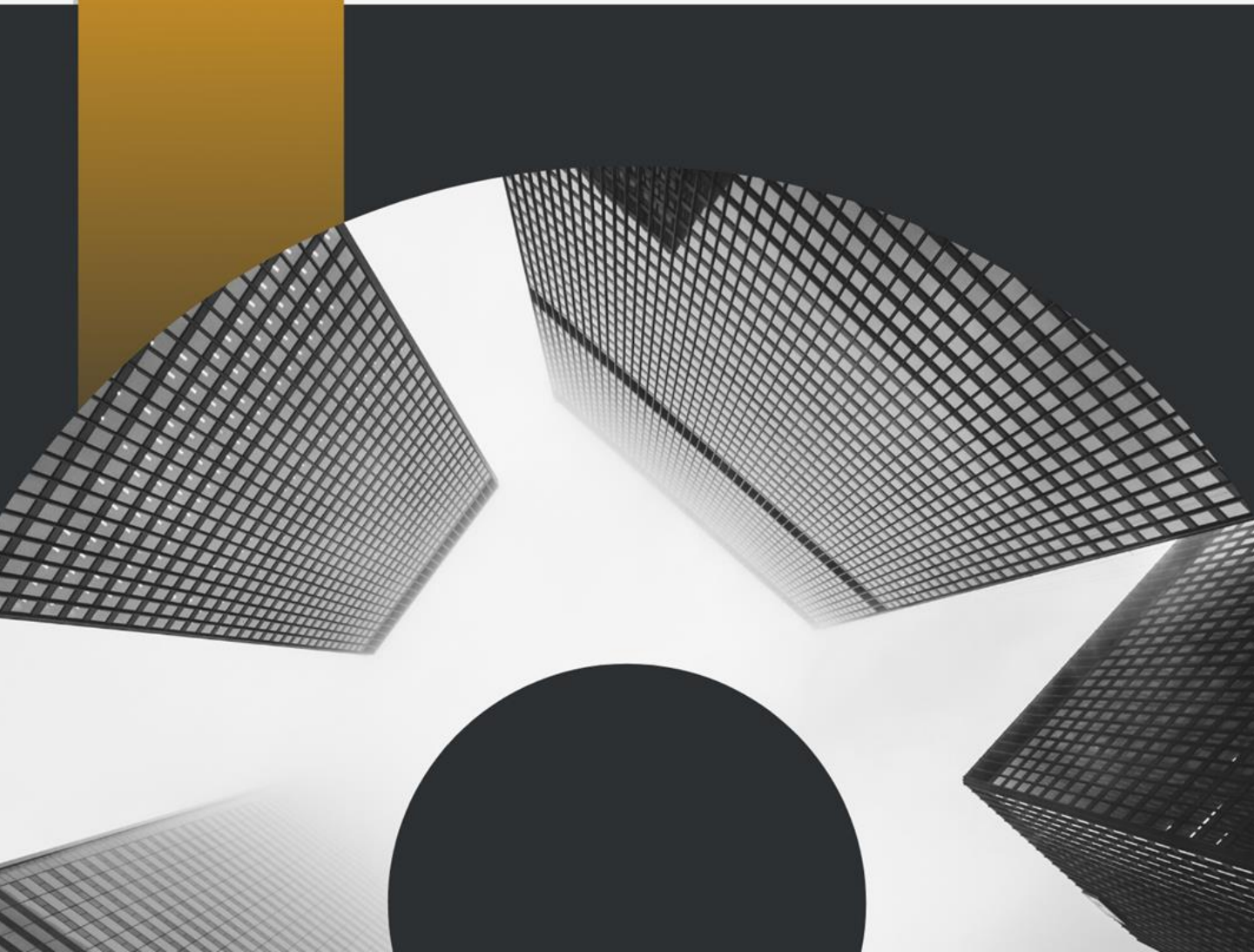


2022

THE GST BULLETIN

YOUR INDIRECT TAX KNOWLEDGE PARTNER

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About The GST Bulletin

The GST Bulletin is a Weekly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm. The Newsletter is intending to keep its readers updated with all important legal and judicial updates in Goods & Services Tax and other Indirect Tax laws. The Newsletter also has a special column of GST Compliance Calendar for the month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below;
<https://www.cgalegal.co.in/home/newsletters.php>

Other Offerings from Team CGA Legal

- **CGA Legal GST Compliance Calendar:** Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- **CGA Legal Meet:** Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website
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In this Issue.....

