



THE GST BULLETIN

YOUR INDIRECT TAX KNOWLEDGE PARTNER

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About The GST Bulletin

The GST Bulletin is a Weekly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm. The Newsletter is intending to keep its readers updated with all important legal and judicial updates in Goods & Services Tax and other Indirect Tax laws. The Newsletter also has a special column of GST Compliance Calendar for the month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below;
<https://www.cgalegal.co.in/home/newsletters.php>

Other Offerings from Team CGA Legal

- **CGA Legal GST Compliance Calendar:** Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- **CGA Legal Meet:** Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website
www.cgalegal.co.in

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Announcing the release of 9th Edition of **GST – Law Analysis & Procedures**



Key Highlights

- Updated with relevant provisions of Finance Act, 2023
- All Notifications / Circulars / Press Releases issued till 31-03-2023 incorporated at proper places
- Detailed Commentary on GST Law with illustrative diagrams and business case studies
- Detailed discussion on Exemptions, Reverse Charge Mechanism, E-Way Bill, Exports and Provisions relating to Refund
- Table of Relevant Provisions and Forms in each Chapter for ease of reference
- Exhaustive Analysis through various judgments including AAR rulings incorporated in all the relevant chapters.

We sincerely hope that this book also acts as a one stop solution to all the queries of our readers with respect to GST. The book is available at all the leading book stores and can also be bought online.

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>10/2023 – CT Dated 10.05.2023</p>	<p>Reduction In Monetary Limit For Issuing E-Invoice In GST w.e.f. 1st August 2023</p> <p>The taxpayers having aggregate turnover exceeding Rs. 5 crores are required to generate E-Invoice w.e.f. 1st of August 2023.</p> <p>Earlier the turnover limit for issuing E-Invoice for the taxpayers was 10 crores which had been provided vide Notification 17/2022 – Central Tax dated 01-08-2022.</p> <p>Thus, all the taxpayers having aggregate turnover exceeding 5 crores in any of the preceding FY beginning from 2017-18 to FY 2022-23 is required to issue e-invoice</p>
<p>5/2023-CT(R) Dated 09.05.2023</p>	<p>Facility To Opt For The Payment Of Tax Under Forward Charge By GTA Has Been Extended Till 31st May 2023 for FY 2023-24</p> <p>As per Notification No. 03/2022-CT(R), the rate of tax on GTA services had been rationalized and an option to pay the tax under forward charge @ 5% or 12% [CGST + SGST] has been provided to GTA service provider.</p> <p>This option by GTA to itself pay GST on the services supplied by it during a Financial Year must be exercised by making a declaration in Annexure V on or before the 15th March of the preceding Financial Year.</p> <p>However, for FY 2023-24 this option for the Financial Year 2023-2024 can be exercised on or before the 31st May, 2023.</p> <p>Further, a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration in Annexure V before the expiry of forty-five days from the date of applying for GST registration or one month from the date of obtaining registration whichever is later.</p>

GST Technical Updates

Deferment of Implementation of Time Limit on Reporting Old Invoices

Dated : 06-05-2023

It was decided by the Government to impose a time limit on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores. To ensure timely compliance, taxpayers in this category was not be allowed to report invoices older than 7 days on the date of reporting.

Now, it is to inform the taxpayers that it has been decided by the competent authority to defer the imposition of time limit of 7 days on reporting old e-invoices on the e-invoice IRP portals for taxpayers with aggregate turnover greater than or equal to 100 crores by three months.

The next date of implementation will be shared with you in due course of time.

GST News

Federation of Automobile Dealers Associations urges GST Council to cut tax on 2-wheelers

Dated : 22-05-2023

The Federation of Automobile Dealers Associations (FADA) has urged the GST Council for an immediate reduction in the GST rate on two-wheelers from the current 28 per cent to 18 per cent.

This appeal comes at a time when two-wheeler sales have witnessed a significant slump over the past few years. FADA said a GST rate cut will make two-wheelers more affordable, reviving demand and reinvigorating the industry.

Read more at: <https://www.telegraphindia.com/business/federation-of-automobile-dealers-associations-urges-gst-council-for-to-cut-gst-on-2-wheelers/cid/1938623>

GST – Judicial Precedents

1. Registration

Order seeking to cancel GST registration must specify the correct reason for the cancellation

Sandhya Enterprise Versus State of Gujarat [Gujarat High Court]

Facts: The show-cause notice was issued for cancellation of registration. The reason seeking to cancel the registration mentioned in show-cause notice was "Place and dealer found but no business board at the place and not any business activities at there".

