

The logo for CGA LEGAL, featuring the text "CGA LEGAL" in a blue, sans-serif font. Above the text is a red, curved swoosh that starts above the 'C' and ends above the 'L'. Below the text is another red, curved swoosh that starts below the 'G' and ends below the 'L'.

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 Updates - Notifications

Notification No.	Summary of Notifications
37/2021 – CT dated 01.12.2021	Seeks to amend CGST Rules <ul style="list-style-type: none">• Seeks to extend the tenure of Anti Profiteering Authority providing that the Authority shall cease to exist after the expiry of five years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.• Seeks to make changes in Form GST DRC-03.

GST Updates – GST Technical Updates

Module wise new functionalities deployed on the GST Portal for taxpayers

Date: 02-12-2021

Withdrawal of Application for cancellation of registration in Form REG-16 by taxpayer

A functionality has been introduced for taxpayers to withdraw their application for cancellation of registration, filed in Form REG-16, provided no action has been initiated by the tax officer against their application.

Providing effective date of suspension in taxpayer profile

Now the effective date of suspension of a taxpayer is also displayed on the Portal when his/her profile is accessed using “Search Taxpayer” functionality.

Enabling EVC for all taxpayers

Earlier all taxpayers registered as Companies were mandatorily required to use DSC for all online process on GST Portal. Now, the facility of EVC, in addition to DSC, has been extended to such taxpayers.

For module wise detailed functionality, kindly follow the below link:

https://tutorial.gst.gov.in/downloads/news/new_functionalities_compilation_november_2021.pdf

GST News

At INR 1.31 Trillion, India's Nov GST collection second-highest in a month yet

Date: 02-12-2021

Goods and services tax (GST) collection grew about 25 per cent year-on-year to Rs 1.31 trillion in November, the second-highest mop-up ever, the official data showed on Wednesday, giving experts confidence that GST receipts would surpass the Budget projections for 2021-22. The highest collection was recorded in April this year, at Rs 1.40 trillion.

Even as e-way bills generated in October were at a record high of 73.5 million, the collection in November trailed the April figures. Transactions in a month yield GST collection in the following month. In March, 71.2 million e-way bills were generated. The finance ministry said the April figures were linked to year-end revenues. As such, there is a bump in April collections.

GST collection crossed the Rs 1.3-trillion mark for the second straight month in November. This is in line with the trend in economic recovery, the ministry said in a statement.

GST – Judicial Precedents

1. Supply

Whether sale of developed land is akin to supply of complex or building under GST?

M/s. Bhopal Smart City Development Corporation Ltd. [Authority For Advance Ruling, Madhya Pradesh]

Facts: The applicant has sought advance ruling whether GST is applicable on sale of developed plot of land for which consideration is received before the issuance of completion certificate (if any), under the given facts:-

The sale of plot is after carrying out the development activities or providing amenities such as Drainage line, water line, electricity line, land levelling, and common facilities viz. road and street light etc. which are to be provided by the applicant and remaining construction activities including civil foundation on the developed plot will be carried out by the buyer on their own account and cost.

Held: The question raised by the applicant is qualified by the phrase “issuance of completion certificate”. In this regard, we have to say that development of land is not akin to construction of a complex or building. The concept of obtaining a completion certificate is applicable to the construction of a complex or building and not to development of land, so far as GST is concerned. Therefore, it is immaterial whether any money is received by the applicant from prospective buyers before development of plots is completed and a completion certificate is received by the applicant from the appropriate authority.

Further, the sale of developed land, by the applicant as per the facts provided by him where the development work is limited to providing common amenities and no development work will be done by the applicant after the sale of the developed land and if no advance from the customer for undertaking development activities is taken then it does not constitute a supply within the meaning of Section 7 of the GST Laws and therefore GST is not applicable on such sale

GST – Judicial Precedents

2. Refund

Whether an application for refund be filed manually if the applicant is not in a position to file the refund application on the portal?

Laxmi Organic Industries Ltd. Vs UOI [Bombay High Court]

Facts: Having failed to upload “Statement 5B” along with refund applications which were filed online, the petitioner applied manually on 10th June, 2021 and 22nd June, 2021 for F.Y.s 2018-19 and 2019-2020. Such applications were returned without being processed with an instruction that in terms of Circular No. 125/44/2019-GST dated 18th November 2019, a refund application has to be filed in FORM GST RFD 01 on the common portal and the same has to be processed electronically. Aggrieved by the said decision, the petitioner files this appeal.

Held: There can hardly be any dispute that the said Superintendent was under an obligation to follow the terms of the impugned circular - the said Superintendent failed to appreciate that the circular could not have been ignored on the face of rule 97A, which is equally binding on him in the discharge of his duties. Since rule 97A contains a non-obstante clause, it is intended to override rules 89 to 97 of the CGST Rules forming part of Chapter X. The plain and simple construction of rule 97A is that despite rule 89 providing for electronic filing of applications for refund on the common portal, in respect of any process or procedure prescribed in Chapter X any reference to electronic filing of an application on the common portal shall, in respect of that process or procedure, include manual filing of the said application - thus, the impugned circular would certainly be applicable to all applications filed electronically on the common portal, but the impugned circular cannot affect or control the statutory rule, i.e., rule 97A of the CGST Rules or derogate from it.

GST – Judicial Precedents

2. Refund

Whether an application for refund be filed manually if the applicant is not in a position to file the refund application on the portal?

Laxmi Organic Industries Ltd. Vs UOI [Bombay High Court]

The impugned circular is clarified and it is observed that its terms shall be applicable only to applications filed electronically on the common portal but would have no applicability to an application for refund which is filed manually - Petition allowed.

