

The GST Bulletin

September 2023 Issue-I



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YOUR INDIRECT TAX KNOWLEDGE PARTNER

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/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 Compliance Calendar - September 2023

Date	Types of Return	Period	Types of Taxpayer
10-09-2023	GSTR-7	August 2023	TDS Deductor
10-09-2023	GSTR-8	August 2023	E-Commerce Operator
11-09-2023	GSTR-1	August 2023	Turnover more than INR 5 crore in the preceding FY or Turnover up to INR 5 crores and opted for monthly return filing
13-09-2023	Details of Outward Supplies through Invoice Furnishing Facility [IFF]	August 2023	Taxpayers who are under QRMP Scheme
13-09-2023	GSTR-6	August 2023	ISD
13-09-2023	GSTR-5	August 2023	Non Resident Taxable Person
20-09-2023	GSTR-3B	August 2023	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
20-09-2023	GSTR-5A	August 2023	OIDAR
25-09-2023	GST PMT - 06	August 2023	Taxpayer who has opted for QRMP Scheme has to deposit tax using form GST PMT-06 by the 25th of the following month, for the first and second months of the quarter.

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
27/2023- CT dt 31.07.2023	<p>Seeks to bring into force provisions of section 123 of the Finance Act, 2021</p> <ul style="list-style-type: none"> • The Central Government hereby appoints the 1st day of October, 2023, as the date on which the provisions of section 123 of the Finance Act, 2021 shall come into force. • Section 123 of the Finance Act, 2021 provided for the provisions relating to amendment in Section 16 of the IGST Act, 2017 Act relating to Supply of goods or services or both by SEZ for Authorized Operations.
28/2023- CT dt 31.07.2023	<p>Seeks to bring in force various sections of Finance Act, 2023</p> <p>The amendments made vide Finance Act, 2023 in the following sections of the CGST Act, 2017 will become effective from 1st October, 2023:</p> <ul style="list-style-type: none"> • Section 10 (Composition Levy) • Section 16 (Eligibility and conditions for taking input tax credit) • Section 17 (Apportionment of credit and blocked credits) • Section 23 (Person not liable for registration) • Section 30 (Revocation of cancellation of registration) • Section 37 (Furnishing details of outward supplies) • Section 39 (Furnishing of returns) • Section 44 (Annual return) • Section 52 (Collection of tax at source) • Section 54 (Refund of tax) • Section 56 (Interest on delayed refunds) • Section 62 (Assessment of non-filers of returns) • Section 122 (Penalty for certain offences) • Section 132 (Punishment for certain offences) • Section 138 (Compounding of offences) • Section 158A (Consent based sharing of information) • Retrospective exemption to certain activities and transactions in Schedule III to the CGST Act, 2017

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>28/2023- CT dt 31.07.2023</p>	<p>Seeks to bring in force various sections of Finance Act, 2023</p> <p>The amendments made vide Finance Act, 2023 in the following sections of the CGST Act, 2017 have become effective from 1st August, 2023:</p> <ul style="list-style-type: none"> • Section 109 (Constitution of Appellate Tribunal and Benches thereof) • Section 110 (President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.) • Section 114 (Financial and administrative powers of President) • Section 117 (Appeal to High Court) • Section 118 (Appeal to Supreme Court) • Section 119 (Sums due to be paid notwithstanding appeal, etc.) <p>The amendments made vide Finance Act, 2023 in the following sections of the IGST Act, 2017 will become effective from 1st October, 2023:</p> <ul style="list-style-type: none"> • Section 2(16) (Definition of Non-taxable online recipient) • Section 2(17) (Online information and database access or retrieval services) • Section 12 (Place of supply of services where location of supplier and recipient is in India) • Section 13 (Place of supply of services where location of supplier or recipient is outside India)
<p>29/2023-CT dt. 31-07-2023</p>	<p>Seeks to provide the provisions for Manual filing of Appeals against the order passed in respect of TRAN-1/ TRAN-2</p> <p>In pursuance of the directions of Hon'ble Supreme Court in case of the Union of India v/s Filco Trade Centre Pvt. Ltd., special procedure has been provided to enable manual filing of appeal against the orders passed by proper officers in respect of TRAN-1/ TRAN-2 claims of the registered persons.</p> <ul style="list-style-type: none"> • An appeal against the order shall be made in duplicate in the Form appended to the notification at ANNEXURE-1 within the time specified in sub-section (1) of section 107 or sub-section (2) of section 107 of the CGST Act.

