



# THE GST BULLETIN

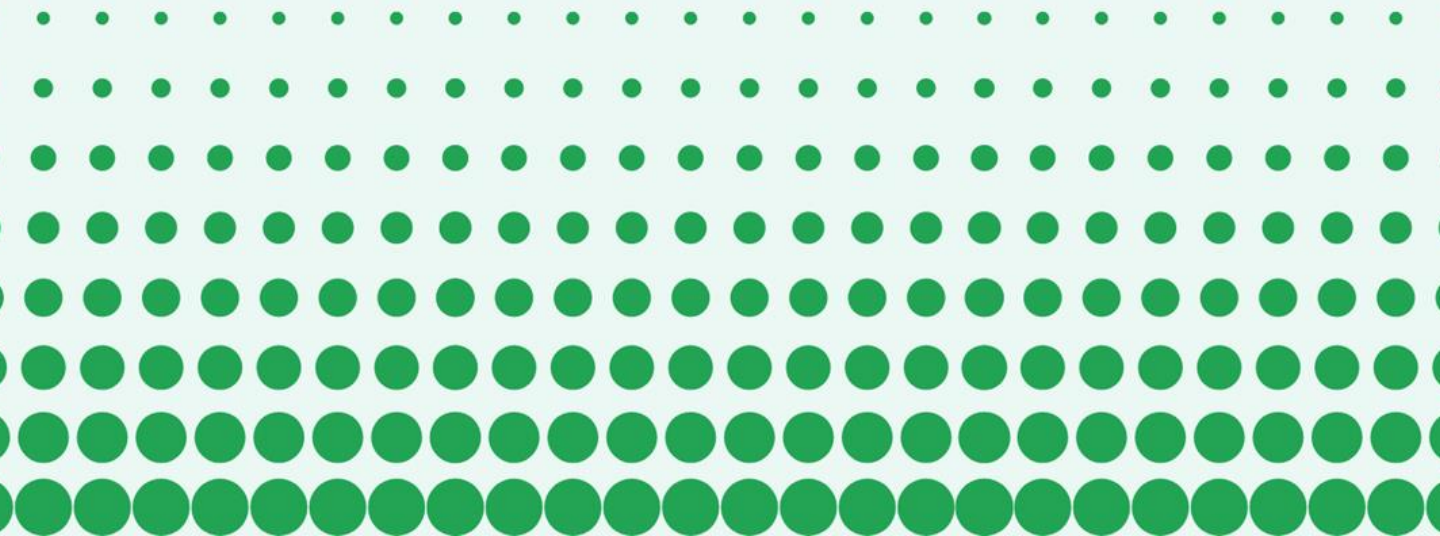
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YOUR INDIRECT TAX KNOWLEDGE PARTNER

December 2022 Issue - II

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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](http://www.cgalegal.co.in)

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## GST Compliance Calendar - January 2023

Statutory Due Date	Type of Return	Period	Type of Taxpayer
10-01-23	GSTR-7	December-2022	TDS Deductor
10-01-23	GSTR-8	December-2022	E-Commerce Operator
11-01-23	GSTR-1	December-2022	Turnover more than INR 5 crore in the preceding FY & Turnover up to INR 5 crores and have opted for monthly return filing.
13-01-23	GSTR-1	October-December-2022	Turnover up to INR 5 Crores and under QRMP Scheme
13-01-23	GSTR-6	December-2022	ISD
13-01-23	GSTR-5	December-2022	Non-Resident Taxable Person
18-01-23	CMP-08	October-December-2022	Composition Dealer
20-01-23	GSTR-3B	December-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
20-01-23	GSTR-5A	December-2022	OIDAR
22-01-23	GSTR-3B	October-December-2022	Taxpayers opted for QRMP Scheme, having aggregate turnover upto INR 5 Cr for *Category A States
24-01-23	GSTR-3B	October-December-2022	Taxpayers opted for QRMP Scheme, having aggregate turnover upto INR 5 Cr for **Category B States

## GST Compliance Calendar - January 2023

### Notes:

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

\* Cat 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.

