



CGA LEGAL

Your GST Knowledge Partner



The GST Bulletin

Month: March 2022 – Issue-2

Date of Issue: 21st March 2022

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

In this Issue.....

S. No.	Particulars
1.	GST Updates
	❖ GST Notifications
	❖ CBIC Circulars
	❖ GST Technical Update
2.	GST News
3.	GST Judicial Precedents
	❖ Whether reimbursement received towards stipend paid to trainees on behalf of Industry partner should be excluded from taxable value as cost incurred as Pure Agent? [M/s. Teamlease Education Foundation (Authority for Advance Rulings, Karnataka)]
	❖ Whether ITC is available on Demo Car by a person engaged in supply of Cars? [M/s. Platinum Motocorp LLP (Authority for Advance Rulings, Haryana)]
	❖ Whether Registration can be cancelled by the Authorities by merely alleging that the taxpayer's firm is Bogus? [Apparent Marketing Private Limited Vs State of U.P. (Allahabad High Court)]
	❖ Whether opportunity of personal hearing is mandatory under Section 75(4) of the CGST/UPGST Act 2017? [Bharat Mint And Allied Chemicals Versus Commissioner Commercial Tax (Allahabad High Court)]
	❖ Whether ITC is available on construction of Solar Power Generating Plant at rooftop of the building [M/s. Pristine Industries Limited (AAR Rajasthan)]

GST Updates - Notifications

Notification No.	Summary of Notifications																										
02/2022 – CT dated 11.03.2022	<p>Appointment of Common Adjudicating authority for adjudicating the show cause notices issued by DGGI under GST</p> <ul style="list-style-type: none"> CBIC has issued Notification No. 02/2022-CT dated 11-03-2022 amending Notification No. 02/2017-CT dated 19-06-2017 wherein powers has been provided to Additional Commissioner or Joint Commissioner of Central Tax subordinate to Principal Commissioners or Commissioners of Central Tax for passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence as provided in table below: <table border="1" data-bbox="429 866 1293 1929"> <thead> <tr> <th data-bbox="435 874 529 1065">S. No</th> <th data-bbox="529 874 1011 1065">Principal Commissioner or Commissioner of Central Tax</th> <th data-bbox="1011 874 1288 1065">Powers (Exercisable throughout the territory of India)</th> </tr> </thead> <tbody> <tr> <td data-bbox="435 1065 529 1162">1</td> <td data-bbox="529 1065 1011 1162">Principal Commissioner Ahmedabad South</td> <td data-bbox="1011 1065 1288 1929" rowspan="10">Passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence under sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of Central Goods and Services Tax Act, 2017.</td> </tr> <tr> <td data-bbox="435 1162 529 1259">2</td> <td data-bbox="529 1162 1011 1259">Principal Commissioner Bhopal</td> </tr> <tr> <td data-bbox="435 1259 529 1357">3</td> <td data-bbox="529 1259 1011 1357">Principal Commissioner Chandigarh</td> </tr> <tr> <td data-bbox="435 1357 529 1454">4</td> <td data-bbox="529 1357 1011 1454">Commissioner Chennai South</td> </tr> <tr> <td data-bbox="435 1454 529 1551">5</td> <td data-bbox="529 1454 1011 1551">Principal Commissioner Delhi North</td> </tr> <tr> <td data-bbox="435 1551 529 1649">6</td> <td data-bbox="529 1551 1011 1649">Principal Commissioner Guwahati</td> </tr> <tr> <td data-bbox="435 1649 529 1746">7</td> <td data-bbox="529 1649 1011 1746">Commissioner Rangareddy</td> </tr> <tr> <td data-bbox="435 1746 529 1844">8</td> <td data-bbox="529 1746 1011 1844">Principal Commissioner Kolkata North</td> </tr> <tr> <td data-bbox="435 1844 529 1929">9</td> <td data-bbox="529 1844 1011 1929">Principal Commissioner Lucknow</td> </tr> <tr> <td data-bbox="435 1929 529 1937">10</td> <td data-bbox="529 1929 1011 1937">Commissioner Thane</td> </tr> </tbody> </table>			S. No	Principal Commissioner or Commissioner of Central Tax	Powers (Exercisable throughout the territory of India)	1	Principal Commissioner Ahmedabad South	Passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence under sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of Central Goods and Services Tax Act, 2017.	2	Principal Commissioner Bhopal	3	Principal Commissioner Chandigarh	4	Commissioner Chennai South	5	Principal Commissioner Delhi North	6	Principal Commissioner Guwahati	7	Commissioner Rangareddy	8	Principal Commissioner Kolkata North	9	Principal Commissioner Lucknow	10	Commissioner Thane
S. No	Principal Commissioner or Commissioner of Central Tax	Powers (Exercisable throughout the territory of India)																									
1	Principal Commissioner Ahmedabad South	Passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence under sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of Central Goods and Services Tax Act, 2017.																									
2	Principal Commissioner Bhopal																										
3	Principal Commissioner Chandigarh																										
4	Commissioner Chennai South																										
5	Principal Commissioner Delhi North																										
6	Principal Commissioner Guwahati																										
7	Commissioner Rangareddy																										
8	Principal Commissioner Kolkata North																										
9	Principal Commissioner Lucknow																										
10	Commissioner Thane																										