The petitioner filed reply to the said show-cause notice on 06.05.2022. In the order dated 07.05.2022 cancelling the registration, on the one hand, reply dated 06.05.2022 was referred to, and on the other hand, it was mentioned that whereas no reply to notice to show cause was submitted adding to the vagueness in approach.

Held: It is to be observed that a mere perusal of the show-cause notice as well as the impugned order would indicate that the notice was vague and was without any particulars. The order did not disclose any reason for cancellation of registration. A non-speaking order which does not disclose the reason and does not specify the grounds on which the decision is rested could be said to be amounting to breach of natural justice.

Right to know reasons is a legitimate right for a litigant. Absence of reasons is deprivation of reasonable opportunity as well, inasmuch as the person against whom the order is passed would not know as to on which consideration, the order is founded.

As the impugned order suffers from the vice of being cryptic and non-speaking, it is liable to be set aside only the said ground alone. The impugned order dated 07.05.2022 is hereby set aside - petition allowed.

GST – Judicial Precedents

2. Appeal

Period of filing appeal to Appellate Authority should be reckoned month wise and not days wise

Shri Ram Ply Product Versus Addl. Commissioner Grade 2 Appeal State Tax Sitapur and 2 Others [Allahabad High Court]

Facts: This petition under Article 226 of the Constitution of India has been filed, seeking setting-aside of the order dated 27.02.2023 passed by the Additional Commissioner Grade-2 (Appeal). Vide the impugned order the appeal instituted by the petitioner was dismissed on the ground that it was beyond maximum period, as prescribed under the statute i.e. four months. The prescribed authority had confirmed the demand of Rs. 49.74 Lakhs vide order dated 07.06.2022. The appellate authority has computed four months as each month would be of 30 days.

Section 107 of the Uttar Pradesh Goods and Services Tax Act, 2017 provides that *an appeal, against any decision or order passed under this Act or the State Goods and Services Tax Act by the adjudicating authority, may be filed before appellate authority within the prescribed period of three months from the date on which the said order is communicated to the person concerned*. Sub-Section (4) of Section 107 of the Act, 2017 provides that *the appellate authority may, if it is satisfied that the appeal was prevented by sufficient cause from presenting it within the period of three months, may allow it to be presented within a further period of one month*.

Held: Bare reading of the provisions of Section 107 of the Act, 2017 reflects that it is not 120 days, but it is four months and, therefore, it would depend upon the date on which date the adjudicating authority passes the order. The four months may be of 121 days or 122 days, as the case may be. In the present case, in four months, around 121 days come, and the appeal was filed on 121st day. The appellate authority should have entered into the merit of the application whether it disclosed sufficient cause for not filing the appeal within the period of three months instead of entering into merit of the application to find out whether the appellant, petitioner herein had sufficient cause which preventing him from presenting the appeal within a period of three months, the appeal has been summarily dismissed only on the ground that it was beyond 120 days, and not within 120 days. The appeal is restored to its original number, and the appellate Authority is directed to proceed with the appeal, and decide the same on merit, expeditiously, in accordance with law - petition allowed.

GST – Judicial Precedents

3. Audit

Whether Audit can be initiated by the Authorities when proceedings of adjudication under Section 74 is still pending

M/s. K.I. International (India) Ltd. Versus The Principal Secretary Commissioner Of Commercial Taxes, Chennai, The State Tax Officer, Chennai [Madras High Court]

Facts: The petitioner has urged to issue a writ, order or direction in the nature of Certiorari quashing the notice dated 14.02.2023 issued under Section 65 (3) of the U.P. Goods and Services Tax Act, 2017 by the Deputy Commissioner (Tax Audit) State Tax, Jhansi.

Submission of learned counsel for the petitioner is, the petitioner having already been subjected to the proceedings of adjudication under Section 74 of the U.P.G.S.T Act, 2017, the revenue authorities are precluded from exercising jurisdiction under Section 65 of the Act, that too by way of necessary implication.