\*\* Cat 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 Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>26/2022 – CT Dated 26.12.2022</p>	<p><b>Seeks to amend CGST Rules, 2017</b></p> <ul style="list-style-type: none"> <li> <p>❑ <b>Changes w.r.t. Registration under GST</b></p> <ul style="list-style-type: none"> <li>• <b>Verification of Mobile No. and E-mail address linked with PAN for GST Registration</b></li> <li>• <b>Biometric based Aadhaar Authentication:</b> Mandatory for applicants who has opted for authentication of Aadhaar number while applying for registration and is also identified on the common portal, based on data analysis and risk parameters.</li> <li>• <b>Suo-moto application for cancellation of registration:</b> A person no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, may himself apply for cancellation of registration.</li> </ul> </li> <li> <p>❑ <b>Changes w.r.t. ITC under GST</b></p> <ul style="list-style-type: none"> <li>• <b>Rationalization of Rule 37 to provide for proportionate ITC reversal on part payment by recipient:</b> Rule 37(1) of the CGST Rules has been amended retrospectively w.e.f. 01-10-2022 to provide for the reversal of input tax credit only proportionate to the amount not paid to the supplier vis-a-vis the value of the supply, including tax payable.</li> <li>• <b>Mechanism for Reversal of ITC by recipient in case of non payment of tax by the Supplier:</b> Mechanism of reversal of ITC by the recipient by 30th day of November following the end of such financial year where tax is not paid by the supplier in Form GSTR-3B to the Government till the 30th day of September following the end of financial year. The recipient shall be entitled to re-avail the ITC once the supplier pays the tax to the Government.</li> </ul> </li> <li> <p>❑ <b>Changes w.r.t. invoicing under GST</b></p> <ul style="list-style-type: none"> <li>• An <b>invoice cum bill of supply</b> shall contains the particulars of Tax Invoice, Bill of Supply and Invoice issued in other cases like by ISD, Banking Co, etc.</li> </ul> </li> </ul>

## GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>26/2022 – CT Dated 26.12.2022</p>	<p><b>Seeks to amend CGST Rules, 2017</b></p> <ul style="list-style-type: none"> <li>• <b>Invoice in case of supply made through e-commerce operator and in case of OIDAR Services supplied to unregistered person:</b> Such invoices shall contain the complete details of the recipient i.e. name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.</li> </ul> <p>❑ <b>Changes w.r.t. filing of Returns</b></p> <ul style="list-style-type: none"> <li>• <b>Restriction on filing of GSTR-1:</b> A registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C.</li> </ul> <p>❑ <b>Changes w.r.t. payment of tax</b></p> <ul style="list-style-type: none"> <li>• <b>Validation of payment with e-scroll of RBI:</b> Rule 87(6) has been amended to provide that in case where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.</li> <li>• <b>Intimation for difference in tax liability as per GSTR-1 and GSTR-3B:</b> Rule 88C has been inserted in CGST Rules, 2017 to provide a detailed manner of dealing with difference in liability reported in statement of outward supplies (GSTR-1) and that reported in return (GSTR-3B).</li> </ul>

## GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>26/2022 – CT Dated 26.12.2022</p>	<p><b>Seeks to amend CGST Rules, 2017</b></p> <ul style="list-style-type: none"> <li>❑ <b>Changes w.r.t. refunds under GST</b> <ul style="list-style-type: none"> <li>• <b>Refund by unregistered persons:</b> Rule 89(2) has been amended to provide the documents for filing refund in case of refund by unregistered persons.</li> </ul> </li> <li>❑ <b>Changes w.r.t. filing of appeals under GST</b> <ul style="list-style-type: none"> <li>• <b>Facility of Uploading of order appeal against on common portal:</b> Rule 108(3) has been amended to provide that where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.</li> <li>• <b>Rule 109</b> which provides the procedure to file an appeal with the Appellate Authority has been amended consequent to amendment in Rule 108(3) of CGST Rules, 2017.</li> <li>• <b>Rule 109C</b> has been inserted in CGST Rules to provide a manner for Withdrawal of Appeal in FORM GST APL-01/03W by an appellant.</li> </ul> </li> <li>❑ <b>Changes w.r.t. E-way Bill</b> <ul style="list-style-type: none"> <li>• <b>Requirement of e-way bill:</b> Rule 138(14) has been amended to provide that e-way bill shall not be required in case of transportation of Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) <b>excepting Imitation Jewellery (7117).</b></li> </ul> </li> <li>❑ <b>Changes w.r.t. GST Forms</b> <ul style="list-style-type: none"> <li>• Certain changes have been made in GST REG-01, GST REG-17, GST REG-19, FORM GSTR-1, FORM GST RFD-01, FORM GST DRC- 03</li> <li>• Certain new forms have been prescribed viz., FORM GST APL-01/03 W, FORM GST DRC-01B.</li> </ul> </li> </ul>



## GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
27/2022 – CT Dated 26.12.2022	<b>Notification under sub-rule (4B) of rule 8 of CGST Rules, 2017</b>  Seeks to provide that provisions of sub-rule (4B) of rule 8 of CGST Rules, 2017 shall apply to state of Gujarat only. Thus, the provisions of Rule 8(4A) providing biometric based Aadhaar Authentication for registration shall be applicable in the State of Gujarat only.