GST Updates – CBIC Circulars

Amendment to Circular No. 31/05/2018-GST, dated 9th February, 2018 on Proper officer under sections 73 and 74 of the CGST Act, 2017 and under the IGST Act, 2017

Dated 12-03-2022

Vide Notification No. 02/2022-Central Tax dated 11th March, 2022, para 3A has been inserted in the Notification No. 2/2017-Central Tax dated 19th June, 2017, to empower Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence. Consequently, para 6 and 7 of the Circular No. 31/05/2018-GST, dated 9th February, 2018 are hereby amended.

The complete circular can be accessed from the below link:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-169-2022-GST.pdf>

GST Updates - GST Technical Updates

Enhanced Registration application user interface (UI)

Dated 10-03-2022

User Interface (UI) with respect to the address fields in the Registration Application GST REG-01 has been enhanced as follows:-

- Incorporation of a map tile along with a drag and drop facility of address pinhead on to the exact location of the applicant's address.
- Once selected, the details will automatically fill in the various address input fields given in the application.
- Address fields have been linked so as to auto- fill other macro level address entry fields based on the entry in one of such fields particularly PIN Codes. For example; on entering the PIN code, the corresponding State and Districts will get auto- filled.
- The user can also directly fill-up the address input fields which are now aided with suggestive address input dropdowns from which the user can select the appropriate/relevant address field(s). This action will reduce errors in the address texts and will also ease the filling up of the appropriate address input fields by the user.
- The address fields have been segregated appropriately to reduce confusions while entering the relevant inputs under various address heads.
- Based on the address entries given by the user, the Latitude/ Longitude of the address will get auto populated which is non-editable.

Registration and login for taxpayers with TO of Rs. 20-50 crores is enabled on e-invoice portal

Dated 15-03-2022

As per the recent update by the E-invoice system dated March 15, 2022, the registration and login for taxpayers with turnover of Rs. 20-50 crores is enabled on the e-invoice portal.

GST News

Many states request GST compensation extension beyond 5 years: FM Nirmala Sitharaman

Dated 14-03-2022

Many states have requested extension of the compensation mechanism under the GST beyond June 2022, Finance Minister Nirmala Sitharaman said on Monday. Under the Goods and Services Tax (GST) law, states were guaranteed to be compensated bi-monthly for any loss of revenue in the first five years of GST implementation from July 1, 2017.

The shortfall is calculated assuming a 14 per cent annual growth in GST collections by states over the base year of 2015-16. The 5-year period ends in June 2022.

The compensation amount to be paid from the compensation fund is arrived at by levying cess on top of the highest tax slab on luxury, demerit and sin goods.

For detailed news, kindly follow the link below:

<https://economictimes.indiatimes.com/news/economy/finance/many-states-request-gst-compensation-extension-beyond-5-years-fm-nirmala-sitharaman/articleshow/90200525.cms>

GST – Judicial Precedents

1. Valuation

Whether reimbursement received towards stipend paid to trainees on behalf of Industry partner should be excluded from taxable value as cost incurred as Pure Agent?

M/s. Teamlease Education Foundation [Authority for Advance Rulings, Karnataka]

Facts: The applicant, being an approved NEEM (National Employability Enhancement Mission) facilitator partner with various trainers and Employers/Company/Industry (industry partner) for imparting training to NEEM trainees. The applicant as well as the Industry partner have certain obligations as per the NEEM Regulations and thus to fulfill the obligations, the applicant charges Administration Fee, Sourcing Fee, Enrollment Fee, Reimbursement of monthly stipend paid to trainees on behalf of Industry partner and Reimbursement of cost of medical and accident insurance obtained for welfare of trainees as agreed by the Industry Partner - applicant, though collecting GST on the entire transaction value including the reimbursement amounts, is of the view that the reimbursement received towards stipend and cost of medical & accident insurance is an expenditure or cost incurred as pure agent of the Industry Partner as per rule 33 of the CGST Rules 2017 and therefore such reimbursements should be excluded from the taxable value and hence GST should not be charged on such reimbursements.

