

The logo for CGA LEGAL features the text "CGA LEGAL" in a blue, sans-serif font. Above the text is a dark red, curved swoosh that arches over the letters. Below the text is another dark red, curved swoosh that arches under the letters, mirroring the top one.

CGA LEGAL

Your GST Knowledge Partner

A large, abstract graphic consisting of several overlapping, flowing lines in shades of light blue, cyan, and purple. The lines are smooth and curved, creating a sense of movement and depth. The background is a light, pale blue gradient.

The GST Bulletin

Month: November 2021 – Issue-II

Date of Issue: 20th November 2021

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
	➤ GST Rate hike from 5% to 12% on Fabrics, Apparel and Footwear Products w.e.f. 01-01-2022
	➤ Seeks to amend certain services relating to Composite supply of Works Contract and Job work services on textiles and textile products
	➤ Seeks to amend the exemption on certain services relating to Composite and Pure supply of Works Contract and Passenger Transport Services
	➤ Seeks to amend Notification providing categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator (ECO)
	❖ CBIC Circulars
	➤ Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020-Central Tax dated 21st March, 2020
	➤ Clarification on certain refund related issues
2.	GST News
	➤ Companies reach out to government for clarity on GST applicability on credit notes
	➤ India's economy back on track with the indicators showing great results says Piyush Goyal

In this Issue.....

S. No.	Particulars
3.	GST – Legal Precedents
	❖ Whether registration in the state required where goods are landed in case of import of goods? [M/s Pine Subsidiary Industry (Authority for Advance Rulings, Karnataka)]
	❖ Can a taxpayer claim refund of balance in Electronic Cash Ledger accumulated from the credit of TCS on sale made through E-Commerce Operator? [M/S. Appario Retail Private Limited, Versus The Union of India (Telangana High Court)]
	❖ Can substantial right of a taxpayer be denied on mere procedural lapse? [Advanced Business and Healthcare Solutions India Pvt. Ltd. Versus Commissioner of Central Tax CESTAT Bangalore)]
	❖ Whether the recovery of an amount of insurance premium from the employees, amounts to a supply of any service? [M/s. The Tata Power Company Limited (Authority for Advance Rulings, Maharashtra)]
	❖ Whether Egg/ hatcheries would be classified as agricultural produce for the purpose of exemption by way of transportation of agricultural produce? [M/s. SAS Cargo Authority for Advance Rulings, Karnataka)]
	❖ Whether the SCN for rejection of application for revocation of cancellation of registration can be issued without mentioning the time and date for reply of notice? [M/s Kashish Infra Energy Power Azadpur Versus State of U.P. and 2 Others (Allahabad High Court)]

GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications
1.	14/2021 – CT (R) dated 18.11.2021	<p>GST Rate hike from 5% to 12% on Fabrics, Apparel and Footwear Products w.e.f. 01-01-2022</p> <p>In order to correct inverted duty structure in textile and footwear sector, as recommended in the 45th GST Council Meeting, CBIC has come up with Notification No. 14/2021-Central Tax (Rate) dated 18-11-2021 which seeks to change the rate of tax on various textile and apparel products from 5% to 12%.</p> <p>Further it also seeks to enhance the rate of tax on Footwear of sale value not exceeding Rs.1000 per pair to 12% from existing 5%.</p> <p>These changes shall be effective from 01-01-2022.</p> <p>Corresponding notifications have also been issued in Integrated Tax and Union Territory Tax vide Notification 14/2021-IT(R) and Notification No. 14/2021-UT(R) both dated 18.11.2021 respectively.</p>
2.	15/2021 – CT (R) dated 18.11.2021	<p>Seeks to amend certain services relating to Composite supply of Works Contract and Job work services on textiles and textile products</p> <p>Seeks to amend Notification 11/2017-CT(R) dated 28.06.2017 by way of amending certain services of composite supply of works contract and conditions relating thereto and services relating to Job work on Textiles and textiles products.</p> <p>The changes proposed in this notification shall be effective from 01.01.2022.</p> <p>Corresponding notifications have also been issued in Integrated Tax and Union Territory Tax vide Notification 15/2021-IT(R) and Notification No. 15/2021-UT(R) both dated 18.11.2021 respectively.</p>

GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications
3.	16/2021 – CT (R) dated 18.11.2021	<p>Seeks to amend the exemption on certain services relating to Composite and Pure supply of Works Contract and Passenger Transport Services</p> <p>Seeks to amend Notification 12/2017-CT(R) dated 28.06.2017 by way of amending certain exemptions on services of composite and pure supply of works contract and passenger transport services.</p> <p>The changes proposed in this notification shall be effective from 01.01.2022.</p> <p>Corresponding notifications have also been issued in Integrated Tax and Union Territory Tax vide Notification 16/2021-IT(R) and Notification No. 16/2021-UT(R) both dated 18.11.2021 respectively.</p>
4.	17/2021 – CT (R) dated 18.11.2021	<p>Seeks to amend Notification providing categories of services the tax on intra-state supplies of which shall be paid by the electronic commerce operator (ECO)</p> <p>Seeks to amend Notification 17/2017-CT(R) dated 28.06.2017 to provide that on services by way of transportation of passengers by motor cycle, omnibus or any other motor vehicle and services of supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises, the tax shall be paid by the electronic commerce operator</p> <p>The changes proposed in this notification shall be effective from 01.01.2022.</p> <p>Corresponding notifications have also been issued in Integrated Tax and Union Territory Tax vide Notification 17/2021-IT(R) and Notification No. 17/2021-UT(R) both dated 18.11.2021 respectively.</p>

CBIC Circulars

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

Circular No. 165/21/2021-GST Dated: 17-11-2021

Circular No. 156/12/2021 dated 21st June 2021 provided clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020.

It is observed that from the present wording of S. No. 4 of Circular No. 156/12/2021 dated 21st June 2021, doubt arises whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but **not** in foreign exchange. It is mentioned that the intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in those cases, where the payment is received by the supplier as per any RBI approved mode, other than foreign exchange.

Accordingly, to clarify the matter further, the Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June, 2021 is substituted to provide that wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."

CBIC Circulars

Clarification on certain refund related issues

Circular No. 166/22/2021-GST Dated: 17-11-2021

CBIC has provided following clarifications with respect to certain refund related issues:

Issue	Clarification
Whether the provisions of subsection (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger ?	No, the provisions of subsection (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.
Whether certification/ declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 for not passing the incidence of tax to any other person is required to be furnished along with the application for refund of excess balance in electronic cash ledger ?	No. furnishing of such declaration is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.
Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51/52 of the CGST Act can be refunded as excess balance in cash ledger?	The amount deducted/collected as TDS/TCS by TDS/ TCS deductors and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability.

CBIC Circulars

Clarification on certain refund related issues

Circular No. 166/22/2021-GST Dated: 17-11-2021

Issue	Clarification
	<p>Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.</p>
<p>Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?</p>	<p>As the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.</p>

GST News

Companies reach out to government for clarity on GST applicability on credit notes

Date: 13-11-2021

Many businesses that provided discounts, reduced prices, or extended payment cycles to customers amid the Covid-19 pandemic have approached the government to clarify the impact of goods and services tax (GST) on these amounts.

According to tax experts, enterprises that issue credit notes or credit memorandums - which are given to consumers when money isn't paid straight away - are witnessing a GST impact.

The pandemic saw many customers renegotiating prices offered by companies - from manufacturing companies to information technology firms - and credit notes have been issued across sectors, experts said.

India's economy back on track with the indicators showing great results says Piyush Goyal

Date: 11-11-2021

"Covid has given India a huge opportunity to prepare for next 25 years," said Shri Piyush Goyal, while speaking at a media conclave in New Delhi on November 11, 2021.