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>29/2023-CT dt. 31-07- 2023</p>	<p>Seeks to provide the provisions for Manual filing of Appeals against the order passed in respect of TRAN-1/ TRAN-2</p> <ul style="list-style-type: none"> • The appellant shall not be required to deposit any amount as pre-deposit • An appeal filed shall be accompanied by relevant documents including a self-certified copy of the order and such appeal and relevant documents shall be signed by the person • An acknowledgement, indicating the appeal number, shall be issued manually in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the appeal shall be treated as filed only when the aforesaid acknowledgement is issued.
<p>30/2023-CT dt 31-07- 2023</p>	<p>CBIC notified special procedure to be followed by the manufacturers of tobacco, pan masala & other similar items inter alia for registration of machines and for filing of special monthly returns</p> <p>The 49th Meeting of the GST Council has approved the recommendation of the Group of Ministers (“GoM”) on Capacity Based Taxation and Special Composition Scheme. In accordance of recommendation of GoM, the GST Council in its 50th meeting, inter alia recommended issuing a notification under Section 148 of the CGST Act prescribing a special procedure to be followed by manufacturers of tobacco, pan masala & other similar items inter alia for registration of machines and for filing of special monthly returns.</p>
<p>31/2023-CT dt 31-07- 2023</p>	<p>Applicability of biometric based Aadhaar authentication extended to Puducherry</p> <p>Notification No. 27/2022-CT lays down that the provisions of rule 8(4A) of CGST Rules, 2017 shall not apply in all the States and UTs except the State of Gujarat thereby, implying that biometric based Aadhaar authentication and taking of photograph for completion of registration application shall be applicable only in Gujarat. The applicability of this notification has now been extended to Puducherry.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
32/2023-CT dt. 31-07- 2023	<p>Seeks to provide exemption from filing of Annual Return</p> <p>For easing compliance burden on smaller taxpayers, this notification has provided exemption from filing of annual return (in FORM GSTR-9/9A) for taxpayers having aggregate annual turnover upto two crore rupees, to be continued for FY 2022-23 also.</p>
33/2023-CT dt 31-07- 2023	<p>Consent based sharing of information by the common portal through ‘Account Aggregator’</p> <p>Section 158A of the CGST Act, 2017 articulates consent-based sharing of information that a taxable person has furnished, by the common portal with such other systems as may be notified by the Government. The Central Government on the recommendations of the Council has notified ‘Account Aggregator’ as the system with which information may be shared by the common portal based on consent under section 158A.</p> <p>For the purpose of this notification, ‘Account Aggregator’ means a non-banking financial company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI under section 45JA of the RBI Act, 1934 and defined as such in the Non-Banking Financial Company – Account Aggregator (Reserve Bank) Directions, 2016. This notification shall be applicable w.e.f. 01.10.2023.</p>
34/2023-CT dt 31-07- 2023	<p>Requirement of mandatory registration waived for persons supplying goods through an ECO</p> <p>The Central Government has specified the persons making supply of goods through an electronic commerce operator (ECO) who is required to collect tax at source under section 52 of the CGST Act, 2017 and having an aggregate turnover in the preceding and current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State/Union territory, as the category of persons exempted from obtaining registration, subject to the following conditions:</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>34/2023-CT dt 31-07- 2023</p>	<p>Requirement of mandatory registration waived for persons supplying goods through an ECO</p> <ul style="list-style-type: none"> a) such persons shall not make any inter-state supply of goods; b) such person shall not make supply of goods through ECO in more than one State or Union Territory; c) such persons shall be required to have PAN under Income Tax Act, 1947 and will have to declare the same on the portal along with the address of the place of business and the State or Union territory in which he seeks to make such supply, which shall be subject to validation on the common portal; d) on successful validation of the details furnished, such person will be granted an enrolment number on the portal. Such persons shall not be granted more than one enrolment number in a State or Union Territory; e) no supplies shall be made by the persons through ECO unless he has obtained the enrolment number. f) where such persons are subsequently granted registration under section 25 of the CGST Act, the enrolment number shall cease to be valid from the effective date of registration. <p>This notification shall be applicable with effect from 1st October, 2023.</p>
<p>35/2023-CT dt 31-07- 2023</p>	<p>Appointment of Adjudicating Authorities under CGST Act and IGST Act.</p> <p>Appointment of common adjudicating authority in respect of show cause notices of M/s BSH Household Appliances Manufacturing Pvt Ltd.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>01/2023-IT dt 31-07- 2023</p>	<p>Government notifies goods which may be exported on payment of IGST, and the refund can be claimed of the tax so paid</p> <p>Pursuant to amendment made by the Finance Act, 2021 in section 16(4) of the IGST Act, 2017 becoming effective from October 1, 2023, hereby notifies all goods or services (except the goods specified in table below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid:</p> <ul style="list-style-type: none"> • Pan-Masala • Certain specified tobacco products • Following essential oils other than those of citrus fruit namely: <ul style="list-style-type: none"> ✓ Of peppermint (<i>Mentha piperita</i>); ✓ Of other mints: Spearmint oil (<i>ex-mentha spicata</i>), Water mint-oil (<i>ex-mentha aquatic</i>), Horsemint oil (<i>ex-mentha sylvestries</i>), Bergament oil (<i>ex-mentha citrate</i>), <i>Mentha arvensis</i> <p>This notification shall be applicable with effect from 1st October, 2023.</p>