GST – Judicial Precedents

3. Composition

Whether Composition scheme is available to a PAN SHOP?

Gulab Singh Chauhan [Authority for Advance Ruling, MP]

Facts: Gulab Singh is proposed to open a new business venture of PAN SHOP. The Business model of PAN SHOP would be selling Pan Masala, Tobacco Products, aerated Drinks etc. There will not be any kind of manufacturing of these products. It merely act as a trader. Whether the composition scheme is available to assessee if the turnover does not exceed ₹ 1,50,00,000 in the preceding financial year.

Held: The list of goods to be sold from the Pan shop include all kinds of goods that are normally bought from a Pan Shop. Accordingly, one of the goods that shall be sold from the applicant's Pan Shop is Gutka, containing Tobacco or otherwise. The Gutka is a preparation of betel nuts and any one or more of lime, katha (catechu) and tobacco whether or not containing any other ingredient, such as cardamom, copra or menthol, which is same as Pan Masala. In a Pan shop the seller also generally makes a product akin to Gutka themselves by mixing of betel nuts, lime, kattha and tobacco containing or not containing other ingredients are sold which amounts to manufacture of Gutka. Preparation of Gutka in the Pan Shop is akin to manufacture on account of the process of preparation being that of mixing of different bought out ingredients and the resultant product having a distinct name and use - the preparation of Gutka at the Pan Shop for sale is covered in the Second Proviso of Notification No. 14/2019-CT. In the Table given in Notification No. 14/2019-CT both Pan Masala and goods covered under Chapter 24 are listed as goods for which composition cannot be obtained.

The case of the applicant is fully and squarely covered under the restrictive condition of Section 10(2)(b) and 10(2)(e) of the GST Act, 2017. Thus, he shall not be eligible for Composition scheme.

GST – Judicial Precedents

4. Exemption

Whether exemption is available on lump sum amount received against health care services to be provided in future under a health plan?

M/s Divyajivan Healthcare LPP [Authority for Advance Ruling, Gujarat]

Facts: M/s. Divyajivan Healthcare LPP, the applicant submits that it proposes to establish a multi-super speciality hospital and provide health care services to patients. The applicant devised a plan, namely “Health Care Service (Diamond Plan)” for providing health care services for next 20 years for which a lump-sum amount, say, Rs. 10 Lakhs will be charged. Under the plan the services will be provided to the family i.e., Member, Spouse & up to 2 children (age below 21 years). The applicant will also tie-up with other hospitals pan India from where the members can avail health care services.

The applicant sought advance ruling whether lump-sum amount received for Health care Services to be provided for 20 years by the applicant as “Diamond Plan” is exempted from Goods and Services Tax as per Sr. No. 74 of Notification No. 12/2017- Central Tax?

Held: The scope of supply of services by the applicant is ‘health care services’ by a clinical establishment and also that the applicant’s Partner is an authorised medical practitioner - subject consideration is received for health care services - applicant’s tie up with the other hospital for diagnosis does not alter the scope of supply of health care services by the applicant to its service recipients - Health care Services provided by the applicant merit exemption from GST vide Sr. No. 74 of said Notification No. 12/2017-CT(R)

GST – Judicial Precedents

5. Classification

Classification Aorom Herbal Smokes (a substitute of Cigarettes) under GST

M/s Aorom Herbotech [Authority for Advance Ruling, Gujarat]

Facts: M/s. Aorom Herbotech, the applicant submits that it supplies 'Aorom Herbal Smokes (regular)', herein after referred to as goods for sake of brevity. The applicant submits that its goods are a new initiative for better health and that HSN of the subject goods is 30049011.

The applicant submits that herbal smoking is an ancient practice to cure many diseases from root mentioned in Ayurveda; this practice is named as dhumapana; it is still a common practice in ayurvedic treatments / therapy such as Panch-Karma and is done by ayurvedic MDs as a medicine to many diseases.

The applicant sought advance rulings on determination of the liability to pay Tax on Sales of Aorom Herbal Smokes.

Held: The user in the market buying these goods does so as cigarettes without Tobacco/ Nicotine and not as an ayurvedic medicament. The popular sense/ common parlance in the market cannot be brushed aside - applicant's proposed HSN 3004 does not apply to subject goods - the subject cigarettes have specific entry at HSN 24029010 as Cigarettes of tobacco substitutes - the Cigarettes of tobacco substitutes are covered at Sr. No.14 of Schedule-IV to Notification 1/2017-CT (R) dated 28-6-2017, liable to 28% GST along with Compensation Cess of Rs. 4006 per thousand

GST – Judicial Precedents

6. Levy

Bringing of petroleum products under the ambit of GST regime

Kerala Pradesh Gandhi Darshanvedhi vs UOI [Kerala High Court]

Facts: This writ petition has been filed regarding the bringing of petroleum products under the ambit of GST regime

Held: Even though the matter was taken in the 45th GST Council meeting, three issues seemed to have been considered by the Council, for bringing the petroleum products under the GST regime, i.e., (i) the matter involves high revenue implications, (ii) requires larger deliberations and (iii) during pandemic times, it would be difficult to bring petroleum products under GST regime. We are not satisfied with the reasons. There should be some discussion and genuine reasons, as to why petroleum products cannot be brought under the GST regime.

Further, pandemic period cannot be cited as a reason. It is well known that even during pandemic period, several decisions were taken involving revenue, after deliberations.

We direct Sri. P. R Sreejith, learned Standing Counsel for the Central Board of Indirect Taxes and Customs, to file a detailed statement with reference to the observations made above and the prayers sought for.

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