Held: It is an admitted fact that the applicant herein is raising invoice for stipend and insurance cost and distributes the same to the trainees on receipt of the said amount and also not furnished any contractual agreement to incur expenditure first and to claim the said amounts later. Thus the applicant does not qualify to be a pure agent at all, in terms of rule 33 of the CGST Rules 2017.

Rule 33 (iii) of the CGST Rules 2017 stipulates that the applicant must procure certain supplies from the third party, as a pure agent of the recipient of supply, which are in addition to the services he supplies on his own account. In the instant case, the applicant has not furnished any information with regard to procurement of supplies from the third party i.e. trainees. Thus the applicant is not fulfilling the required condition - the applicant does not qualify to be a pure agent and hence the GST is chargeable on the entire transaction value.

GST – Judicial Precedents

2. Input Tax Credit

Whether ITC is available on Demo Car by a person engaged in supply of Cars?

M/s. Platinum Motocorp LLP [Authority for Advance Rulings, Haryana]

Facts: The Applicant purchases 'Demo Cars' for demonstration purpose along with the purchases of vehicles for further supply. Each Demo car is used for demonstration for a maximum period of 2 years from the date of purchase after which it can be sold as the second-hand car. Applicant sought AAR on the following questions:

- Whether Input Tax Credit (ITC) can be availed on such Capital Goods (demo cars) and set off against output tax payable under GST.
- Whether Input Tax Credit (ITC) can be availed on ancillary input services such as insurance and repair and maintenance availed in respect of demo cars.

Held: The law provides for ITC in case of “further Supply” of said vehicles. But here, first the vehicles are purchased, then they are diverted and used for Demonstration of 2 years or so, and in the first demonstration run it loses the character of the new vehicle and demo vehicles is sold akin to second hand goods and which is different from new Vehicle and accordingly treated differently under GST law. Thus it cannot be said that the demo vehicle is for further supply of such motor vehicles'. This very restricted and specific provision has been provided in law for Motor Vehicles. The purpose and intent of the law is thus very clear. Thus by allowing the ITC this way will be ultra vires the basic provisions of 'further supply of such motor vehicles' - the use to which the Demo Vehicles are put to, does not fit into the uses which find mention in sub-Section 17(5). The vehicles under question are not meant for 'further supply of such motor vehicles', but are first put to the mentioned uses. These are disposed of after prolonged use, which may even not restrict to 2 years as mentioned by the Appellant.

The Demo Vehicles received by the Appellant have never been received with the intent to simply 'further supply/ sell' as such. Input Tax Credit on these vehicles, thus, cannot be allowed - under Section 17(5)(ab), the credit of the input services of repair/ insurance/ maintenance used in respect of said vehicles with seating capacity up to 13 passengers, cannot be allowed.

GST – Judicial Precedents

3. Registration

Whether Registration can be cancelled by the Authorities by merely alleging that the taxpayer's firm is Bogus?

Apparent Marketing Private Limited. Versus State of U.P. [Allahabad High Court]

Facts: The assessee applied for and was granted registration under the UP GST Act, 2017 for trading in Pan Masala and Tobacco. The assessee claims to have filed its return on time and it also claims to have deposited the due tax. A survey was conducted at the assessee's business premises on 15.12.2017. Those premises were found closed. Another survey was conducted at the assessee's business premises on 16.02.2018. However, no adverse material is claimed to have been discovered during that survey proceedings. Besides the above two survey, the assessee claims to have cooperated in certain proceedings against a third party where under it had been summoned under Section 70 of the Act.

In the above background, the assessee received a notice through e-portal of the revenue department on 22.07.2020 issued under Section 29 of the Act whereby the registration granted to the assessee under the Act was proposed to be cancelled for the following solitary reason :

"Your firm was found bogus in inspection of SIB. Information received from headquarter."

The assessee was required to furnish its reply within seven working days and to appear before that authority on 24.07.2020 at 11:00 a.m. Undeniably, the assessee did not make compliance of the aforesaid notice. On 13.08.2020, the respondent authority cancelled the assessee's registration without disclosing any further reason.

Held: In the first place, cancellation of registration has serious consequences. It takes away the fundamental right of a citizen etc. to engage in a lawful business activity. In the present case, undisputedly, the registration claimed by the assessee had been granted by the respondent authority. Therefore, a presumption does exist as to such registration having been granted upon due verification of necessary facts. If the respondent proposed to cancel the registration thus granted, a heavy burden lay on the respondent authority to establish the existence of facts as may allow for such cancellation of registration.