S. No.	Particulars
1.	GST Compliance Calendar – July-2022
2.	GST Updates
	❖ CBIC Notification
	❖ Sectoral Analysis of Recommendations of the 47th GST Council Meeting
3.	GST Judicial Precedents
	❖ Whether movement of goods from one unit to another under same GSTIN amounts to supply and whether on such transfer E-way is required to be issued? [Crown Craft India Pvt. Ltd. - AAR Rajasthan]
	❖ Whether escalated value received under service contract to be considered for the payment of GST? [B.P. Sangle Constructions Pvt. Ltd. - AAR Maharashtra]
	❖ Writ Petition cannot be dismissed on account of the availability of alternate remedy of appellate forum when the Authorities exercised wrong jurisdiction while issuing the Order [Imax Infrastructure Private Limited. Versus Deputy Commissioner, DRI, Government of West Bengal - Calcutta High Court]

GST Compliance Calendar - July 2022

Statutory Due Date	Types of Return	Period	Types of Taxpayer
10-07-2022	GSTR-7	June 2022	TDS Deductor
10-07-2022	GSTR- 8	June 2022	E-Commerce Operator
11-07-2022	GSTR-1	June 2022	Turnover more than INR 5 crore in the preceding FY or Turnover up to INR 5 crores and opted for monthly return filing
13-07-2022	GSTR-1	April-June 2022	Turnover up to INR 5 Crores and under QRMP Scheme
13-07-2022	GSTR-6	June 2022	ISD
18-07-2022	CMP-08	April- June-2022	Composition Dealer (Extended to 31-07-2022 by 47th GSTC meeting)
20-07-2022	GSTR-3B	June 2022	Turnover more than INR 5 crore in the preceding FY or Turnover upto INR 5 crore in the preceding FY but opted for monthly return filing
20-07-2022	GSTR-5	June 2022	Non Resident Taxable Person
20-07-2022	GSTR-5A	June 2022	OIDAR
22-06-2022	GSTR-3B	April- June-2022	Taxpayers opted for QRMP Scheme, having aggregate turnover upto INR 5 Cr for *Category A States
24-07-2022	GSTR-3B	April- June-2022	Taxpayers opted for QRMP Scheme, having aggregate turnover upto INR 5 Cr for **Category B States
28-07-2022	GSTR-4	FY 2021-22	Annual Return by Composition taxpayer (In 47th GSTC meeting late fee for filing GSTR-4 has been waived till 28-07-2022)

GST Compliance Calendar - July 2022

Note: Categories of Taxpayers whose Aggregate Turnover is upto INR 5 crore for the purpose of filing GSTR-3B:

* **Category A:** Regular Taxpayers having an aggregate turnover of upto INR 5 crores whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.

** **Category B:** Regular Taxpayers having an aggregate turnover of upto INR 5 crores 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 or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.

GST Update – GST Notifications

Ntf. No.	Summary of Notifications
01/2022 – Compensation Cess on Cess Dated 24.06.2022	Extension of the period of Levy and Collection of Compensation Cess till 31-March-2026 The CBIC has issued notification whereby it has extended the period for levy and collection of cess under section 8(1) of the Goods and Services Tax (Compensation to States) Act, 2017 upto 31st March, 2026. This shall come into force with effect from the 1st day of July, 2022.

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

1. Hotel, Guest Houses , Restaurants

Exemption on following services is being withdrawn:

- a) Renting of residential dwelling to business entities (registered persons). In case of Individuals renting their premises to RPs, there will be requirement of GST Registration in case the aggregate turnover exceeds the threshold as per Section 22 of CGST Act, 2017.
- b) Hotel accommodation services having price upto Rs. 1000/- day or equivalent. Same shall now be taxed at 12%. Similarly, GST @ 12% shall be applicable to companies charging amount less than Rs. 1000/- day for stay in their guest houses. This will increase the compliance burden on smaller hotels, guest house , homestays etc.
- c) GST @ 5% without ITC shall be applicable on supply of ice-creams by ice-cream parlours during the period 01.07.2017 to 05.10.2021 to avoid unnecessary litigation.