## GST Updates - CBIC Circular

### Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19

#### Circular No. 183/15/2022-GST dated 27-12-2022

CBIC has specified the procedure for Commissionerate's as to how to deal with difference ITC as per GSTR-2A and ITC claimed in GSTR-3B in respect of FY 2017-18 and FY 2018-19.

**Step 1: Seek Details from Registered person in respect of ITC not appearing in GSTR-2A but claimed in GSTR-3B:** In case of difference in ITC as per GSTR-2A and ITC claimed in GSTR-3B, the proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A.

**Step 2: Ensuring compliance of Sec 16 of CGST Act :** He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person: (i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents; (ii) that he has received the goods or services or both; (iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

**Step 3: Procedure for Verification of Payment of Tax by Supplier:** In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

## GST Updates - CBIC Circular

.....*Continued from above*

Cases where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh -The proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN.

In other cases - the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B

**Step 4 Exception to the above Rule:** However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

**Step 5: Applicability of the CBIC Instructions:** These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

## GST Updates - CBIC Circular

*.....Continued from above*

### **CGA Legal Comments**

1. These Instructions are a welcome step as lot of notices / proceedings in respect of GSTR-2A Reconciliation are kept pending by various Commissionerate's for want of clear instructions.
2. The Legal grounds that whether such reconciliation with GSTR-2A is legally tenable for FY 2017-18 & FY 2018-19 when Rule 36(4) was introduced in Oct 2019 still holds true.
3. The CBIC Circular is not applicable on completed proceedings is unfair on the part of the assessee since the Circulars are always clarificatory in nature and should be uniformly applicable.
4. Clarification provided by Circular on the GSTR-2A which was not there at all in Law is against the spirit of the law and not expected from the Government.

## GST Updates - CBIC Circular

### Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017

#### Circular No. 184/16/2022-GST dated 27-12-2022

The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipient are located in India, is determined in terms of subsection (8) of section 12 of the IGST Act.

The place of supply of services by way of transportation of goods, including by mail or courier where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

In this regard, following issues have been clarified as hereunder:

- **Transaction to be Considered as Inter-State Supply:** The aforesaid supply of services would be considered as inter-State supply in terms of sub-section (5) of section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply of services.
- **Recipient Eligible to Claim ITC even if Place of Supply is not the state in which recipient is Registered:** In relation with the claim of ITC, the said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.

## GST Updates - CBIC Circular

*.....Continued from above*

- **Place of Supply in such cases**-Further, for reporting of such supplies in GSTR-1, the supplier of service shall report place of supply of such service by selecting State code as '96-Foreign Country' from the list of codes in the drop-down menu available on the portal in FORM GSTR-1.

### **CGA Legal Comments**

1. These Instructions have brought a big relief to Freight Forwarding Industry who have been in dilemma of claiming ITC on such transactions.
2. The registered persons who are the recipient of such transactions may ensure that the State code as specified in the instruction may be used by Supplier in the Tax invoices and while filing their GSTR-1/ IFF.
3. Since these clarifications are being provided by way of Circular, it will have the retrospective effect.

## GST Updates - CBIC Circular

### Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation

#### Circular No. 185/17/2022-GST dated 27-12-2022

Sub-section (2) of section 75 of CGST Act, 2017 which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as “noticee”), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

It has been clarified that in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.

Further, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined in respect of which show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act.

## GST Updates - CBIC Circular

.....*Continued from above*

Similarly, in case, where the show cause notice under sub-section (1) of section 74 was issued beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73.

Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.

### **CGA Legal Comments**

Issuance of the above guidelines is a great step of the department towards taxpayer's facilitation who were unnecessary being issued Sec 74 notice without any specific reason.