The Minister for Commerce & Industry, Textiles, Consumer Affairs and Food & Public Distribution said that India's economy is fully back on track with the indicators showing great results.

He said that exports are at an all-time high with almost Rs 235 Billion dollar already achieved in just 7 months. GST collections were touching Rs 1.3 lacs cr and PMI for Services was at a decade high. Valuations in Industry are great.

GST – Judicial Precedents

1. Registration

Whether registration in the state required where goods are landed in case of import of goods?

M/s. Pine Subsidiary Industry [Authority for Advance Rulings, Karnataka]

Facts: The appellant engaged in the import and trading of Gum Rosin and Damar Battu etc. is registered in the state of Karnataka. The applicant has sought advance ruling, whether Tax Invoice from Bengaluru office (Registered Place of Business) for imports received at Chennai Sea Port and directly sold to a customer either in Andhra Pradesh, Tamil Nadu, etc., could be raised, or a separate registration is to be obtained at the place of Importation, i.e. Tamil Nadu?

Held: As per the provisions of place of supply of Goods under section 11 (a) of IGST Act 2017, “the place of supply of goods imported into India shall be the location of the importer”. In case of the applicant, location of the importer is the state of Karnataka where the applicant has obtained the GST registration. Therefore, the applicant though imports the goods to the port of Chennai, imported goods are deemed to have been supplied to the location of the importer i.e., Karnataka and then further supplied to customer. Hence, imported goods supplied directly from the port of import to the customer located in other states or Union territories other than state of Karnataka, such transaction shall be treated as a supply of goods in the course of inter-State trade or commerce in terms of section 7(1) of the IGST Act, 2017 and is liable to issue IGST tax invoice in terms of section 20 of the IGST Act 2017 read with section 31 of the CGST Act 2017.

GST – Judicial Precedents

2. Refund

Can a taxpayer claim refund of balance in Electronic Cash Ledger accumulated from the credit of TCS on sale made through E-Commerce Operator?

M/s. Appario Retail Private Limited Vs Union of India [Telangana High Court]

Facts: Petitioner is in the business of trading of electronic goods over e-commerce platform. Petitioner maintains huge inventory for the purpose of ensuring timely deliveries; that as a result of purchases effected by it, a very high balance of input tax credit of GST paid on its purchases is available in the electronic credit ledger; that on receiving orders through Electronic Commerce Operator (for short, 'ECO'), the sale is affected through ECO and goods are dispatched to customers; and that the tax liability is discharged by the petitioner by debiting the Electronic Credit ledger.

The ECO collects TCS on the amount of sale made through it and the credit of the same get accumulated in the Electronic Cash Ledger of the petitioner and the petitioner applied for the refund of accumulated balance in the Electronic Cash Ledger which is rejected by the Adjudicating Authority and First Appellate Authority.

Held: Once it is held that the amount collected by ECO and paid to the Government under Section 52(3) of the CGST Act is tax to which the supplier is entitled to take credit in his electronic cash ledger under subsection (7) of Section 52, the provisions of Section 54 of CGST Act would apply for claiming refund of the same.

GST – Judicial Precedents

2. Refund

Can a taxpayer claim refund of balance in Electronic Cash Ledger accumulated from the credit of TCS on sale made through E-Commerce Operator?

M/s. Appario Retail Private Limited Vs Union Of India [Telangana High Court]

The balance amount in the electronic cash ledger till it is appropriated by making payment towards discharge of liability of tax, interest or any other amount to the Government, would be the amount available to the 'registered person' in whose name the said electronic cash ledger is maintained. Therefore, the stand of the respondents that since the amount collected by ECO under Section 52 of the CGST Act is not paid by the petitioner by himself and therefore, it is not entitled to claim refund of the same, is totally misplaced. As the petitioner is claiming refund balance in electronic cash ledger, it is covered by the proviso to sub-section (1) of Section 54 and would not fall under sub-section (1) of Section 54.