2. Tour & Travel Services

Service provided by Indian Tour operator to a foreign resident for a tour partially in India and partially outside India shall be liable to GST on proportionate basis subject to certain conditions.

3. Hospital Sector

- a) GST rate revised from 12% to 5% on Orthopedic appliance - Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens.
- b) Exemption from IGST on import of Diethylcarbamazine (DEC) tablets supplied free of cost for National Filariasis Elimination Programme
- c) Withdrawal of exemption on Services provided by the cord blood banks by way of preservation of stem cells.
- d) Common bio-medical waste treatment facilities, like CETPs, for treatment or disposal of biomedical waste shall be liable to GST @ 12% with ITC.

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

- a) Room rent (excluding ICU) exceeding Rs 5,000/- per day per patient charged by a hospital shall be liable to GST @ 5% without ITC. The amended provision will have huge impact on Healthcare sector. There are various judgements stating of Renting of Room is a composite supply where principal supply i.e Healthcare service is exempt . The department need to bring the clarification on this issue.
- b) Exemption to services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF) by covering under the definition of health care services.

4. Job Work Services

GST rate increased from 5% to 12% on Job work services in relation to –

- a) processing of hides, skins and leather,
- b) manufacture of leather goods and
- c) footwear and manufacture of clay bricks

5. Works Contract Services

- a) Increase in GST rate on various work contract service as tabulated below as a part of rate rationalization to remove inverted duty structure:

S.No.	Nature of Work	Existing Rate	New Rate
1	Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc.	12%	18%
2	Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & subcontractor thereof	12%	18%
3	Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts	5%	12%

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

- b) Clarification of GST Rate on toll charges: Additional fee collected in the form of higher toll charges from vehicles not having Fastag shall be treated same as toll charges and shall be exempted.
- c) Change in GST rate from 5% to 18% in case of Tar (whether from coal, coal gasification plants. Producer gas plants and coke oven plants).

6. Transportation of goods/passengers

a) Transportation of goods

- i. Renting of truck/goods carriage is classifiable under Heading 9966 (rental services of transport vehicles with operators) and where cost of fuel is included in the consideration then GST @ 12% (existing 18%) shall be applicable.
- ii. Withdrawal of exemption on transportation by rail or a vessel of railway equipment and material.
- iii. GTA is being given option to pay GST at the rate of 5% or 12% under forward charge. Such option to be exercised at the beginning of the Financial Year. RCM option shall also continue. This will ensure discipline among the RPs who wish to avail the option of Forward charge.
- iv. Clarification given that exemption applies to supply of transit cargo services both to and from Nepal and Bhutan.

b) Transportation of Passengers

- i. Renting of motor vehicles for transport of passengers to a body corporate for a period (time) is taxable in the hands of body corporate under RCM.
- ii. Exemption on services of transportation of passengers by air to and from North Eastern states & Bagdogra is being restricted to economy class only.

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

iii. The expression 'public transport' used in the exemption entry at SI No. 17(d) of notification No.12/2017-CT(R), which exempts transport of passengers by public transport other than predominantly for tourism purpose, in a vessel between places located in India, means that such transport should be open to public for point-to-point transport [e.g. such transport in Andaman and Nicobar

c) Transport of goods and passengers by ropeways - from 18% to 5% (with ITC of services)

7. Agriculture Sector

a) GST rate on following machines is being increased:

- i. From 5% to 18% - Machines for cleaning, sorting or grading, seed, grain pulses; Machinery used in milling industry or for the working of cereals etc; Pawan Chakki that is air based atta chakki; Wet grinder
- ii. From 12% to 18% - Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, Milking machines and dairy machinery.

b) Exemption on following services is being withdrawn:

- i. Storage or warehousing of commodities which attracts tax (nuts, spices, copra, jaggery, cotton etc.)
- ii. Fumigation in a warehouse of agricultural produce.

