no effort to verify the correctness of the assertions made by the petitioner at the end of the Department.

I am sorry to record that the appellate authority has also committed the same manifest arbitrariness in deciding the appeal, the recording of the reason that facts cannot be verified at the appellate level is wholly arbitrary and militates against the whole purpose of statutory appeal under an enactment.

The Court cannot overlook the mutually contradictory stands taken by the Department before the Appellate Authority on one hand and the instructions given to this Court.

It is surprising that as to why this instructions could not be obtained or given at the level of the adjudication or appellate level and the callous attitude of the Department has resulted in the assessee being harassed by approaching one forum after the other and wasting his considerable financial resources as well as time.

Considering the fact that now the Department has accepted that the returns were filed within time and no dues remain payable, the order dated 30.11.2019 as well as the

appellate order dated 06.07.2020 deserves to be set aside with a direction to allow the application for revocation of registration filed by the petitioner.

**26. GST: Provisional attachment of Bank A/C & FD to protect interest of revenue was justified**

Case Name : **R. J. Exim And Another Vs Principal Commissioner Central Goods And Service Tax And 3 Others (Allahabad High Court)**

Appeal Number : Writ Tax No. 608 of 2020

Date of Judgement/Order : 24/11/2020

From the perusal of Section 74(5) of the Act, it is evident that a person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax and interest under Section 50 and penalty @ 15% of such tax on the basis of own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The intimation dated 22.07.2020 issued by the proper officer to the petitioners is referable to Section 74(5) of the Act and Rule 142(1A) of the Rules. The proper officer afforded opportunity to the petitioners to file an objection, but the petitioners have not filed any objection.

11. The impugned Provisional attachment order has been issued by the competent authority under Section 83 of the Act for the purpose of protecting interest of the Government revenue. Against the order of Provisional attachment under Section 83(1) of the Act, the petitioners have *an opportunity to file an objection under sub-Rule 5 of Rule 159 of the Rules. It has been admitted before us by learned counsel for the petitioners that the petitioners have not filed any objection against the impugned provisional attachment dated 22.07.2020. Therefore, the impugned orders cannot be said to suffer from any manifest error of law.*

**27. PIL challenging constitution of AAR – HC issues Notice to Government**

Case Name : **Rajendra Kumar Duggar Vs Union of India & Ors. (Calcutta High Court)**

Appeal Number : WPA No. 2186 of 2020

Date of Judgement/Order : 25.11.2020

Hon'ble Calcutta High Court has issued notice to Centre and State Government in a PIL filed by CA Rajendra Kumar Duggar wherein the petitioner has challenged the constitution of the Authority of Advance Ruling and Appellate Authority for Advance Ruling constituted under the CGST/SGST Act being '**Coram non judice**' because of the total absence of a judicial member in the constitution of AAR and AAAR. The AAR and AAAR consists only of technical members as one member is officer of central tax and the other member is officer of State tax.

The matter is being argued by Advocate Vinay Shraff with Advocate Himangshu Kumar Ray on the ground that AAR and AAAR constituted under the CGST/SGST Act are bodies exercising judicial power conferred on it by respective laws and are tribunal

within the meaning of the expression in Articles 136 and 227 of the Constitution. Constitution of the AAR and AAAR is arbitrary and violative of Article 14 and 50 of the Constitution. Article 50 states that “the State shall take steps to separate judiciary from the executive in the public services of the State”. The right to life under Article 21 includes the right to justice by an independent judiciary and by a Tribunal which is free from executive or political influence. It is an established principle of law that an independent judiciary is among the basic features of the Constitution. Total insulation of the judiciary from all forms of interference from the co-ordinate branches of the Government is a basic essential feature of the Constitution. In absence of judicial member in AAR and AAAR, it will lead to executive taking power of judiciary which vitiates the very power of judiciary by making one judge in his own cause. The constitutional guarantee of an independent judicial branch and the constitutional scheme of separation of powers can be easily and seriously undermined, if the legislatures were to entrust the Tribunals with Members not being Members of the ‘Judicial service’ of the State.

### **28. Consider afresh declaration under SVLDRS 2019 & grant consequential relief: HC directs Designated Committee**

Case Name : **G. R. Palle Electricals Vs Union of India & Ors. (Bombay High Court)**  
Appeal Number : Writ Petition (Stamp) No. 3485 of 2020  
Date of Judgement/Order : 26/11/2020

As has been held by us in *Thought Blurb Vs. Union of India*, decided on 27.10.2020, the **Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019** is a beneficial one with the prime object of unloading the baggage of pending litigations centering around service tax and excise duty. The focus is to unload this baggage of pre-GST regime and thereby allowing business to move ahead but at the same time to also ensure that the administrative machinery can focus fully in the smooth implementation of GST. This is the broad picture which should be kept in mind while considering a declaration seeking amnesty under the scheme. Therefore, a liberal view embedded with the principles of natural justice is called for. The approach should be to ensure that the scheme is successful.

