

The logo for CGA Legal, featuring the text "CGA LEGAL" in blue, uppercase letters. Above the text is a red, curved swoosh that starts under the 'C' and ends under the 'L'. Below the text is another red, curved swoosh that starts under the 'G' and ends under the 'A'.

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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CBIC Instructions

Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017

Date 02-11-2021

CBIC has issued a detailed Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017.

The Guidelines covers the grounds for disallowance of the debit of an amount from electronic credit ledger, Procedure for disallowing debit of electronic credit ledger/blocking credit under Rule 86A, Allowing debit of disallowed/restricted credit under sub-rule (2) of Rule 86A, etc.

The guidelines clearly provides that the power of disallowing debit of an amount from an electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine case(s) fit for exercising power under rule 86A.

The detailed guidelines can be accessed from the below link:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Guidelines%20on%20Rule%2086A.pdf>

GST News

GST Revenue Collection for October 2021

Date: 01-11-2021

The gross GST revenue collected in the month of October 2021 is 1,30,127 crores of which CGST is 23,861 crores, SGST is 30,421 crores, IGST is 67,361 crores (including 32,998 crores collected on import of goods) and Cess is 8,484 crores (including 699 crores collected on import of goods).

The revenues for the month of October 2021 are 24% higher than the GST revenues in the same month last year and 36% over 2019-20. During the month, revenues from import of goods was 39% higher and the revenues from domestic transaction (including import of services) are 19% higher than the revenues from these sources during the same month last year.

Government of India releases 40,000 crores to States/ UTs with Legislature in-lieu of GST compensation shortfall on 07.10.21

Date: 07-10-2021

The Ministry of Finance on 07.10.21 released an amount of 40,000 crores to the States and UTs with Legislature under the back-to-back loan facility to meet the shortfall in GST Compensation. Earlier on 15th July 2021 an amount of 75,000 crores was released to the States & UTs with legislature.

With the current release, the total amount released in the current financial year as back-to-back loan in-lieu of GST compensation has reached to 1,15,000 crores. This release is in addition to normal GST compensation being released every 2 months out of actual cess collection.

GST – Judicial Precedents

1. Input Tax Credit

Whether ITC is eligible on goods or services provided as gift under promotional schemes?

M/s. GRB Dairy Foods Pvt. Ltd. [Authority for Advance Ruling, Tamil Nadu]

Facts: Applicant sought Advance Ruling on the following question:-

Whether the GST paid on inputs/input services procured by the applicant to implement the promotional scheme under the name 'Buy n Fly' is eligible for Input Tax Credit under the GST law in terms of Section 16 read with Section 17 of the CGST Act, 2017 and TNGST Act, 2017?

Held: The input goods/services in the form of Trip to Dubai, Gold voucher, Televisions, Air coolers procured by the applicant for the intended use in furtherance of their business and distributed to the retailers under the 'Buy N Fly' scheme, are goods/services which are in the nature of gifts for personal consumption of the receiver specifically restricted under Section 17(5)(g) of the GST Act - further, the promotional rewards in goods being consumables in nature are gifts extended to the retailers for promoting their products, voluntarily distributed by the applicant without any consideration/ Tax invoice and are in the nature of gifts meant for personal consumption. Hence the input tax credit of the taxes paid on the goods/services procured to be distributed as rewards is not available to them under Section 17(5)(g) read with Section 17(5)(h) of the CGST Act 2017.

CGA Legal Comment: *This Ruling seems to be incorrect. Procurement of goods/ services for the purpose of promotional scheme of the business cannot be equated with the gifts if such goods/ services are provided to retailers as per promotional scheme.*

GST – Judicial Precedents

2. Classification

Whether children's toy in which physical force is the primary action and contains an in built electronic circuit to be classified as electronic toy or non-electronic toy ?

M/s. Joshna Chandresh Shah (M/s. Navbharat Imports) [Authority for Advance Ruling, Tamil Nadu]

Facts: The applicant has stated that they are regular importers and traders of toys from various countries, they sell these goods in India, in retail as well as through E--Commerce platforms. They also intend to manufacture these toys in India in future. The toys imported include both electronically operated toys as well as manually operated toys in which electronic parts were fitted for providing light, music and horn etc. They have sought Advance Ruling on the question "when physical force is the primary action of a toy and if the light and the music are ancillary to it then whether it is to be classified under "Electronic Toys taxable @ 18%" or "other than Electronic Toys taxable @ 12%".

Held: The AAR observed that in the case at hand, it is seen that the Children Scooter, Activity Ride-on, Smart Tri- cycle and Kick Scooter, have an electronic circuit for flashing lights, playing music/sound and horn, which is either powered by the Battery housed in the toy or powered by the Induction force applied while playing with the toy. Thus, all the four products consists of an electronic circuit as a part of the said 'Toy'. Thus, the products in which physical force is the primary action and contains an in built electronic circuit, are 'Electronic Toys' and the applicable GST Rate is CGST @ 18% as per Sl. No. 440 of Schedule-III of Notification No. 01/2017 C.T.(Rate) dated 28.06.2017.