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

- c) Ginned or baled fibre is covered in entry 24B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 in the category of raw vegetable fibres. The exemption under this entry is being rationalized.
- d) All forms of mango including mango pulp (other than mangoes sliced, dried) attract GST @12%. Raw or fresh mangoes continue to be exempt.

8. Education/ Training/ Coaching activities

- a) Exemption on training or coaching in recreational activities relating to arts or culture, or sports is being restricted to such services when supplied by an individual.
- b) Exemption from GST to application fee charged for
 - i. entrance or,
 - ii. issuance of eligibility certificate for admission or,
 - iii. issuance of migration certificate by universities.

9. Banking Sector

Withdrawal of exemption from supply of cheques, in loose or book form. Now GST @ 18% shall be applicable. One more move to promote digital payments.

10. Casino, Racecourse and Online Gaming

The Council has directed the Group of Ministers to re-examine the issues on Casino, Racecourse and online gaming based on the inputs received from States and submit the report within short duration.

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

11. Printing and Stationery

Changes in GST rate on following goods has been proposed:

S.No.	Nature of Work	Existing Rate	New Rate
1	Printing, writing or drawing ink	12%	18%
2	Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake-servers etc	12%	18%
3	Drawing and marking out instruments	12%	18%
4	Tetra Pak (Aseptic Packaging Paper)	12%	18%
5	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed	NIL	12%
6	Cheques, loose or in book form	NIL	18%

12. Power/Lighting Sector

S.No.	Nature of Work	Existing Rate	New Rate
1	LED Lamps, lights and fixture, their metal printed circuits board	12%	18%
2	Solar Water Heater and System	5%	18%

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

13. Gems and Jewellery Sector

GST rate on Cut and Polished Diamonds have been proposed to be increased from 0.25% to 1.5%. The cost of the jewellery will increase.

14. Real Estate Sector

Following has been clarified in respect of certain real estate transactions

- a) **Location charges of Preferential Location Charges (PLC)** recovered in connection with the lease of land are part of consideration charged for long term lease of land and accordingly, shall get the same treatment under GST as the long term lease of land.
- b) Amount received towards **Plot Development charges** such as leveling, laying down of drainage lines incurred for sale of land shall be treated as consideration towards sale of land and **shall not attract GST**.

15. Government/Governmental Bodies Services

It has been decided to tax all the taxable services provided by the Department of Post under Forward Charge. Currently, services by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority were only taxed under Forward Charge. Exemption on services provided by RBI, IRDA, SEBI, FSSAI, GSTN is being withdrawn.

16. E-Commerce Operator

Certain relaxations have been given for suppliers making supplies through E-commerce operator.

- a) Requirement to take registration under Section 24(ix) of the CGST Act, 2017 has been waived off i.e., a person who is supplying goods or services, other than supplies covered under Section 9(5), through e-commerce operator who is required to collect TCS under Section 52, shall not be required to take compulsory registration

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

subject to the condition that the total turnover of such person on all India basis shall not exceed the general threshold limit of Rs. 20 lakhs or Rs. 40 lakhs, as the case may

- b) Composition taxpayers would be allowed to make intra-State supply through e-commerce operators subject to certain conditions.

The details of the above scheme will be worked out by the Law Committee of the Council and would be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by ECOs.

17. Retail Sector

Proposals have been made to reduce the scope of exemption on pre-packaged and pre-labelled retail pack of food items in terms of Legal Metrology Act. Earlier, there was an exemption on specified food items when sold unbranded or under a brand where right on the brand has been foregone.

Now, after this proposed amendment, no GST exemption will be available if such food items are sold in pre-packaged and pre-labelled retails pack as per Legal Metrology Act even though unbranded or sold under a brand where right on the brand has been foregone.

14. General Provisions

a) Refund related proposed changes

- i. Revision in Rule 89(5) for claiming refund of unutilized ITC under inverted duty structure

Change in formula for calculation of refund under Rule 89(5) i.e., in case of Inverted Tax Structure has been proposed. The revised formula would take into account utilization of ITC on account of inputs and input services for payment of output tax

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period. The proposed change in formula of Rule 89(5) will be beneficial for those taxpayers who are availing ITC on Input Services also. We will have to wait for the notification bringing amendment into the formula under Rule 89(5) for better clarity on this aspect.