The impugned Order-in-Appeal passed by the 4th respondent, cannot be held to be a validly passed order for it to be sustained - Petition allowed.

CGA Comment: This Judgment pronounced by Honorable Telangana High Court seems to be correct. The same has also been clarified by recently issued Circular No. 166/22/2021-GST dated 17-11-2021.

GST – Judicial Precedents

3. Refund

Can substantial right of a taxpayer be denied on mere procedural lapse?

Advanced Business and Healthcare Solutions India Pvt. Ltd. Versus Commissioner of Central Tax [CESTAT Bangalore]

Facts: The appellant had made refund claims of unutilized cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004 (CCR for short), read with Notification 27/2012-CE (NT) dated 18/06/2012 for the periods covering October 2016 to December 2016, January 2017 to March 2017 and April 2017 to June 2017

After show-cause, the adjudicating authority passed 3 separate Orders-in-Original for the above 3 claim periods and rejected the refunds on the ground that the appellant had carried forward the same into its Tran-1 Form of GST and the appellant have not reversed the amount of refund claimed from the GST portal on filing of claim for refund.

Held: Court find that there are no disputes as to the facts. It is now the case of the appellant that it has reversed the entire credit covering the appeal period in their GST Electronic Credit Ledger filed for March 2021. They have also filed copy of the Form GSTR-3B in support, before this forum.

It is the settled position of law that a substantial right of a taxpayer cannot be denied on mere procedural lapse. In view of this, I hold that the authorities below have erred in rejecting the appellant's claim for refund for want of reversal of cenvat credit. The appeal is disposed of on the above terms.

GST – Judicial Precedents

4. Supply

Whether the recovery of an amount of insurance premium from the employees, amounts to a supply of any service?

M/s. The Tata Power Company Limited [Authority for Advance Rulings, Maharashtra]

Facts: The applicant provides certain facilities to its employees such as insurance, transport, etc.

The applicant has an arrangement with New India Assurance Co. Ltd. for providing insurance cover for its employees, in pursuance of which, the insurance company issues a master insurance policy to the applicant for providing group insurance to the applicant's employees.

Further, the applicant has formulated a 'Health & Wellness Policy' for the welfare of its employees under which, its employees can opt for an additional insurance (hereinafter referred to as "Top-up Insurance") apart from the insurance cover provided under the group insurance. Therefore, the applicant has taken a 'Top-up policy' from the insurance company. The said policy contains the number of employees who have opted for such top-up insurance.

Further, under the Insurance cover provided to employees under the Group Insurance policy, the employee is only eligible to claim the expenses incurred for medical treatment availed in respect of his own health. As per the 'Health & Wellness Policy' of the applicant, the employees have an option to include their parents under such policy.

In this regard The applicant, seeking an advance ruling "whether the recovery of an amount towards Top-up and parental insurance premium from the employees, amounts to a supply of any service under Section 7 of the Central Goods & Service Tax Act, 2017"?

GST – Judicial Precedents

4. Supply

Whether the recovery of an amount of insurance premium from the employees, amounts to a supply of any service?

M/s. The Tata Power Company Limited [Authority for Advance Rulings, Maharashtra]

Held: As the applicant is not engaged in providing insurance service and the applicant has not taken ITC of the GST paid to the Insurance Company, the activity undertaken by the applicant like providing of mediclaim policy for the employees and their parents through the insurance company neither satisfies conditions of section 7 to be held as “supply of service” nor is it covered under the term “business” of section 2(17) of CGST ACT 2017. Hence, we find that the applicant is not rendering any services of health insurance to their employees' parent and; hence, there is no supply of insurance services in the instant case of transaction between employer and employee.

Thus, the recovery of the Top Up Insurance/Parental Insurance Premium from employees does not amounts to “supply of service” under Section 7 of the Central Goods and Service Tax Act, 2017.