## GST Updates - CBIC Circular

### Clarification on various issue pertaining to GST

#### Circular No. 186/18/2022-GST dated 27-12-2022

**Issue: Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?**

Clarification: It is, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.

**Issue: Whether No Claim Bonus can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?**

Clarification: It is, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured.

**Issue: Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?**

Clarification: It is clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

## GST Updates - CBIC Circular

**Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalized under Insolvency and Bankruptcy Code, 2016**

**Circular No. 187/19/2022-GST dated 27-12-2022**

CBIC treats NCLT proceedings under 'other proceedings' under Section 84 of CGST Act, 2017 and specifies FORM GST DRC-25 to be issued by Commissioner to taxable person for intimating reduced demand.

**Prescribing manner of filing an application for refund by unregistered persons**

**Circular No. 188/20/2022-GST dated 27-12-2022**

Representations have been received requesting for providing a facility to unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/ building or on termination of long-term insurance policy.

Thus, in order to provide the manner of filing an application for refund by an unregistered persons, CBIC has clarified the detailed procedure for filing of refund by such unregistered person.

## GST News

### No proposal before Govt. to lower threshold for generating e-invoice

**Dated 26-12-2022**

The CBIC on Monday said there is no proposal before the government to lower the threshold from January 1 for mandatory generation of e-invoices. Currently, businesses with a turnover of Rs 10 crore and above are required to generate an electronic invoice for all B2B transactions.

"There is no proposal before the Government, at present, to reduce this threshold limit to Rs 5 crore with effect from 01.01.2023, as no such recommendation has been made by GST Council as yet," the CBIC tweeted.

Read more at:

<https://economictimes.indiatimes.com/news/economy/policy/no-proposal-before-govt-to-lower-threshold-for-generating-e-invoice/articleshow/96524567.cms>

## GST – Judicial Precedents

### 1. Demand and Recovery

#### Absence of statutory provisions for recovery of TRAN-1 Credit

#### **M/s. Usha Martin Limited, Versus Additional Commissioner [Jharkhand High Court]**

**Facts:** M/s. Usha Martin Ltd. (“the Petitioner”) is engaged in the business of manufacturing iron and steel products and was registered in the Central Excise Act, 1944 (“the Excise Act”) and Finance Act, 1994 (“the Finance Act”) in erstwhile tax regime. Post July 01, 2017, the Petitioner registered under GST. The Petitioner carries forwarded CENVAT credit under GST regime by filing GST TRAN-1. The Respondent issued the SCN alleging that Petitioner could not claim CENVAT credit in lieu of invoices raised by an entity in erstwhile tax regime as the same was contravention of the Excise Act and Finance Act read with Cenvat Credit Rules, 2004 (“CCR”) on March 30, 2022. Thereafter, the Respondent vide Order-In-Original March 30, 2022 (“the Order”) disallowed the CENVAT credit carried forwarded by the Petitioner on the ground stated above.

Petitioner filed the writ petition questioning the jurisdiction of the GST Authorities to examine the correctness of the CENVAT credit.

**Held:** Section 73 of the CGST Act, makes it clear that proceeding under this section can only be initiated for non-payment of any tax or short payment of such tax for erroneous refund of such tax or for wrongly availing the input tax credit which are admissible under the CGST Act.

Section 73 of the CGST Act does not provide power to adjudicating authority to issue notice pertaining to CENVAT credit. Therefore, invoking Section 73 in the present case was not proper in the eyes of law.

The Court also noted that the Petitioner fulfilled all conditions under Section 140 of the CGST Act. For any Cenvat Credit incorrectly availed, Section 174 of the CGST Act empowers the revenue to initiate proceedings under the erstwhile regime. Basis above, the Court quashed the SCN.

## GST – Judicial Precedents

### 2. Supply and ITC

#### Taxability of Canteen Services

##### **M/s. Federal Mogul Goetze India Ltd [Authority for Advance Rulings, Karnataka]**

**Facts:** The applicant, provides canteen facility to all their employees including contractual employees wherein a part of the cost of the meals provided is deducted by the applicant from the salary of the employees on a monthly basis.

The said canteen is operated by the applicant and all the equipments and items essential for running the canteen such as grocery, etc., are arranged by the applicant. The applicant entered into a separate contract with a service provider for providing of manpower required to manage the canteen operations.

In view of the above, the applicant has sought advance ruling in relation to applicability of GST on the deductions made from the salary of the employees and the question relating to eligibility of ITC on input services of manpower required to manage the canteen operations.