<p>36/2023-CT dt 04-08- 2023</p>	<p>Seeks to provide the special procedures for E-commerce operators in respect of Composition Taxpayers</p> <p>The GST Council in its 47th meeting, recommended to allow composition taxpayers to make intra-State supply of goods through E-commerce operators subject to certain conditions.</p> <p>Subsequently, Section 137 of the Finance Act, 2023 made appropriate amendment under Section 10 of the CGST Act so to allow the composition taxpayer to make intra-state supply of goods through E-commerce platforms (the said amendment will be made effective from October 01, 2023 and had been notified vide Notification no. 28/2023 Central Tax dated July 31, 2023).</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>36/2023-CT dt 04-08- 2023</p>	<p>Seeks to provide the special procedures for E-commerce operators in respect of Composition Taxpayers</p> <p>Now, the has notified E-commerce operators as the class of persons who shall follow the following special procedure in respect of the supply of goods made through them by the composition taxpayer,—</p> <ol style="list-style-type: none"> i. The E-commerce operator cannot facilitate the inter-state supply of goods by it to the Composition taxpayer; ii. The E-commerce operator is responsible for collecting the tax at source (TCS) in respect of the supply of goods made through it by the composition taxpayer and to pay to the government in accordance with the provision of Section 52(3) of the CGST Act; iii. The E-commerce operator shall electronically furnish the details of supplies of goods made through it by the composition taxpayer in FORM GSTR-8 on the common portal.
<p>37/2023-CT dt 04-08- 2023</p>	<p>Seeks to provide the special procedures for E-commerce operators in respect of Unregistered Persons</p> <p>Earlier, the GST Council in its 47th meeting had granted in-principle approval for allowing unregistered suppliers to make the intra-state supply of goods through e-commerce operators, so as to empower small traders who are below the GST threshold limit to expand their business through e-commerce platforms.</p> <p>Now, the CBIC has notified that the electronic commerce operator as the class of persons who shall follow the special procedure in respect of supply of goods made through it by unregistered person.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>37/2023-CT dt 04-08- 2023</p>	<p>Seeks to provide the special procedures for E-commerce operators in respect of Unregistered Persons</p> <ul style="list-style-type: none"> i. The unregistered person shall be allowed to supply goods only after allotment of enrolment number by common portal; ii. E-commerce operator shall not allow inter-state supply of goods to unregistered person ; iii. The E-commerce operator shall not collect any Tax at source (TCS) under Section 52 of CGST Act in relation to the supply of goods made through the unregistered person; and iv. The E-commerce operator shall furnish all the details of supplies made through unregistered person in the statement in FORM GSTR-8 electronically on common portal.
<p>38/2023-CT dt 04-08- 2023</p>	<p>Seeks to amend CGST Rules, 2017</p> <p>Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.</p> <p>Amendment in rule 10A to provide that the details of bank account, in name and PAN of the registered person, to be required to be furnished within 30 days of grant of registration or before filing of statement of outwards supply under section 37 of CGST Act in FORM GSTR-1/ IFF, whichever is earlier.</p> <p>Amendment in rule 21A(2A) to provide for system-based suspension of the registration in respect of such registered persons who do not furnish the details of valid bank account under rule 10A with the time period prescribed under the said rule.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>38/2023-CT dt 04-08- 2023</p>	<p>Seeks to amend CGST Rules, 2017</p> <p>Insertion of 3rd proviso in rule 21A(4) to provide for automatic revocation of such system-based suspension upon compliance with provisions of rule 10A.</p> <p>Amendment in Rule 23 w.e.f. 01-10-2023 to provide that the time limit for applying for revocation of cancellation of registration extended from 30 days to 90 days and the time limit by the Commissioner is extended for a further period of not exceeding 180 days.</p> <p>Amendment in rule 59(6) to provide that where a registered person has not furnished details of a valid bank account under rule 10A, the said registered person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF.</p> <p>Amendment in rule 9 and rule 25 to do away with the requirement that the physical verification of business premises is to be conducted in the presence of the applicant and also to provide for physical verification in high risk cases even where Aadhaar has been authenticated.</p> <p>Explanation 3 has been inserted In Rule 43(5) w.e.f. 01-10-2023 :- For the purpose of rule 42 and this rule, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.</p> <p>Amendment in clause (f) to Rule 46 to provide for requirement of only name of the State of the recipient, and not the name and full address of the recipient, is required on the tax invoice in cases of supply of taxable services by or through an ECO or by a supplier of OIDAR services to an unregistered recipient.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>38/2023-CT dt 04-08- 2023</p>	<p>Seeks to amend CGST Rules, 2017</p> <p>Amendment in Rule 64 w.e.f. 01-10-2023 to provide that every registered person providing online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or to a registered person shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.</p> <p>Amendment in Rule 67(2) w.e.f. 01-10-2023 to provide that the details of tax collected at source under sub-section (1) of section 52 furnished by the operator under sub-rule (1) shall be made available electronically to each of the registered suppliers on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.</p> <p>Rule 88D has been inserted to provide for the manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return.</p> <p>Subsequent amendment in Rule 56(6) to provide for the restriction on furnishing of GSTR-1 for subsequent period if no ITC reversed or no reply furnished in terms of Rule 88C.</p> <p>Amendment in Rule 94 w.e.f. 01-10-2023 to provide the certain time which has to be excluded while calculating the interest on delay in payment of refund.</p> <p>Rule 138F has been inserted to provide for the Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>38/2023-CT dt 04-08- 2023</p>	<p>Seeks to amend CGST Rules, 2017</p> <p>Amendment in Rule 108 and 109 to provide that an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if the Commissioner has so notified, or the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.</p> <p>Rule 142B has been inserted to provide that where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may be the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.</p> <p>Amendment in Rule 162 w.e.f. 01-10-2023 to provide for the procedure for Compounding of Offences and determination of the compounding amount by the Commissioner.</p> <p>Rule 163 has been inserted w.e.f. 01-10-2023 to provide for Consent based sharing of information.</p> <p>Certain amendments has been made in FORM GSTR-3A, FORM GSTR-5A, FORM GSTR-8, FORM GSTR-9, FORM GSTR-9C.</p>