Held: There is no material shown to exist that any earlier audit had been permitted or directed under Section 65 of the Act and insofar as plain reading of the provisions do not suggest any bar in exercise of that power, if the assessee had faced any earlier proceedings under Section 74 of the Act with respect to Input Tax Credit, excess claimed, there is no inherent legal infirmity shown to exist in the audit having been directed, keeping in mind the language of the statute.

As to facts, nothing has been pleaded as may lead this Court to a conclusion that the audit directed is either not permissible or is not warranted, either in view of earlier proceedings suffered by the petitioner under Section 74 of the Act, or otherwise. Plainly facts pleadings to assail the audit (as directed), are missing.

No good ground is made out to offer any interference in exercise of extra ordinary jurisdiction under article 226 of the Constitution as that jurisdiction may be exercised if a legal injury is shown to exist, that too caused contrary to the provisions of law.

Petition disposed off.

GST – Judicial Precedents

4. Refund

Rejection of claim for refund due to non signing of physically submitted declarations along with the refund application is not valid

Medicamen Biotech Limited Versus Union of India [Rajasthan High Court]

Facts: The Competent Authority, i.e. Principal commissioner, Central Goods and Service Tax, Commissionerate, Alwar, in terms of provisions of Section 107(2) of the CGST Act of 2017 reviewed the order of refund dated 14.12.2020 observing that on examination of the records and documents uploaded by the claimant taxpayer, the requisite declarations and undertakings as per Master Circular No. 125/44/2019-GST dated 18.11.2019 was not duly signed, hence, the refund claim processed by the jurisdictional Assistant Commissioner was improper.

Pursuant to review reference order dated 19.07.2021, the respondent-department filed appeal under Section 107 of the CGST Act of 2017. Vide impugned order dated 20.09.2022 passed by the Additional Commissioner (Appeals), CGST, Jaipur, the claim of refund and the order passed by the Adjudicating Authority allowing the refund has been held to be not legal and correct mainly on the basis that scanned copies of declarations and undertakings which were uploaded as attachments with Form GST RFD-01 submitted electronically through common portal, but the taxpayer/writ petitioner, due to oversight failed to physically sign those declarations and undertakings before scanning and attaching with Form GST RFD-01.

Held: A reading of the provisions of Rule 89 of the CGST Rules would show that there is no specific requirement that the declaration must necessarily be signed in physical mode.

Though non-submission of refund application along with the declarations as required under the law would certainly be illegal and that may, in appropriate case, entail rejection of the application, however, if declarations, as in the present case, are digitally authenticated in the manner prescribed under Rule 26 of the CGST Rules of 2017, non-submission of physically signed and scanned declarations may only be an irregularity, but not an illegality.

The impugned order passed by the Appellate Authority upsetting the order of refund passed by the Adjudicating Authority is not sustainable in law. Therefore, impugned order rejecting claim of refund and depriving the petitioner of the refund to which it may be entitled, without any authority of law, cannot be allowed to be sustained - Petition allowed.

GST – Judicial Precedents

5. Demand and Recovery

Issuance of notice under Section 61(3) for scrutiny of returns cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.

M/s. Nagarjuna Agro Chemicals Pvt. Ltd. Versus State of U.P. and Another [Allahabad High Court]

Facts: The department apparently has not initiated any action referable to Section 61 of the Act. It transpires that the proceedings under Section 74 have been initiated by the department against the petitioner on certain grounds with regard to classification and consequential tax payable of certain goods. The department has examined the issue and ultimately passed the order impugned whereby the tax previously paid was found short and a demand has been raised for deposit of appropriate short fall in the deposit of tax as also interest and penalty.

Learned counsel for the petitioner submits that since returns had been submitted by the petitioner for the period in question, therefore, the appropriate course open for the department was to have pointed out deficiency in the returns submitted by the petitioner so as to give it an opportunity to rectify the return before proceeding under Section 74 of the Act.

Held: The argument that unless deficiency in return is pointed out to the assessee, and an opportunity is given to rectify such deficiency, that the department can proceed under Section 74 is not borne out from the statutory scheme and the argument in that regard, therefore, must fail.

The scrutiny proceedings of return as well as proceeding under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.

Merely because no notices were issued under Section 61 of the Act would mean that issues of classification or short payment of tax cannot be dealt with under Section 74 as exercise of such power is not dependent upon issuance of notice under Section 61. The argument is misconceived is thus, repelled - Petition dismissed.



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