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CGA LEGAL

Your GST Knowledge Partner



The GST Bulletin

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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

www.cgalegal.co.in

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GST News

GST Council to consider clarifying GST issue on ice cream parlour

Date: 09-12-2021

The GST Council, expected to meet later this month, is likely to take up the issue related with levy mechanism on ice cream parlour. Ice cream companies have urged for clarification on the applicability of GST at the rate of 18 per cent on parlour.

“The matter is expected to be placed before the GST Council. Based on its recommendation, we will issue clarification,” a senior Finance Ministry Official said.

GST – Judicial Precedents

1. Detention of Goods and Vehicle

Whether serving of notice of detention of goods and vehicle to the driver of the vehicle is proper notice?

M/s Tanay Creation Through Prop. Tanay Mahavir Shah vs State of Gujarat [Gujarat High Court]

Facts: In this case, the respondent detained the vehicle carrying goods due to some mismatches in the invoice and e-way bill and the notice was served upon the driver of the truck and not upon the petitioner. Therefore, the petitioner challenges such notice on account of violation of principle of natural justice.

Held: The show cause notice issued under section 129 and thereafter under section 130 of the CGST Act is only to the truck driver and neither to the truck owner nor to the petitioner in its capacity of the owner of the goods - in the instant case, there is a complete absence of any notice and gross violation of principles of natural justice - The petitioner, who is the owner of the goods has not been afforded the opportunity as no service of show cause notice is also made to the petitioner and the opportunity was only afforded to the driver. Quashment of the order will sub-serve the purpose and hence the impugned order passed by the authority is quashed and set aside - the matter is remanded to the file of the respondent to issue the notice under section 130 of the Act and to decide the matter afresh in accordance with law, on affording reasonable opportunity of hearing on serving the show cause notice to the petitioner.

GST – Judicial Precedents

2. Exemption

Whether exemption relating to leasing of residential dwelling for use as a residence covers leasing of land?

M/s. Gwalior Development Authority [Authority for Advance Rulings, MP]

Facts: Gwalior Development Authority is the company that provides residential land on lease is located at Ravinagar in the Gwalior district of the state of Madhya Pradesh. They sought advance rulings whether GST is payable on providing residential land on lease basis.

Held: It is well accepted that in the case of ambiguity in a provision of law, the interpretation shall be liberal. However, in the case of an exemption notification, the interpretation shall be strict. In this case, the entry grants exemption to Services by way of renting of residential dwelling for use as residence. It does not refer to land whether as part of the residential dwelling or otherwise. There are many instances, where the legislature, where it intends a separate dispensation for land or specific treatment of land uses the phrase “building and land appurtenant thereto”. No such phrase has been found in Entry No. 12. In the case of a single unit built on a parcel of land, the land is part of the building and in the case of multiple residential units on a parcel of land, there is share of undivided land that is part of each flat - The building constructed is not considered while decided on the renewal of the lease. Thus, in the case of residential building constructed by the lessee on leased land, it is always the lease of the land that is renewed. The building does not attain the character of a leasehold property.

Since the entry grants the exemption to a leased / rented residential dwelling, the benefit is therefore restricted to a residential building which has been let out and does not extend to a parcel of land which has been taken on lease for construction of a residential dwelling on the said land.

GST – Judicial Precedents

3. Supply

Whether recovery of notice pay, insurance premium and nominal amount for canteen services by employer from employee tantamount to supply?

M/s. Bharat Oman Refineries Limited [Authority for Advance Rulings, MP]

Facts: Applicant sought AAR on the following issues:

1. Whether GST is applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period under clause 5(e) of II of GST Act?
2. Whether GST is applicable on the amount of premium of Group Medical Insurance Policy recovered at actuals from non-dependent parents of employees, and retired employees those who are covered under the said Policy ?
3. Whether GST is applicable on recovery of nominal amount for availing the facility of Canteen at the Refinery at Bina when it is not a supply as per clause I of Schedule III of GST Act ?

Held:

Levy of GST on payment of notice pay by an employee to the applicant: There can be no dispute about this fact that the applicant as employer is tolerating the act or situation whereby the employee is not giving the notice for the agreed period of 30 days before leaving the service of the applicant-company. Thus, by relieving an employee without notice period or by accepting a shorter notice period, the applicant is tolerating an act or a situation created by such action of the employee, and therefore, it is covered by Para 5(e) of Schedule II, and is a supply of service liable to tax.

GST – Judicial Precedents

3. Supply

Whether recovery of notice pay, insurance premium and nominal amount for canteen services by employer from employee tantamount to supply?

M/s. Bharat Oman Refineries Limited [Authority for Advance Rulings, MP]

Premium of Group Medical Insurance Policy recovered from the non-dependent parents of employees & retired employees at actuals - As per applicant it is not covered by the scope of supply as defined u/s 7 of GST Act, as it is not in the course or furtherance of business of the applicant. It is also submitted by applicant that it is not covered by the definition of business as given in Section 2(17). However, both the contentions of the applicant are not valid - Had the services been provided by applicant as pure agent as per Rule 33 of GST Rules, then there would have been no liability to pay GST. But the applicant has not provided the insurance service to the non-dependent parents of employees & retired employees as an agent of the Insurance Company. Therefore, the premium of Group Medical Insurance Policy recovered by applicant from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST.