Considering the above, we set aside the order dated 22.01.2020 and remand the matter back to the Designated Committee to consider afresh the application (declaration) of the petitioner dated 12.12.2019 as a valid declaration and grant the consequential relief after giving due opportunity of hearing to the petitioner, who shall be informed about the date, time and place of the hearing. Such decision shall be in the form of a speaking order with due intimation to the petitioner. The entire exercise shall be carried out within a period of six weeks from the date of receipt of a copy of the present order.

### **29. Fake ITC & GST Bill case: HC refuses to grant Bail**

Case Name : **Neeraj Karande Vs Directorate General of GST Intelligence (Telangana High Court)**

Appeal Number : Criminal Petition No. 5967 of 2020

Date of Judgement/Order : 30/11/2020

In view of the above rival submissions, the allegations against the petitioner are that he has collected and issued invoices or bills without actual supply of goods in violation of the provisions of the CGST Act and the rules made thereunder leading to wrongful availment or utilization of input tax credit rendered by him and his Company. The modus operandi adopted by the petitioner is that he indulged in issuing GST invoices and e-way bills and passing on input tax credit to various customers without actual supply of goods. It is also specifically mentioned in the remand application that the registered office and also the factory of the petitioner are non-existent one. According to the respondent authorities, the bank has sold the unit of the Company by invoking the procedure laid down under SARFAESI Act. Both the registered office and the factory are found to be not in possession of the Company since 2016. The petitioner has filed irregular inward ITC credit of Rs.5.46 crores and outward irregular ITC credit of Rs. 5.43 crores from 01.07.2017 to 31.08.2020. In the statement recorded under Section 70 of the CGST Act, the petitioner has admitted that presently there is no registered premises of the factory. The business is being run by him from the vehicle viz., Grey Colour Swift Dezire TS07 1667. He is also conducting business by using his laptop and mobile No. 9493895762. He has answered that based on the invoices created in the laptop, he has raised documents like e-way bills using hotspot and transfer documents created through e-mail neerajkarande@godavariengg.com. He also answered that he will submit all the related documents like invoices, e-way bill after retrieval from his mail, as far as possible.

In the counter affidavit, the respondent authorities specifically contended that the investigation is not yet completed. The forward chain recipient of the tax credit is to be investigated. Due to ongoing investigation, the department could lay its hand on an amount of Rs.42,90,133/- in the electronic credit ledger of the Company of the petitioner. Further, a provisional attachment order under Section 83 of CGST Act was issued to the banker of the Company. Steps have been undertaken to get the laptop recovered under panchanama dated 02.11.2020 to be forensically examined by CFSL, Hyderabad. Such forensic science laboratory report is awaited. Steps have been taken to prevent further loss to the Government exchequer by blocking the ITC credit under Rule 86A(1)(a) of the CGST Act as the competent authority i.e., the Additional Director General has accorded approval along with reasons to believe that the ITC has been fraudulently availed and is ineligible due to two counts i.e. the petitioner has availed credit on fake invoices obtained without supply of goods and Company of the petitioner not conducting business from its registered place.

Thus, there are serious allegations against the petitioner. There are several aspects to be investigated into by the investigating officer during the course of investigation. The modus operandi said to have been adopted by the petitioner in commission of offence is to be investigated into by the investigating officer. The GST amount involved for the operations carried out by him for the period from 01.7.2017 to 31.08.2020 is Rs.10.89 crores. Admittedly, the investigation is pending.

Considering the above and also the offences alleged to have been committed by the petitioner and also the aspect that the petitioner was arrested only on 02.11.2020, this Court is not inclined to grant regular bail to the petitioner.

### **30. Transfer of goods involved in works contract amount to 'sale'**

Case Name : **United Processors Vs State Tax Officer (Madras High Court)**

Appeal Number : W.P. Nos. 26427 to 26429 of 2018

Date of Judgement/Order : 30/11/2020

It is brought to notice by the Learned Government Advocate appearing for the Respondent that the Division Bench of this Court in **State of Tamil nadu -vs- Tex-in-Printers** (Order dated 04.10.2013 in Tax Case (Revision) No. 49 of 2009) has reiterated that after introduction of Section 3-B and the amendment made to the definition of 'sale' in Section 2(n)(ii) of the TNGST Act, the transfer of goods involved in works contract would amount to 'sale' and the entire turnover has become assessable to tax and that the same view has been expressed by another Division Bench of this Court in **State of Tamil Nadu -vs- Tvl. Tamil Nadu Co-operative Textile Processing Mills Limited** (Order dated 25.06.2019 in Tax Case No. 2319 of 2008), meaning thereby that the Petitioner cannot have any grievance for the re-assessment of tax liability based on that settled question of law.