GST – Judicial Precedents

3. Detention of goods and vehicle

Whether unloading of goods from vehicle should be within the validity period of E-way Bill?

State of Karnataka versus M/s. Hemanth Motors [Karnataka High Court]

Facts: This writ appeal is filed by the State assailing the correctness of the order dated 20.11.2020 passed by the learned Single Judge in W.P.3337/2020.

The department's grievance before the learned Single Judge was that the motor vehicles purchased were dispatched from Hosur, Tamil Nadu, and the same were supposed to be delivered at Doddaballapur Road, Yelahanka, after generating E-way bill which was valid from 31.12.2018 to 1.1.2019. M/s Hemant Motors claimed that the conveyance carrying the vehicles reached the place of destination on 1.1.2019 before expiry of the validity of the E-way Bills. However, the unloading of the vehicles could not take place on the same day and while the vehicles were being unloaded on 2.1.2019, the department Officers visited the spot and issued an order for physical verification culminating in issuance of notice under sub-clause (3) of Section 129 of the Act. M/s Hemant Motors preferred an appeal before Joint Commissioner of GST (Appeals) and the same was dismissed by order dated 28.11.2019. Therefore, they preferred a writ petition.

Held: The High Court observed that the conveyance had reached the destination on 1.1.2019 at 11.00 p.m. which was well within the prescribed validity period under the E-way bill. The appellant-authorities contention that the consignment was being delivered on 2.1.2019 and therefore, the goods cannot be transported cannot be acceded to. Therefore, an inference has to drawn that the conveyance had reached the destination well within the subsistence of the valid period stipulated under the E-way bill. For the reasons stated supra, the writ appeal is dismissed.

GST – Judicial Precedents

4. Blocking of Input Tax Credit

Whether ITC of the taxpayer be blocked without communication by the department?

M/s. HEC India LLP vs Commissioner of GST [Madras High Court]

Facts: The grievance of the appellant before the Learned Writ Court was blocking of the credit available in the credit ledger of the appellant by invoking Rule 86-A of CGST Act, 2017 without receiving any written reasons from the Commissioner of GST and Central Excise. Thus, the Appellant was prevented from receiving and utilizing its ITC.

Held: The Hon'ble Madras High Court observed that Rule 86-A of the CGST Rules confers powers on the Commissioner or an officer authorized by him not below the rank of Assistant Commissioner may, for reasons to be recorded in writing, not allow debit of an amount equivalent to the credit suspected to be obtained fraudulently in electronic credit ledger for discharge of any liability under Section 49 of the CGST Act, 2017 or for claim of any refund of any unutilized amount. It was observed that the requirement of recording reasons in writing for exercising the said power and communicating the same to the Appellant was not fulfilled as no order invoking the power under Rule 86-A of the CGST Rules was communicated to the Appellant.

Hence, the Hon'ble Madras High Court held that power under Rule 86-A of the CGST Rules cannot be exercised without recording the reasons for invoking the power in writing and communicating the same to the taxpayer.

GST – Judicial Precedents

5. Advance Rulings

Is Recipient of supplies can seek Advance Ruling or only the Supplier can seek it?

M/S. USV Private Limited [Authority For Advance Ruling, Maharashtra]

Facts: The Applicant, is a healthcare company in India, and Novartis AG ('NAG') is a Switzerland based pharma company which owns rights of Trade Marks (namely 'Jalra' and 'Jalra M') across the world including India. The applicant entered into an assignment deed with NAG wherein NAG agreed to permanently transfer the trademark rights related to the Indian territory for 'Jalra' and 'Jalra M'. The effective date of the transfer was either December 10, 2019 or the date of the receipt of the entire consideration by NAG, whichever is later. USV paid full consideration in two tranches before this date. Applicant filed an application with the AAR on whether the activity of transfer of the registered trademarks by NAG to itself was a supply of goods or services?

Held: The AAR pointed that there are two conditions to be fulfilled for making an advance ruling application: firstly, the question asked should be in relation to supply undertaken by the applicant and secondly the question should be in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. In this case, it was Novartis that was undertaking the supply. Thus, the first condition was not met. Second, the effective date of the transfer of the trademark was December 10, 2019 whereas the application was filed on January 16, 2020. As a result, on the date of filing, the supply was already completed. Thus, based on the submissions made by the applicant and hearings conducted, the subject application is rejected as being non-maintainable as per Section 95 of the CGST Act, 2017.