CGA Comment: *Similar view has been held in the case of M/s. Jotun India Pvt. Ltd. [AAR, Maharashtra] and M/s POSCO India Pune Processing Center Private Limited [AAR, Maharashtra].*

GST – Judicial Precedents

5. Exemption

Whether Egg/ hatcheries would be classified as agricultural produce for the purpose of exemption by way of transportation of agricultural produce?

M/s. SAS Cargo [Authority for Advance Rulings, Karnataka]

Facts: The Applicant is in the business of freight services and also holds lease rights of space/containers in Indian Railways.

The applicant has sought advance ruling in respect of the following questions:

- a. Whether eggs / hatcheries are classified under the Agricultural Produces/ Products?
- b. Applicability of GST on Transportation Services by Rail on Eggs/hatcheries under GST Act?

Held: Eggs, including hatching eggs are obtained by rearing of chicken (Poultry Farming) directly. They are either meant for food or as raw material (hatching eggs) for further propagation, and as per definition of Agricultural Produce, “any produce out of rearing of all life forms of animals, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.” Thus, fresh eggs in shell on which no further processing is done are covered under the definition of “Agricultural Produce.” There is no condition in the definition that this has to be done by a certain type of person to qualify for the definition.

Since the applicant is involved in providing services of transportation of agricultural produces i.e. eggs, by rail from one place in India to another, those services are hence covered under the entry 20 of Notification No.12/2017-Central Tax (Rate) dated 28-06-2017 and hence such services are exempt by the said Notification from payment of taxes under the CGST Act.

GST – Judicial Precedents

6. Registration

Whether the show cause notice for rejection of application for revocation of cancellation of registration can be issued without mentioning the time for reply of notice?

M/s Kashish Infra Energy Power Azadpur Vs State of U.P. [Allahabad High Court]

Facts: A show cause notice was issued to the petitioner on 31.8.2019 informing him that its registration is liable to be cancelled. In that notice, it was mentioned the petitioner is to file a reply within 7 working days from the date of service of notice. It was further mentioned that in case petitioner fails to furnish a reply or fails to appear for personal hearing on the appointed date and time, the case will be decided ex-parte on the basis of available records and on merits. It is stated that no date and time was mentioned in the said notice dated 31.8.2019.

Thereafter, by means of an order dated 18.9.2019, the registration of the petitioner was cancelled, the effective date of cancellation of registration being 31/8/2019. The order of cancellation did not require the petitioner to pay any amount. On coming to know of the order of cancellation, an application dated 21.12.2020 was moved by the petitioner for revocation of cancellation of registration. Thereafter, another show cause notice dated 02.01.2021 was issued to the petitioner for rejection of application for revocation of cancellation of registration which does not provide the time to furnish reply to such notice. However, the petitioner did not reply to such notice and by means of an order dated 30/01/2021, the application for revocation of cancellation of registration was rejected on the ground that the petitioner had not replied to the notice dated 2.1.2021 within the time specified therein.

Held: Admittedly, the petitioner did not furnish any reply to the show cause notice dated 2.1.2021. However, what is required to be seen is that whether the mandate of section 30 of the Act was complied with by the authority concerned.

GST – Judicial Precedents

6. Registration

Whether the show cause notice for rejection of application for revocation of cancellation of registration can be issued without mentioning the time and date for reply of notice?

M/s Kashish Infra Energy Power Azadpur Vs State of U.P. [Allahabad High Court]

The show cause notice is required to mention that the petitioner has to furnish a reply to that notice within 7 working days and that his appearance is required before the notice issuing authority on the specified date and time. The notice dated 2.1.2021 that has been enclosed as Annexure-5 to the writ petition reveals that neither the time to file a reply to the notice has been mentioned and nor is the appointed date and time mentioned in the notice.

As such the show cause notice dated 2.1.2021 is no show cause notice in the eyes of law.

The subsequent order dated 30.01.2021, rejecting the application for revocation of cancellation, of the authority is questionable - Petition allowed.

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.

