



CGA LEGAL

THE GST BULLETIN

YOUR INDIRECT TAX KNOWLEDGE PARTNER

MARCH 2023 ISSUE - II

DATE OF ISSUE – 24TH MARCH 2023

www.cgalegal.co.in

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 Technical Updates
2.	GST News
3.	GST Judicial Precedents
	❖ Recovery proceedings cannot be initiated by Authorities against the Order passed by Appellate Authority when the taxpayer is willing to file an appeal with Appellate Tribunal [Vihaan Networks Limited Versus State of Bihar - Patna High Court]
	❖ If the subject issue is one and the same or if the subject is inter-related, it is always better that one authority adjudicates the matter [LGW Industries Limited & anr. Versus Assistant Commissioner, Salt Lake Charge. - Calcutta High Court]
	❖ In absence of cogent evidence, mere invoice production, cheque-payment insufficient to claim ITC [The State of Karnataka Versus M/s Ecom Gill Coffee Trading Private Limited - Supreme Court]
	❖ Irrespective of the purpose of use, if the residential dwelling is rented to a registered person under GST, the tenant has to discharge the GST liability under RCM [M/s. Indian Metals and Ferro Alloys Limited - AAR Odisha]

GST Updates – Technical Update

HSN Code Reporting in e-Invoice on IRPs Portal

Dated 22-03-2023

1. GSTN would like to bring to your attention notification no. 78/2020 – Central Tax dated 15th October 2020. As per the above-said notification, it is now mandatory for taxpayers to report a minimum of six-digit valid HSN code for their outward supplies having AATO of more than 5 crores in any previous financial year.
2. GSTN would like to inform you that this requirement has already been implemented in the GST system, and we are now in the process of implementing the same at IRPs portal in collaboration with our IRP partners including NIC. It is further suggested that in case wherever valid six digit HSN code is not available, a corresponding valid eight digit HSN code be reported instead of artificially creating six digit HSN code.
3. It is understood that this requirement may require changes to your systems as well. Therefore, would like to assure you that GSTN intend to provide sufficient time for taxpayers and IRP partners to make the necessary changes to comply with this requirement.
4. GSTN will communicate the exact date of implementation to you shortly.

GST Updates – Technical Update

Advisory for the taxpayer wishing to register as “One Person Company” in GST

Dated 21-03-2023

As per provision of section 2(62) of the Companies Act, 2013 “One Person Company” is defined as a company which has only one person as member.

Some issues have been raised by the persons registering as ‘One Person Company’ while they take GST registration. Upon analysis, it has been noticed that the option of choosing One Person Company is not there in form notified by CGST/SGST Acts and hence not available on the GSTN portal also.

As a work around, it is advised that in the ‘Part B’ of GST Registration Form ‘REG-01’, applicant may select (Constitution of Business under ‘Business Details’ tab using dropdown list) option “Others”, if the taxpayer wants to register for GST as “One Person Company”. After selecting option as “Others”, the applicant shall also mention “One Person Company” in the text field and follow the steps for a normal registration application to complete the process.

GST e-Invoice System enabled the ‘E-Invoice voluntary enablement’ for FY 2022-23

Dated 17-03-2023

The GST e-Invoice System has enabled the ‘E-Invoice voluntary enablement’ for Financial Year 2022-23.

GST News

Maharashtra GST officials involved in fake raid dismissed through newspaper advertisement

Dated : 22-03-2023

The state goods and service tax department led by senior bureaucrat Rajeev Mittal on Tuesday dismissed three GST inspectors after it was confirmed they were involved in a fake raid and decamped with Rs 11 lakh from a leading trader.

It was for the first time in the history of the state administration that is issued an advertisement to announce dismissal of errant officials.

Read more at: <https://timesofindia.indiatimes.com/city/mumbai/3-maharashtra-gst-officials-involved-in-fake-raid-dismissed-through-newspaper-ad/articleshow/98882262.cms?from=mdr>

Top 22% firms remit 90% of GST kitty, says Union Finance Minister Nirmala Sitharaman

Dated : 21-03-2023

Ninety per cent of India's Goods and Services Tax (GST) collections are paid by the top 22% businesses having a turnover above ₹50 crore, Finance Minister Nirmala Sitharaman said on March 21, 2023, dismissing an Oxfam report's conclusions that the richest 10% contribute a fraction of the GST kitty, while the poorest 50% contribute two-thirds of the revenues.

The Oxfam report "seems to be based on various improbable assumptions and not irrefutable or verifiable facts", the minister said in Rajya Sabha, noting that the GST is a consumption tax collected from suppliers of goods and services and not from the ultimate consumers of goods and services.

Read more at: <https://www.thehindu.com/business/Economy/top-22-firms-remit-90-of-gst-kitty-says-union-finance-minister-nirmala-sitharaman/article66645644.ece>

GST – Judicial Precedents

1. Appeal

Recovery proceedings cannot be initiated by Authorities against the Order passed by Appellate Authority when the taxpayer is willing to file an appeal with Appellate Tribunal

Vihaan Networks Limited Versus The State of Bihar [Patna High Court]

Facts: The petitioner filed an appeal with Appellate Authority against a demand order and the Appellate Authority disposed of the petitioner's appeal. Petitioner had made its intention clear to prefer an appeal before the Appellate Tribunal in terms of Section 112 of the BGST Act 2017. As the department kept on insisting for recovery of the entire amount, the petitioner, on 31.03.2021, deposited a sum of Rs. 17,00,757/-, which, in fact, is somewhat in excess of 20% of the remaining amount of tax in dispute.