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
38/2023-CT dt 04-08- 2023	<p data-bbox="321 404 1348 435">Seeks to amend CGST Rules, 2017</p> <p data-bbox="321 486 1348 621">FORM GST DRC-01C has been provided for Intimation of difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return.</p> <p data-bbox="321 673 1348 745">FORM GST DRC-01D has been provided for Intimation for amount recoverable under section 79.</p>

GST Updates – CBIC Circulars

Clarifications regarding applicability of GST on certain services

Circular No. 201/13/2023-GST Dated:01-08-2023

Clarification on Services supplied by Director

- Services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM.
- Only those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017- CTR (Sl. No. 6) dated 28.06.2017.

Clarification on Supply of Food & Beverages in Cinema Hall

- Supply of food and beverages in cinema halls is taxable as restaurant service as long as
 - a) they are supplied by way of or as part of a service and
 - b) supplied independently of the cinema exhibition service.
- Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

GST Updates – CBIC Circulars

Clarifications regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting

Circular No. 200/12/2023-GST Dated:01-08-2023

Based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023, clarifications with reference to GST levy related to the following items are being issued through this circular:

- i. Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion;
- ii. Fish Soluble Paste;
- iii. Desiccated coconut;
- iv. Biomass briquettes;
- v. Imitation zari thread or yarn known by any name in trade parlance;
- vi. Supply of raw cotton by agriculturist to cooperatives;
- vii. Plates, cups made from areca leaves
- viii. Goods falling under HSN heading 9021

GST Technical Updates

Advisory on E-Invoice - Services Offered by the Four New IRPs

Dated : 02-08-2023

The services offered by the four new IRPs for generation of e-invoice are provided by the GSTIN.