GST – Judicial Precedents

6. Returns

Supreme Court sets aside order of Delhi High Court allowing GST Refund for payment made through cash ledger due to non reflection of ITC in portal for non operationalization of GSTR-2A

Union of India versus Bharti Airtel Ltd. & Ors. [Supreme Court]

Facts: This appeal emanates from the judgment and order dated 05.05.2020 passed by the High Court of Delhi in W.P. (C) No.6345 of 2018, whereby the High Court allowed the writ petition filed by respondent herein and read down paragraph 4 of the Circular No. 26/26/2017GST dated 29.12.2017 (“impugned Circular”) issued by CBIC, to the extent it restricted the rectification of Form GSTR-3B in respect of the period in which the error had occurred. The High Court also allowed respondent No.1 to rectify Form GSTR-3B for the period in which error had occurred, i.e., from July to September 2017. Further, the High Court directed the appellant that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim set forth by respondent No.1 and give effect to the same once verified.

The case pertains to underreporting of input tax credit in the GST summary return form, GSTR 3B, during those three months in 2017 due to absence of the purchase-related return form during the transition period. The operator argued that in the absence of the statutory forms GSTR 2 and 3, the summary return form was introduced. It does not allow validation before uploading. In the absence of such validation, chances of incorrect details being uploaded could not be eliminated.

The Delhi High Court said, *“Indisputably, if the statutorily prescribed returns, GSTR-2 and GSTR-3 had been operationalised by the Centre, the petitioner would have known the correct input tax credit amount available to it in the relevant period, and could have discharged its liability through the tax credit.”*

GST – Judicial Precedents

6. Returns

Supreme Court sets aside order of Delhi High Court allowing GST Refund for payment made through cash ledger due to non reflection of ITC in portal for non operationalization of GSTR-2A

Union of India versus Bharti Airtel Ltd. & Ors. [Supreme Court]

Held: The entire grievance of the respondent was founded on non-operability of Form GSTR-2A during the relevant period, which plea having been rejected as untenable, it must follow that the respondent with full knowledge and information derived from its books of accounts and records, had done self-assessment and assessed the output tax liability for the relevant period and chose to discharge the same by paying cash. Having so opted, it is not open to the respondent to now resile from the legal option already exercised. It is for that reason, the respondent has advisedly propounded a theory that in absence of (electronic auto populated record) mechanism made available as per Sections 37 and 38, return filed in Form GSTR-3B is not ascribable to Section 39(9) of the 2017 Act read with Rule 61(5) of the 2017 Rules - Appellant not only amended the statutory rule but also provided for filing of return manually in Form GSTR-3B electronically through the common portal with effect from July 2017. This is manifest from the circulars/notifications issued from time to time including the timeline for submitting the returns.

A priori, despite such an express mechanism provided by Section 39(9) read with Rule 61, it was not open to the High Court to proceed on the assumption that the only remedy that can enable the assessee to enjoy the benefit of the seamless utilization of the input tax credit is by way of rectification of its return submitted in Form GSTR-3B for the relevant period in which the error had occurred - the assessee cannot be permitted to unilaterally carry out rectification of his returns submitted electronically in Form GSTR-3B, which inevitably would affect the obligations and liabilities of other stakeholders, because of the cascading effect in their electronic records.

GST – Judicial Precedents

6. Returns

Supreme Court sets aside order of Delhi High Court allowing GST Refund for payment made through cash ledger due to non reflection of ITC in portal for non operationalization of GSTR-2A

Union of India versus Bharti Airtel Ltd. & Ors. [Supreme Court]

Suffice it to conclude that the challenge to the impugned Circular No. 26/26/2017GST dated 29.12.2017, is unsustainable for the reasons noted hitherto - the stipulations in the stated Circular including in paragraph 4 thereof, are consistent with the provisions of the 2017 Acts and the Rules framed thereunder - appeal allowed.

GST – Judicial Precedents

7. Input Tax Credit

Can second hand dealer of used car opted for margin scheme for payment of tax claim ITC on other expenses like rent commission etc.

M/s. Deccan Wheels [Authority of Advance Rulings, Maharashtra]

Facts: Applicant purchases second-hand cars (goods) and after minor processing on it such as change of tyres, change of battery, painting, denting, repairs, servicing, internal cleaning, polishing etc, which does not change the nature of the goods, the said goods are sold. The applicant does not claim ITC on purchase of secondhand goods and has opted for Margin Scheme and applies GST rate as per notification no:8/2018-CT(R) dated 25 January 2018.

The applicant sought Advance Ruling on the question “can the applicant claim ITC on other indirect expenses incurred for the business such as rent, commission, professional fees, telephone, etc.”?

Held: The AAR observed that the taxpayer relies on notification no. 08/2018-CT(R) dated 25 January 2018 for its business activity of buying and selling second-hand cars. It was also observed that the concessional rate provided under the notification shall not apply, if the supplier of such goods has availed ITC as defined in section 2(63) of the CGST Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the ITC of Value Added Tax or any other taxes paid, on such goods;

The AAR ruled that, since the taxpayer has been availing the benefit of the said notification and paying GST at a concessional rate, they shall not avail ITC on such supplies.

CGA Legal Comment: *This Ruling seems to be incorrect. Notification No. 08/2018-CT(R) provides the condition for not taking ITC on such goods i.e. on purchase of goods supplied as second hand goods but does not bar ITC on other expenses incurred in the course or furtherance of business.*



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