Learned counsel for the petitioner has argued that the appeal, however, cannot be filed and the petitioner is deprived of his statutory remedy of appeal before the Appellate Tribunal under Section 112 of the BGST Act, since the Appellate Tribunal has not been constituted till date.

Held: It is apparent that the petitioner's statutory right to prefer appeal under Section 112 of the BGST Act still survives and is not barred by limitation. The petitioner is not only willing to prefer an appeal, but claims to have deposited the requisite amount for preferring Appeal before the Appellate Tribunal, as also for stay of recovery proceedings as per Section 112(9) of the BGST Act. This Court would find that the petitioner has been able to make out a strong prima facie case. On account of non constitution of the forum of Appellate Tribunal, by the authorities, the petitioner cannot be deprived of the statutory remedy under Section 112 (8) and (9) of the BGST Act. The Court, therefore, is of the opinion that interest of justice and balance of convenience also lies in favour of grant of interim relief to the petitioner - the impugned notice stands stayed.

GST – Judicial Precedents

2. Demand & Recovery

If the subject issue is one and the same or if the subject is inter-related, it is always better that one authority adjudicates the matter

LGW Industries Limited & anr. Versus Assistant Commissioner, Salt Lake Charge [Calcutta High Court]

Facts: The appellants are aggrieved by the show cause notice issued by the respondent herein dated 29th December, 2022 on the ground that the very same issue is now subject matter of consideration by the Assistant Commissioner, State Tax, Bureau of Investigation, South Bengal (HQ), who has issued notice dated 7th November, 2022.

Held: If the subject issue is one and the same or if the subject is inter-related, it is always better that one authority adjudicates the matter. By directing the assessee to face multiple authorities may result in conflicting decisions. Therefore, not only in the interest of the assessee but in the interest of the revenue also, one authority should take the decision. Admittedly, the Bureau of Investigation, South Bengal is a centralised agency and if that agency has already taken up the matter for consideration and the concerned Assistant Commissioner has issued notice dated 7th November, 2022, it is but appropriate that issues be considered by the said authority including the issue, which has been raised by the respondent in the show cause notice dated 29th December, 2022.

The appeal as well as the writ petition are disposed of by directing the respondent to place the entire file pertaining to the show cause notice dated 29th December, 2022 to the Special Commissioner, State Tax, Bureau of Investigation, South Bengal, Headquarters, Kolkata, who shall in turn direct the said show cause notice and file be placed before the Assistant Commissioner, State Tax, Bureau of Investigation, South Bengal (HQ) and to adjudicate the show cause notice along with the proceedings already initiated pursuant to the notice dated 7th November, 2022.

GST – Judicial Precedents

3. Input Tax Credit

In absence of cogent evidence, mere invoice production, cheque-payment insufficient to claim ITC

The State of Karnataka Versus M/s Ecom Gill Coffee Trading Private Limited [Supreme Court]

Facts: Initially, the Assessing Officer doubted the genuineness of the transactions and the purchases made from the respective dealers and denied the ITC. The findings of fact recorded by the Assessing Officer came to be confirmed by the first Appellate Authority. However, the second Appellate Authority and the High Court have allowed the ITC, by observing that as the purchasing dealers produced the invoices issued by the respective dealers and in some cases, making the payment through cheques, the Assessing Officer was not justified in denying the ITC. Aggrieved by this, State government moved to the Apex Court.

Held: The division bench of the Apex Court observed that mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. It also said that if a dealer claims ITC on purchases, he will have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC.

CGA Comments: *Although this Judgment of Honorable Supreme Court pertains to the provisions relating to Karnataka VAT, but it may have huge implications under GST also.*

GST – Judicial Precedents

4. Reverse Charge

Irrespective of the purpose of use, if the residential dwelling is rented to a registered person under GST, the tenant has to discharge the GST liability under RCM

M/s. Indian Metals and Ferro Alloys Limited [AAR Odisha]

Facts: The Applicant has sought an advance ruling in respect of the following question.

Whether Service Received by a registered person by way of renting of residential premises used as guest house of the registered person is subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism (RCM)?

Held: It is clear that GST will be applicable even if the residential property is rented out to a registered person w.e.f. 18th July 2022. Liability to pay GST @ 18% under the reverse charge mechanism will arise on the recipient (tenant), if he is a registered person under GST with no other condition. Further, It may be noted that type or nature/purpose of use of residential dwelling i.e. for residence or otherwise by the recipient, has not been a condition in the said RCM notification. Hence, service of renting of residential dwelling to a registered person, would attract RCM irrespective of the nature of use.

A residential property given on rent to a registered person whether for residential purpose or otherwise shall attract RCM provisions. At the outset it is pertinent to understand whether in this case, the property on rent is a residential property or not and what shall be the GST implication if the same is being used as guest house by the Applicant? In the instant case, the Applicant has stated that it has taken on rent certain premises at New Delhi and Jajpur in Odisha, for use as guest house. The guest house is used to provide food and accommodation for the employees of the company. From the written submission made, contentions advanced by the representatives of the Applicant company and rent agreement copies furnished, the nature of rented properties under discussion clearly appear to be residential properties used for commercial purpose.

Thus, it may be concluded that irrespective of the purpose of use, if the residential dwelling is rented to a registered person under GST, the tenant has to discharge the GST liability under RCM as per Notification No. 05/2022 Central Tax (Rate) dated 13th July 2022.



Contact Us :

CA. Chitresh Gupta
Team CGA Legal
chitresh.gupta@cgalegal.co.in



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.