- ii. Restriction on refund of accumulated ITC on account of Inverted duty structure on edible oils and coal
- iii. Refund of IGST paid on zero rated supplies: In cases where the refund of IGST paid on certain zero rated supplies has been suspended or withheld due to the reason that the exporter has been identified under the category of “risky exporter” or due to violation of provisions of Customs Act, it is proposed to introduce transmission of such refunds on the portal in a system generated FORM GST RFD-01 to the jurisdictional GST authorities for processing through amendment in Rule 96. This would result in expeditious disposal of such IGST refund claims, after due verification by GST officers, thus benefitting such exporters.
- iv. **Introduction of Form GST PMT-03A:** It has been proposed to introduction new form GST PMT-03A for re-credit of the amount of erroneous refund paid back by the taxpayer along with interest and penalty in cases where the erroneous refund amount have been sanctioned to a taxpayer on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services, in contravention of rule 96(10) of the CGST Rules.
- v. **Extension in limitation period to file refund claim:** Suitable amendments have been proposed to exclude the time period from 01.03.2020 to 28.02.2022 from calculation of the limitation period for filing refund claim by an applicant under section 54 and 55 of CGST Act, as well as for issuance of demand/ order (by proper officer) in respect of erroneous refunds under section 73 of CGST Act.

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

- b) Following provisions of Finance Act, 2022 to be notified by Central Government at the earliest:
 - i. Interest u/s 50(3): Retrospective amendment in section 50(3) of CGST Act, with effect from 01.07.2017, to provide that interest will be payable on the wrongly availed ITC only when the same is utilized. The rules providing for the manner of calculation of interest under Section 50 of CGST Act have also been recommended for more clarity.
 - ii. Transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person.
- c) Change in GST rate on e-waste from 5% to 18%.
- d) Exemption from filing annual return in FORM GSTR-9/9A for FY 2021-22 to be provided to taxpayers having AATO upto Rs. 2 crores.
- e) Following clarifications have been provided:
 - i. activity of selling of space for advertisement in souvenirs published in the form of books is eligible for concessional GST at 5%.
 - ii. electric vehicles whether or not fitted with a battery pack attract GST rate of 5%.
 - iii. all fly ash bricks attract concessional rate of irrespective of fly ash content.
- f) Exemption of IGST on import of goods under AA/EPCG/EOU scheme to be continued and E-wallet scheme not to be pursued further.
- g) Composition Taxpayers: Waiver of late fees for delay in filing FORM GSTR-4 for FY 2021-22 till 28.07.2022 and extension of due date for filing FORM GST CMP-08 for Q1 of FY 2022-23 till to 31.07.2022.
- h) Reversal under Rule 42 & 43 shall not be required in case of exempt supplies of Duty Credit Scrips.

GST Update –Sectoral Analysis of Recommendations of the 47th GST Council Meeting

- i) UPI & IMPS to be provided as an additional mode for payment of Goods and Services Tax to taxpayers under Rule 87(3) of CGST Rules.
- j) Automatic revocation of suspension of registration in cases where suspension of registration was done by the system for continuous non-filing of specified number of returns, once all the pending returns are filed on the GST portal by the taxpayer.
- k) Provide for refund of unutilized Input Tax Credit on account of Export of Electricity.

Notification enforcing the above changes shall be issued in due course of time along with issue of Circulars for providing clarification. It is proposed all the Rate changes will be made applicable from 18th July, 2022.

GST – Judicial Precedents

1. Supply and E-way Bill

Whether movement of goods from one unit to another under same GSTIN amounts to supply and whether on such transfer E-way is required to be issued?

Crown Craft India Pvt. Ltd. [AAR Rajasthan]

Held: As far as supply of goods or services or both between these two establishment of applicant is concerned, it is found that movement of goods/raw material/ capital goods from present unit to new unit and vice versa does not constitute 'supply, as these units are not distinct person to each other due to single registration.