GST – Judicial Precedents

3. Registration

Whether Registration can be cancelled by the Authorities by merely alleging that the taxpayer's firm is Bogus?

Apparent Marketing Private Limited. Versus State of U.P. [Allahabad High Court]

Therefore, the registration once granted could be cancelled only if one of the five statutory conditions was found present. Per se, no registration may be cancelled by merely describing the firm that had obtained it, was "bogus". The word "bogus" has not been used by the statute. The only contingency to which such expression may relate may be one appearing under Clauses (c) and (d) of Section 29(2) of the Act being where a registered firm does not commence its business within six months of its registration. Other than that, the term "bogus" may also refer to a satisfaction contemplated by Section 29(2)(c) of the Act where registration may be cancelled if the registered firm has not furnished its return for continuous period of six months. Those conditions have not been shown to exist in this case - Registration having been granted earlier, the obligation existed on the authority to specify the exact reason/charge on which it proposed to cancel the registration. In the present case, unless the respondent authority had first specified the reason why it proposed to cancel the registration and unless the authority had specified the reason why it was attempting to treat the assessee firm "bogus" i.e. whether reference was being made to Section 29(2)(c) or Section 29(2)(d) of the Act, by specifically stating the facts as may give rise to that charge and unless the supporting material giving rise to that charge had been referred to in that notice, the notice itself remained defective in material aspect.

In the present case, by merely describing the assessee firm "bogus", the respondent authority did not make known to the assessee the exact charge that was being levelled against the assessee. Correspondingly, the respondent authority deprived the assessee of the necessary opportunity to rebut the charge - It is equally remarkable to note that the Appeal Authority also chose to consider the matter on merits. Though the appeal is a continuation of original proceedings and it may have been open to the Appeal Authority to hear and decide the matter on merits, however, in absence of any legally permissible reason given by the original authority, the only proper course the Appeal Authority may have adopted, may have been to set aside the orders dated 13.08.2020 and 21.08.2020.

GST – Judicial Precedents

4. Demand and Recovery

Whether opportunity of personal hearing is mandatory under Section 75(4) of the CGST/UPGST Act 2017 ?

Bharat Mint And Allied Chemicals Versus Commissioner Commercial Tax

[Allahabad High Court]

Facts: Learned counsel for the petitioner submits that the impugned assessment order creating demand of tax, interest and penalty, has been passed without affording opportunity of hearing contemplated in Section 75(4) of the Central Goods and Services Tax, 2017/ U.P. Goods and Services Tax, 2017 (hereinafter referred to as “the Act 2017”) and thus, the impugned order being patently in breach of principles of natural justice, is unsustainable and deserves to be quashed.

Held: From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the Act, 2017 where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person.

Article 226 of the Constitution of India confers very wide powers on High Courts to issue writs but this power is discretionary and the High Court may refuse to exercise the discretion if it is satisfied that the aggrieved person has adequate or suitable remedy elsewhere. It is a rule of discretion and not rule of compulsion or the rule of law. Even though there may be an alternative remedy, yet the High Court may entertain a writ petition depending upon facts of each case. It is neither possible nor desirable to lay down inflexible rule to be applied rigidly for entertaining a writ petition.

The impugned order under Section 74 of the Act for the tax period April (year 2019-20) can not be sustained and is hereby quashed - Writ petition is allowed to the extent indicated above with cost of ₹ 10,000/-.

GST – Judicial Precedents

5. Input Tax Credit

Whether ITC is available on construction of Solar Power Generating Plant at rooftop of the building?

M/s. Pristine Industries Limited [AAR Rajasthan]

Held: On the issue of eligibility of ITC on construction of Solar Power Generating Plant at rooftop of the building, the AAR held as follows:

The explanation to Section 17(5) provides “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes,-

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

Solar Power Generating Plant of the applicant qualify as 'plant and machinery' as it falls under machinery - Although, construction of “Solar Power Generating Plant at rooftop of the building of applicant is an immovable property, however the said “Solar Power Generating Plant qualify as 'plant and machinery', hence it not covered under blocked credit as mentioned in 17(5)(d) of the CGST Act, 2017. Thus, the applicant is eligible for Input credit of Inputs, Capital goods and Services related to setting of Solar Power generator plant for captive consumption.

CONTACT US



Contact Us

CA. Chitresh Gupta

Team CGA Legal

Chitresh.gupta@gstexperts.net

DISCLAIMER:

The views expressed in this Bulletin are personal view of the presenter. This Bulletin includes general information about legal issues and developments in the law of GST in India. Such materials are for informational purposes only and may not reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. We disclaim all liability in respect to actions taken or not taken based on any or all the contents of this presentation to the fullest extent permitted by law.