To access the detailed advisory, please follow the link below.

https://tutorial.gst.gov.in/downloads/news/e_invoice_services_offered_by_the_new_irps_updated_irps_final_1Aug2023.pdf

CGA Legal GST Webinar

Major changes in GST Law brought through recommendations of the 50th and 51st GSTC - Implication on Industry

Dated : 24-08-2023

CGA Legal organized a CGA Legal Live Meet on 24th August 2023 on the topic "Major changes in GST Law brought through recommendations of the 50th and 51st GSTC - Implication on Industry".

The link for the video of the meet is provided below:

<https://www.youtube.com/watch?v=TY8tv1MKU7o>

GST News

Petroleum dealers press for GST tax regime

Date: 26-08-2023

Petroleum dealers in the State have urged the Central and State governments to switch over to the Goods and Service Tax (GST) or any other uniform tax regime all over the country. This follows a peaceful protest staged a few days ago by a section of dealers from certain States in North India at Delhi pressing this and other demands.

“Uniform taxes would mean consumers living near State borders need not go to neighbouring States just to purchase fuel. Right now, price differences do matter due to varied Value Added Tax rates. Dealers near borders too would benefit from this,” explained K. P. Murali, president, Tamil Nadu Petroleum Dealers Association.

Read more at:

<https://www.thehindu.com/news/cities/chennai/petroleum-dealers-press-for-gst-tax-regime/article67239162.ece>

GST – Judicial Precedents

1. Input Tax Credit

ITC on renting/hiring of motor vehicles with seating capacity of less than thirteen persons (including driver) for providing transport facilities to women employees working beyond 8.00 PM

M/s. Access Healthcare Services Private Limited [AAR Tamil Nadu]

Held: With effect from 01.02.2019, Input Tax Credit has not been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of not more than thirteen persons (including the driver) - However, as per the proviso to Section 17(5)(b), input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In the instant case, it has been specifically mentioned in the invoices issued by the service providers that the seating capacity of the motor vehicles (including driver) is less than thirteen persons. However, it is obligatory on the part of the Applicant to provide transport facilities to women employees working beyond 8.00 PM, as per the provisions of the Tamilnadu Shops and Establishment Act, 1947 - it is clear that Section 17(5) of the CGST Act blocks input tax credit on motor vehicles used in transport of passengers up to the date of amendment ie., 01.02.2019. With effect from 01.02.2019, ITC is not allowed on leasing, renting or hiring of motor vehicles for transportation of passengers having approved seating capacity of not more than thirteen persons (including driver).

The motor vehicles used by the Applicant have seating capacity of less than 13 persons, making them ineligible to avail ITC on such services.

ITC is not blocked on the renting of motor vehicles to provide transport facilities to women employees working between 8.00 PM to 6.00 AM as it is obligatory for an employer to provide the same to its employees under the law for the time being in force (Tamilnadu Shops and Establishment Act, 1947) as per Section 17 (5)(b) of the CGST Act, 2017 only from 28.05.2019, which is the date of the Notification issued by the Tamil Nadu Government in this regard.

GST – Judicial Precedents

2. Audit

Can an audit be initiated for a person who is not registered under GST for the Financial Years for which such person was registered

TVL. Raja Stores, Represented By Its Partner Mr. Pitchai Nadar Versus The Assistant Commissioner (ST) [Madras High Court]

Facts: The petitioner is a partnership firm doing business in the name and style of Raja Stores was registered under GST. The petitioner intended to close his business and submitted a petition before the authorities. The authorities after considering the same vide order dated 03.03.2023 has allowed the petitioner to close his business with effect from 31.03.2023. The petitioner however failed to pay the collected tax. Subsequently, the respondent has issued impugned show cause notice dated 19.05.2023 for conducting audit. After receiving the notice, the petitioner sought adjournment but subsequently filed the Writ Petition by challenging the show cause notice, before the Court.

The contention that was raised by the petitioner is that under Section 65, the respondents are empowered to conduct audit if the concern is a registered unit. As on the date, the petitioner's registration is cancelled, he is an unregistered concern. Therefore, the respondent is not having any jurisdiction to conduct an audit. But the contention of the respondent is that the audit is being conducted for a period from 2017-2018, 2021-2022. Therefore, the respondent claims that for the said period, the petitioner was a registered firm and for the said period, the respondent is empowered to conduct audit.

