



*Your GST Knowledge Partner*



# **The GST Bulletin**

*Month: April 2022 – Issue-2*

*Date of Issue: 14<sup>th</sup> April 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](http://www.cgalegal.co.in)

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## GST Updates - GST Technical Updates

### Module wise new functionalities deployed on the GST Portal for taxpayers

**Dated: 08-04-2022**

Various new functionalities are implemented on the GST Portal, from time to time, for GST stakeholders. These functionalities pertain to different modules such as Registration, Returns, Advance Ruling, Payment, Refund and other miscellaneous topics.

To view module wise functionalities deployed on the GST Portal during the month of March 2022, kindly follow the below link:

[https://tutorial.gst.gov.in/downloads/news/new\\_functionalities\\_compilation\\_march\\_2022.pdf](https://tutorial.gst.gov.in/downloads/news/new_functionalities_compilation_march_2022.pdf)

## GST News

### GST Council's 47th meeting likely to be held next month

**Dated: 12-04-2022**

GST Council's 47th meeting is likely to be held next month as Finance Minister Nirmala Sitharaman is going for a 10-day trip to the US for World Bank-IMF meet this month, as per sources in the know.

Earlier, the meeting was scheduled for this month but due to FM's other commitments, the meeting had to be postponed to next month. According to the sources, the meeting will likely take place in Shillong, Meghalaya as planned earlier.

In the next GST Council meeting, compensation issue will likely be taken up as many non-BJP States are pressing for the extension of the GST compensation mechanism for beyond five years ending in June 2022. Under the law, the Centre has committed to compensate states bi-monthly for any shortfall in their revenue due to implementation of the GST regime for the first five year.

Besides this, as per sources, a merger of 5% and 12% slab rates may also be discussed in the next meeting. "The items falling under both the slab rates may be merged under the 8% category. Also, many items which come under the 12% category are being considered to be moved under 18%," the official added. However, they said the decision on the merger of slabs is unlikely in the upcoming meet as the situation is very volatile at this juncture because of inflation and other geopolitical tensions.

*Source:*

<https://www.newindianexpress.com/business/2022/apr/12/gst-councils-47th-meeting-likely-next-month-2441027.html>

## GST – Judicial Precedents

### 1. Supply

**Service Tax not payable under reverse charge on fee paid to the State Excise Department or to the Government or Government agencies for manufacture, import and sale of alcoholic beverages for human consumption**

#### **United Spirits Limited Versus Commissioner of Central Taxes, Bangalore North GST Commissionerate [CESTAT Bangalore]**

**Held:** We have carefully considered the submissions made by both sides and perused the records. We find that the adjudicating authority has confirmed the demand in respect of various fees paid to the State Government in respect of manufacture, import and sale of alcoholic liquor. The adjudicating authority, though dropped the demand on licence fee, but confirmed the demand on all other fees. In our considered view, there is no difference between the licence fee and other fees as these fees are not charged against any service provided by the State Government. These fees were charged as per the Statutory levy; therefore not against provision of any service. Since there is no service existing against fee paid by the appellant to the State Government, service tax cannot be charged on the said fees.

This issue is no longer res integra as the same has been considered by this Tribunal in the case M/s. Anheuser Busch Inbev India Ltd. Versus Commissioner Of Central Tax where it was held that the appellant is not liable to pay service tax on Export Pass fee, Import Pass fee, Permit fee, Excise Staff Salary and overtime allowances/charges.

It can be seen that the various fees paid by the assessee in the aforesaid case were identical to the fees paid by the present appellant. Therefore, the facts of both the cases are absolutely identical. Thus, the fees paid by the appellant to the State Government during the course of manufacture and trading of alcoholic beverages does not amount to provision of any service - no service tax can be demanded - appeal allowed - decided in favor of appellant.



## GST – Judicial Precedents

### 2. Detention of goods and vehicle

#### Goods and vehicle cannot be detained when there is no intention to evade payment of tax

#### **Algae Labs Pvt. Ltd. Versus State Tax Officer-I, Tirunelveli [Madras High Court]**

**Facts:** The petitioner is a new start up company and is engaged in research and development on Alage and its utilization. The petitioner placed purchase order on 07.10.2021 for supply of a specialized spray dryer and the parts thereof with M/s.ABV Engineering, Ahmedabad, who had consigned the same along with the invoice bearing No.197/21-22, dated 28.02.2022. The goods also accompanied with E-way Bill. As per the invoice, the name and address of the Consignee read as under:

"Algae Labs Private Limited, 5/150, South Karumpattor, South Thamaraiikulam, Kanyakumari, Tamilnadu - 629708"

The vehicle along with spray dryer were seized by the respondent on the ground that the address of the Consignee mentioned as No. 5/150, South Karumpattor, South Thamaraiikulam, Kanyakumari, Tamil Nadu – 629708, was not a place mentioned in the GST Registration of the petitioner. The learned counsel for the petitioner submits that the petitioner has entered into a rental agreement with one of the Directors of the petitioner Company, who is running a Proprietary concern at the said premises called "Tvl Pinnacle Biosciences" and the above said premise has been taken on rent by the petitioner. Post facto the petitioner has also amended GST Registration by including the address at No. 5/150, South Karumpattor, South Thamaraiikulam, Kanyakumari, Tamil Nadu – 629708 in the GST Registration.