**Held:** Providing canteen facility is incidental to their main activity of manufacture, and therefore covered in the definition of 'business' in terms of Section 2(17)(b) - the activity of provision of canteen facility by the applicant to supply the food amounts to supply in terms of Section 7(1)(a) of the CGST Act 2017.

In relation with the question of eligibility of ITC, the GST paid on manpower supply services, that are used for providing canteen facility should be allowed as credit of the same is not restricted under Section 17(5) of the CGST Act, 2017 and there is no restriction on availment or any requirement of reversal of said ITC.

However, as we have found that the services of the applicant are covered under services provided in canteen and other establishments and merit classification under SAC 996333. The said services attract GST @ 5%, without ITC in terms of SI. No. of the Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended. Thus, the applicant is not entitled to ITC of the GST paid on manpower supply services that are used for providing canteen facility.

## GST – Judicial Precedents

### 3. Registration

#### Cancellation of Registration without providing any reason for such cancellation

##### **M.M. Scrap Trading Versus State of Gujarat [Gujarat High Court]**

**Facts:** It is case of the petitioner that since issuance of certificate, it has been duly filing its returns and has been duly reporting the business returns to the concerned authorities in accordance with law. It is the case of the petitioner that despite following the mandate under the law, it received a show cause notice for cancellation of registration dated 28.2.2022. Immediately, a reply to the show cause notice was filed stating necessary facts. Despite that, without considering any of the averments made in the reply, an order dated 9.3.2022 came to be passed by the authority cancelling the registration number of the petitioner. The petitioner also preferred an application for revocation of cancellation of registration number, however, the same was rejected vide order dated 26.4.2022. Against the order dated 26.4.2022, the petitioner preferred appeal before the competent authority vide appeal dated 17.5.2022 and the competent authority also vide order dated 12.10.2022 rejected the same. Aggrieved by the afore-stated actions of the respondents, the present petition is filed.

**Held:** In the opinion of this Court, it is a settled legal position of law that reasons are heart and soul of the order and non-communication of the same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. More so, in this case even the appeal order also does not reflect application of mind by the competent authority.

In the decision of Aggarwal Dyeing and Printing Works versus State of Gujarat, this Court after considering the scheme of Act as well as the procedure contemplated under the provisions of the Act for cancellation of registration has held that we notice that it is settled legal position of law that reasons are heart and soul of the order and non-communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice.

Applying the same principles particularly on the ground that the show cause notice as well as the order rejecting application seeking revocation of cancellation is without assigning any reasons and thereby there is a clear violation of principles of natural justice, the writ petition is allowed.

## GST – Judicial Precedents

### 4. Classification

#### Whether classification of flavored milk for tea preparation falls under beverage?

#### M/s. HR Food Processing (P) Ltd [Authority of Advance Ruling, Jharkhand]

**Facts:** The Company is engaged in processing of milk and milk products under the Brand name OSAM'. The applicant, seeking an advance ruling in respect of the following questions:-

- (a) What would be the classification of Flavored Milk for Tea Preparation?
- (b) What would be the rate of GST Applicable on the said product?

**Held:** In common parlance, a beverage is (chiefly in commercial use) a drink other than water, It is a liquid for drinking especially such liquid other than water (as tea, milk, fruit juice beer) usually prepared (as by flavouring, heating, admixing) before being consumed. The Instant Product, “flavoured milk for Tea Preparation” can't be consumed instantly and it does not contains any additives like sugar or sweeteners for direct consumption.

It is moreover, a 'preparation' made as per the description given by the applicant in the flow chart submitted by them. The applicant's product was found to be “Tea Milk” rather than 'Flavoured Milk for Tea Preparation' from which Tea shall be prepared. The final product Tea can be said to be a beverage but not the raw material i.e. “Tea Milk”.

The product of the applicant is appropriately classifiable under Chapter 04 under heading 0401 20 00.

In relation with the rate of GST, since, the product of the applicant, classifiable under Chapter Sub-Heading No. 0401 20 00, is pasteurized milk which is neither concentrated nor contains added sugar or other sweetening material and it is not Ultra High Temperature Milk, as declared by the applicant, it is eligible for the benefits under Notification No. 2/2017-Central Tax (Rate) dated 28-06-2017.