Applicability of GST on recovery of nominal amount for availing canteen facilities by the employees - As per Section 15(1) of GST Act, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply. However, if the transactions are between related persons then value of supply is to be determined as per Rule 28. The employer and employee are related person as per Explanation to Section 15, and therefore, the valuation of canteen facility provided by applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by applicant from its employees.

GST – Judicial Precedents

4. Classification

Classification of Fryums/ Papad under GST

M/s Shree Swaminarayan Foods Pvt Ltd [Appellate Authority for Advance Rulings, Gujarat]

Facts: Appellant/assessee was engaged in business of manufacturing and supply of Fryums and different type of Namkeen/Farsan – Fryums were “Papad” of different shapes and sizes in ready to eat form – Authority for Advance Ruling held that product ‘fried Fryums’ manufactured and supplied by appellant was classifiable under Tariff Item 2106 90 99 of First Schedule to Customs Tariff Act, 1975 attracting Goods and Services Tax rate of 18%. Aggrieved by the decision of AAR, applicant filed appeal with AAAR.

Held: Papad in ready to cook/un-fried form is purchased by appellant from market. The shape and size may vary but the ingredients, the proportion of ingredients, the composition and the recipe remains similar, if not exactly the same - Impugned products can be categorized as crispy savoury food product as such it is made from dough based on flour like wheat flour, rice flour, starch, corn flour and cereal flour – Products of appellant are ready to eat condition fall under Chapter Heading 1905 – Product ‘different shapes and sizes Papad’ involved in present case merit classification under Tariff heading No. 19059040 of Customs Tariff Act, 1975 – As product in question is classifiable under CTH No. 1905 of the Customs Tariff Act, 1975, said CTH No. 1905 is covered under entry No. 16 of Schedule-III of Notification No. 1/2017-CT (Rate) dated 28.06.2017 and accordingly chargeable to 18% GST – Order of Authority for Advance Ruling is modified.

GST – Judicial Precedents

5. Blocking of ITC Ledger

Whether blocking of ITC ledger by department beyond one year is valid if assessee reply to letter seeking reconciliation statements for GSTR-2A and GSTR-3B is still awaited?

Advent India PE Advisors Private Limited Vs Union of India [Bombay High Court]

Facts: Mr. Shah, learned advocate for the petitioner refers to the provisions of rule 86A of the Central Goods and Services Tax Rules, 2017 and in particular sub-rule (3) thereof, which provides that restriction imposed under sub-rule (1) would cease to have effect after expiry of one year from the date of imposition thereof. Drawing the attention to Exhibit A, he contends that the input tax credit was blocked on January 26, 2020 and since more than 20 months have lapsed by now, by operation of law, the petitioner is entitled to relief claimed in this writ petition.

Learned Advocate for the respondents has placed before the Court letter seeking reconciliation statements for the difference in their GST returns namely GSTR-2A and GSTR-3B is still awaited and instead of furnishing the documents the taxpayer has filed a writ petition.

Held: The respondent appears to be oblivious of provision of sub rule (3) of Rule 86A of CGST Rules - Having regard to the statutory mandate in sub-rule (3) of rule 86A, the petitioner is entitled to claim that the input tax credit ought to have been unblocked immediately after one year of the restriction being imposed under sub-rule (1) of Rule 86A - If indeed the respondents were of the view that the petitioner had not been cooperating with the department, they ought to have proceeded against it in a manner known to law. However, to say that reply is awaited and hence lifting of the restriction has not been resorted to is clearly illegal - Respondent is directed to unblock the input tax credit availed by the petitioner in its electronic credit ledger – answered in favour of petitioner

GST – Judicial Precedents

6. Refund

Whether refund can be withheld due to non-availability of option for bifurcation of amount in Form RFD-05 in the system?

Nayara Energy Limited Vs Union of India [Gujarat High Court]

Facts: assessee grievance that though the respondent has sanctioned the refund, the amount has not as yet been disbursed even after the expiry of one year from the date of sanction - According to the Dept, sanctioned refund could not be credited to the petitioner as well as the Consumer Welfare Fund due to non-availability of option for bifurcation of amount in Form RFD-05 in the system and delay in functionality to credit the sanctioned amount fully/partially to Consumer Welfare Fund.

Held: Non-attendance of said technical issue has resulted into not only the non-payment of the refund amount which is otherwise not being disputed by the respondents, but has caused hardship for the petitioner and many others who for no fault of theirs are suffering - Payment of interest on late payment can never furnish the reason to delay payment - four weeks time is granted to resolve the issue, if need be felt for outsourcing by the authority concerned for taking assistance of experts on the part of the software engineers, let that also be taken for attending to this issue - let the amount be paid at the end of four weeks to the petitioner without fail with interest. If not paid at the end of four weeks, the rate of interest on the sum due shall be 12% on the entire sum from the due date of payment till the actual date of payment – the petition stands disposed of

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