Further in relation with the requirement of E-way Bill, it was held that the applicant is not exempted to generate e-way bill for the movement of capital goods, raw material or finished goods to be made between their two units. Thus, for transfer of the goods between two units they would have to take a value of such goods as explained in Explanation-2 to Sub-Rule (1) of the Rule 138 of the CGST Rules, 2017 and issue an E-way bill for such transfer (if required depending on value of such transferred goods).

GST – Judicial Precedents

2. Valuation

Whether escalated value received under service contract to be considered for the payment of GST?

B.P. Sangle Constructions Pvt. Ltd. [AAR Maharashtra]

Facts: M/s. B P Sangle Constructions Pvt. Ltd. (“the Applicant”) was awarded a contract by the National Highways Authority of India (“NHAI”) for construction of road for an agreed consideration of INR 65,90,98,099/- which included VAT. However, during the course of completion of service as per the contract, there was an escalation in the contract value against goods and services took place due to the introduction of the GST regime w.e.f. July 01, 2017.

As per the contract, in case of any change in the rates of labour, steel, cement, plant, machinery, spares, bitumen, spares, lubricants etc., the contract price shall increase or decrease as per the formula provided in the contract notice and in the event of such escalation of value, the same shall be recovered in addition to contract value from NHAI.

The Applicant went to the AAR to seek whether such escalated value shall be added to taxable value u/s 15 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”).

Held: Section 15 (1) says that the value of a supply of goods or services or both shall be the Transaction value and the transaction value in the subject case will also include the escalated value (as per the impugned contract), which is being recovered from NHAI by the applicant, both being unrelated parties. Therefore, such escalated price/value which is added to contract price shall be liable for payment of GST as per the said provision of Section 15 of the Act - As per the provisions of Section 15(1) of CGST Act, 2017, the actual transaction value which includes the escalated value should be considered for payment of tax under GST Laws.

Thus, the escalated value shall be added to the original value of the contract and the total of the escalated value plus the original value of the contract will be the transaction/taxable value u/s 15 of the Act, on which GST must be discharged by the applicant.

GST – Judicial Precedents

3. Appeals

Writ Petition cannot be dismissed on account of the availability of alternate remedy of appellate forum when the Authorities exercised wrong jurisdiction while issuing the Order

Imax Infrastructure Private Limited. versus Deputy Commissioner, DRI, Government of West Bengal [Calcutta High Court]

Facts: In this writ petition, petitioner has challenged the impugned order dated 3rd March, 2022 passed by the Deputy Commissioner of Revenue, Directorate of Revenue Intelligence and Enforcement, under Section 74(9) of the State GST Act, on the ground that the same is without jurisdiction by contending that the initiation of proceeding in question under the State GST Act is without jurisdiction and he cannot act as an officer under the State GST Act. Mr. Ghosh, learned advocate appearing for the respondents raised point of maintainability of the writ petition on the ground of availability of alternative remedy by way of an appellate forum

Held: The respondents raised point of maintainability of the writ petition on the ground of availability of alternative remedy by way of an appellate forum but the same is not sustainable for the reason that it is a well settled principle that alternative remedy is not always a bar and particularly when the question of jurisdiction is involved in the writ petition and the writ court is very much empowered to entertain the writ petition, if an order or action of an officer is without jurisdiction or there is a violation of principle of natural justice or constitutional validity of a provision of law is involved and prima facie the petitioner has been able to make out a case that the issue involved in this case is the jurisdiction of the officer concerned who has exercised the power of a GST Officer and since interpretation of several provisions of law and notifications are involved, this writ petition cannot be thrown out at the motion stage on the ground of availability of alternative remedy and this writ petition has to be heard and decided on merit.

Prima facie the petitioner has been able to make out a case for an interim order and considering this aspect there will be conditional stay of the impugned adjudication order dated 3rd March, 2022 and subject to deposit of 10% of the demand in question, by the petitioner, within ten days from date and if such payment is made by the petitioner within the time stipulated herein, no coercive action shall be taken against the petitioner for recovery of the demand in question. Petition disposed off.



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