**Held:** Both the petitioner and the respondent admit that as on date the above said address has been included in the petitioner's place of business in the GST Registration. Thus, there is a post facto inclusion of the address, which was mentioned in the tax invoice raised by the supplier and in the E-way Bill. Considering the above fact, I am inclined to quash the impugned order, as there is no attempt to evade tax.

## GST – Judicial Precedents

### 3. Valuation

#### Whether escalation in the value of supply shall be added to the taxable value u/s 15 of the CGST Act

##### **B.P. Sangle Constructions Pvt. Ltd. [AAR Maharashtra]**

**Facts:** NHAI has awarded a contract for construction of road to the applicant vide letter dt 01.05.2017 for agreed price of ₹ 65,90,98,099/- which included VAT Tax as tender was awarded before the appointed date. However, during the course of completion of service, i.e. construction of road as per contract, there happens escalation in value. Such escalation in value is added to the contract value as per the terms of the tender notice which read as under: The contract price shall be adjusted for increase or decrease in rates and price of labour, cement, steel, plant, machinery and spares, bitumen, fuel and lubricants and other material inputs in accordance with the principles, procedures and formulae specified therein.

Question based on these facts is as to whether such escalated value shall be added to the taxable value u/s 15 of the act or otherwise?

**Held:** Section 15 (1) says that the value of a supply of goods or services or both shall be the Transaction value and the transaction value in the subject case will also include the escalated value (as per the impugned contract), which is being recovered from NHAI by the applicant, both being unrelated parties. Therefore, such escalated price/value which is added to contract price shall be liable for payment of GST as per the said provision of Section 15 of the Act - As per the provisions of Section 15(1) of CGST Act, 2017, the actual transaction value which includes the escalated value should be considered for payment of tax under GST Laws.

Thus, the escalated value shall be added to the original value of the contract and the total of the escalated value plus the original value of the contract will be the transaction/taxable value u/s 15 of the Act, on which GST must be discharged by the applicant.



## GST – Judicial Precedents

### 4. Valuation

#### Valuation in case of supply of Superior Kerosene Oil to Ration Dealers

##### **Nathmull Bhagchand Jain [AAR West Bengal]**

**Facts:** The applicant submits that he is an agent of Indian Oil Corporation Limited (IOCL) and is engaged in the distribution of Superior Kerosene Oil (SKO) for domestic purposes to fair price dealers. The applicant procures S.K. Oil directly from Indian Oil Corporation Ltd (IOCL) and supplies the same as per instruction of Government of West Bengal at a sale price which is also fixed by the Government. The State Government allows some commission on different heads like agent commission, agent transport charges, agent stationery charges, compensation of handling and evaporation loss over the basic purchase price.

It is submitted by the applicant that he has been charging output tax on the total consideration received (basic price+ agent commission+ agent transport charges+ agent stationery charges+ compensation of handling and evaporation loss) i.e. on the entire value of supply since the inception of Goods and Services Tax. However, the Dist. Controller, Food and Supplies has issued an instruction vide memo no. 2405(5)(EN)/DCFS/MSD/2021 dated 25/10/2021 where the price chart for supply of S.K. Oil has been revised. According to the revised price list, the applicant is now required to charge GST @ 5% only on the base price of Kerosene. On other charges like agent's commission, agent's transport charges, stationery charges, compensation on handling & evaporation loss, no GST is to be charged.

The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

*(i) Whether the applicant is a service provider or suppliers of goods?*

*(ii) Whether the output tax is chargeable on the total consideration received or only on the basic price?*

*(iii) Whether an agent of S K Oil lies under the category of fair price shop?*

## GST – Judicial Precedents

### 4. Valuation

#### Valuation in case of supply of Superior Kerosene Oil to Ration Dealers

##### Nathmull Bhagchand Jain [AAR West Bengal]

.....Continued from above

**Held:** In the instant case, the applicant admittedly charges, other than price of kerosene, commission, transportation charges, stationery charges, compensation on handling & evaporation loss, to the recipient of goods i.e., dealers which are permitted / approved by the Director of Consumer Goods, Department of Food and Supplies, Government of West Bengal.

The amount received by the applicant against supply of S.K. Oil together with consideration received in respect of other elements as discussed earlier, shall form a part of the value of supply on which tax shall be levied in terms of sub-section (1) of section 9 of the GST Act. The value of supply, as per clause (c) of sub-section (2) of section 15, shall include 'incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services.'

Thus, in respect of supply of goods, any amount charged for anything done by the supplier at the time of, or before delivery of goods shall be a part of the value of supply.

#### RULING

**Question:** Whether the applicant is a service provider or suppliers of goods?

**Answer:** The applicant is found to be engaged in supply of Superior Kerosene Oil.

**Question:** Whether the output tax is chargeable on the total consideration received or only on the basic price?

**Answer:** Tax would be levied on the entire value of supply.

**Question:** Whether an agent of S K Oil lies under the category of fair price shop?

**Answer:** In the instant case, the applicant being an agent who is licensed to supply S.K. Oil to dealers cannot be regarded as 'Fair Price Shop'.

# CONTACT US



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### **DISCLAIMER:**

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