Held: On perusing Section 65, it is stated that the audit can be conducted to the said registered persons “for such period”, “for such frequency” and “in such manner”. When a Section provides for periodical audit, the respondent having failed to conduct audit for all these years, suddenly cannot wake up and conduct an audit. However, this will not preclude the respondent from initiating assessment proceedings for the said concern under Sections 73 and 74. Therefore, the said impugned order is liable to be quashed. Hence, the impugned order is quashed with liberty to the respondent to initiate assessment proceedings under Sections 73 and 74 of the Act.

In view of the above, this Writ Petition is allowed. There shall be no order. Consequently, connected miscellaneous petition is closed.

GST – Judicial Precedents

3. Detention of Goods and Vehicle

Detention of goods and vehicle on account of non-availability of Credit Note in case of return of goods by the recipient without even the goods having been received by the recipient

Luminous Power Technologies Private Limited, Represented By Ram Chander Yadav Versus State Tax Officer, Deputy State Tax Officer [Madras High Court]

Facts: The petitioner had dispatched the goods to the consignee/buyer by four different invoices all dated 25.12.2022 - The goods also accompanied e-way bills all dated 26.12.2022. The goods were not received by the consignee/buyer and therefore, they were re-transported back by the petitioner after generating four different e-way bills all 28.12.2022.

However, in terms of sec 34 of the Act, any goods returned due to unfructified sales, it should be accompanied with delivery challan/credit/debit note. In this case the taxable person has failed to issue the credit/debit note. Therefore, the goods under movement is treated as movement without document prescribed under sec 34 read with rule 55 of the Act thereby invoking sect 129 is warranted. Accordingly, penalty under sec 129 of the Act is levied.

It is submitted that the detention was incorrect, as the consignee namely Attrib System, refused to take delivery. Therefore, issuance of Credit Notes under Section 34 of the respective GST enactments does not arise.

Held: The detention of the goods was per se illegal and unwarranted particularly in the light of the fact that the goods accompanied the e-way bills, which were generated for return of the goods. Credit note under Section 34 is not required to be issued at the stage, when the goods were being returned without even they having been received by the recipient. Issuance of Credit Note and/or Debit Note under Section 34(1) of the CGST Act, is only for adjustment of tax liability.

The petitioner has to merely declare the details of the Credit Note in the monthly return during which Credit Note is issued for adjustment of tax liability - The question of issuing Credit Note also will arise only by the supplier and not by the recipient.

Petition allowed.

GST – Judicial Precedents

4. Input Tax Credit

ITC not available where tax has not been paid by the Supplier

M/s Aastha Enterprises Versus The State Of Bihar [Patna High Court]

Facts: The issue raised in the above writ petition is as to the sustainable claim of Input Tax Credit, when it has been proved that the purchaser, a registered dealer has satisfied the tax liability to the selling dealer, another registered dealer, evidenced by a tax invoice; even when the selling dealer does not pay the said tax to the Government after collecting it from the purchaser. Whether the purchasing dealer can be denied Input Tax Credit evidenced by the invoice and is not the State obliged to take proceedings against the selling dealer, who defaulted payment of collected tax to the State; for which the statute provides ample scope.

Held: It is true that Input Tax Credit is a concept introduced in the tax regime, all over the country for the purpose of avoiding the cascading effect of taxes. The benefit of such credit being availed by a purchasing dealer who sells or manufactures goods, using raw materials on which tax has been paid is a benefit or concession conferred under the statute - the contention of double taxation does not impress us especially since the claim is denied only when the supplier who collected tax from the purchaser fails to pay it to the Government. Taxation as has been held is a compulsory extraction made for the purpose of public good, by the welfare State and without the levy being paid to the Government; there can be no claim raised of the liability to tax having been satisfied and hence there is no question of double taxation.

The seller and purchaser have an independent contract without the junction of the Government. The statute provides for a levy of tax on goods and services or both, supplied by one to the other which can be collected but the dealer who collects it has also the obligation to pay it up to the State.

It is clear that the literal nomenclature and the statutory language, mandates that there should be credit available in the credit ledger of the purchaser to claim Input Tax and otherwise the claim would be frustrated. On the above reasoning, it is found that the claim of Input Tax Credit raised by the petitioner cannot be sustained when the supplying/selling dealer has not paid up the amounts to the Government; despite collection of tax from the purchasing dealer.

The writ petition would stand dismissed.



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