## GST – Judicial Precedents

### 5. Blocking of Electronic Credit Ledger

**Electronic Credit Ledger cannot be blocked on account of non-payment of consideration to the Supplier within 180 days by the recipient**

#### **Sunny Jain Vs Union of India [Delhi High Court]**

**Facts:** The allegation against the petitioner is that he had not paid the consideration for supplies received from D.G. Impex within the period of 180 days and therefore, was liable to pay interest under Section 16(2)(d) of the CGST Act.

Rule 86A of the CGST Rules entitles the Commissioner or any officer authorized by him in this behalf, not below the rank of Assistant Commissioner, to not permit debit (utilization) of the ITC lying to the credit in the ECR of a taxpayer in certain circumstances. Concededly, the respondents blocked the petitioner's ITC lying in his ECR is in exercise of the power under Rule 86A of the CGST Rules.

**Held:** It is, clearly, not the scheme of the CGST Act to restrain a person from availing the ITC till he has paid the supplier for such goods/services. A recipient of goods/services who receives goods and services on supplier's credit is also entitled to avail the ITC. However, if he fails to discharge his liability within a period of 180 days, he is liable to disgorge the benefit of the ITC along with interest. The taxpayer's liability to account for the ITC availed without paying for the same within the period of 180 days, is required to be assessed as a part of his output liability.

If the taxpayer does not discharge his liability to the supplier within a period of 180 days, he is required to account for the benefit of the ITC availed by the taxpayer along with interest as a part of the output liability. In terms of the third proviso to Section 16(2) of the CGST Act, the taxpayer would be entitled to avail of the ITC once again on payment being made to the supplier.

The respondents have completely misdirected themselves in proceeding on the basis that unless a taxpayer pays the supplier, he is ineligible to avail of the ITC lying to his credit in the ECL. The action of the respondents to continue blocking the ITC available in the ECR of the petitioner for such extended period is without the authority of law.



## GST – Judicial Precedents

### 6. Exemption

#### Sale of Independent part of a business shall be treated as Supply of Services by way of Transfer of a Going Concern

##### Capfront Technologies Pvt. Ltd. [AAR, Karnataka]

**Facts:** The applicant own a mobile application, developed and owned by them, called as “LoanFront”, which is a Fintech product and is used as a digital platform to facilitate lending of short term personal loans; they intend to transfer the said mobile application software to their wholly owned subsidiary M/s Vaibhav Vyapaar Private Limited (WPL). In view of the above, the applicant has sought advance ruling in respect of the following question:-

*Whether the GST would be applicable on the aforesaid transfer of mobile application software?*

**Held:** The statement of facts conveys that the transfer of business pertains to “LoanFront” app sought to be sold is a fully functional part of the business and the transaction contemplates the transfer of the entire aforesaid business to a new person (WPL), who would not only enjoy a right over the assets but shall also take over the liabilities. It thus postulates that there will be a continuity of business, as the said part of business is said to be functional and is decided to be transferred as a whole to a new owner, and thus amounts to transfer of a going concern, of the said independent part of the business.

Further vide SI.No 2 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, the said activity amounting to 'Services by way of transfer of a going concern, as a whole or an independent part thereof attracts 'Nil' rate of tax without any conditions.

## GST – Judicial Precedents

### 7. Supply

#### High Court Allowed Refund of GST Paid on Notice Pay Recovered from Employees

##### **Manappuram Finance Ltd. Vs Assistant Commissioner [Kerala High Court]**

**Facts:** The taxpayer paid GST on notice pay recovery made from the departing employees. However, the Central Board of Indirect Taxes and Customs ('CBIC') vide Circular No. 178/10/2022-GST dated August 3, 2022, clarified that GST is not payable on notice pay recovery.

The taxpayer, therefore, claimed back the GST earlier paid on such notice pay recovery. The Department as well as the Appellate Authority rejected the refund claim.

**Held:** The Court held that the abovementioned Circular only clarifies the position that notice pay is not chargeable to GST. Therefore, the same must be read retrospectively.

The Court also observed that the in the decisions of the Supreme Court in Navnit Lal C. Javeri Versus KK. Sen, Appellate Assistant Commissioner Of Income-tax, Bombay which was applied and followed in KP Varghese Versus Income-tax Officer, Ernakulam, and Another are binding precedents for the proposition that Circulars are binding on the Department and no officer can take a view contrary to stipulations contained in such Circulars.



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