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CGA LEGAL

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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GST Updates – CBIC Circulars

Clarification on refund related issues

Circular No. 181/13/2022-GST Dated: 10-11-2022

Sub-rule (5) of rule 89 of CGST Rules, 2017 prescribes the formula for grant of refund in cases of inverted duty structure. Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017. Further, vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, the restriction has been placed on refund of unutilised input tax credit on account of inverted duty structure in case of supply of certain goods falling under chapter 15 and 27.

Referred to above, CBIC clarified as follows:

Issue: Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide Notification No. 14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022?

Clarification: Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated 05.07.2022.

GST Updates – CBIC Circulars

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Issue: Whether the restriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or whether the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods?

Clarification: The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022, and would not apply to the refund applications filed before 18.07.2022.

GST Updates – CBIC Circulars

Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 & 02.09.2022

Circular No. 182/14/2022-GST Dated: 10-11-2022

The Hon'ble Court has directed that the common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months from 01.10.2022 to 30.11.2022 for the aggrieved registered assessee (henceforth, referred as 'applicant'). The Transitional Credit claimed by the applicant shall be credited in his electronic credit ledger to the extent allowed by the jurisdictional tax officer through an order after carrying out necessary verifications. As per the Hon'ble Court's order, the said verification has to be carried out within 90 days after completion of the above window of two months, i.e. within 90 days from 01.12.2022 i.e. up to 28.02.2023.

To ensure uniformity in the implementation of the directions of the Hon'ble Supreme Court across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby issues the following guidelines for verifying the Transitional Credit:

- **Verification of the Transitional Credit**

The jurisdictional tax officers can access the TRAN-1/TRAN-2 filed/revised by the applicant on their back office systems (which is the CBIC-AIO portal for the central tax officers, the respective State portal for MODEL-1 States and BO portal for MODEL 2 States). Further, a self-certified downloaded copy of TRAN-1/TRAN-2 filed/revised by the applicant shall also be made available to the jurisdictional tax officer by the said applicant as mentioned in Para 4.5 of Circular 180/12/2022 dated 09.09.2022.

GST Updates – CBIC Circulars

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The verification of the transitional credit shall be conducted by the jurisdictional tax officer who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based on all the facts and the provisions of the law. In respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the central tax authorities, such verification and issuance of order shall be done by the jurisdictional officer of central tax, whereas in respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax. The jurisdictional tax officer shall start the verification process immediately on availability of TRAN-1/TRAN-2 filed/revised by the applicant on the back office system or on receipt of self-certified downloaded copy of the same from the applicant, whichever is earlier. It is needless to mention that principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.

In cases where TRAN-1/ TRAN-2 had already been filed by the applicant earlier, the tax officer shall check whether there is any change from the earlier filed TRAN-1/TRAN-2 or not. In case, there is no change from the earlier filed TRAN-1/ TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.

In other cases, the jurisdictional tax officer shall proceed for verification of claim of transitional credit made by the applicant in FORM TRAN-1/TRAN-2. In this regard, in respect of transitional credit pertaining to central tax, he may refer to the guidelines detailed in Annexure I to this circular. In respect of verification of transitional credit pertaining to the State Tax/Union territory Tax, the tax officer may refer to the guidelines issued by the relevant state/UT, if any.

In such cases, where the applicant is under the jurisdiction of central tax officer and where the transitional credit claimed has component of state/Union Territory tax also, the jurisdictional central tax officer shall refer the said claim for verification of component of state/UT tax to his counterpart state/UT tax officer

GST Updates – CBIC Circulars

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The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the CGST or the SGST head, as the case may be, by referring to the guidelines detailed in Annexure I to this circular for transitional credit pertaining to central tax and the guidelines issued by the relevant state/UT for verification of transitional credit pertaining to the State Tax/Union territory Tax, as applicable. While conducting the verification, the officer must also check whether any adjudication or appeal proceedings in TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant. In such cases, where any adjudication or appellate proceedings have been initiated against the applicant in respect of TRAN-1/TRAN-2, the officer should take a note of the relevant facts in the notice/ order, and the grounds/reasons for inadmissibility of transitional credit, if any, in the said notice/ order.

In respect of verification done by the counterpart officer, after verification, he will prepare a verification report, in the format detailed in Annexure-II of this circular.

For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (central or State) being administered by such counterpart officer.

GST Updates – CBIC Circulars

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After considering the facts of the case, including verification report received from the counterpart officer, submissions made by the applicant and the comments, if any, of the counterpart officer on the same, the jurisdictional tax officer shall proceed to pass a reasoned order, preferably within a period of fifteen days from the date of personal hearing, specifying the amount of transitional credit allowed to be transferred to the electronic credit ledger of the applicant and upload a pdf copy of the said order, on the common portal for crediting the amount of allowed transitional credit to the electronic credit ledger of the applicant. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e. up to 28.02.2023.

- **Modalities of coordination between central tax authorities and state tax authorities**

It is to be noted that all the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs shall appoint nodal officer(s) in their respective formations immediately for proper co-ordination between central and state/UT authorities for verification of transitional credit claims and shall make available the details of the said nodal officers, along with their phone numbers and email IDs, to the counterpart tax authority. The nodal officers shall ensure that the verification reports/comments sought by the jurisdictional tax officers are being sent in a timely manner by the counterpart officers in their formations.

It is the responsibility of the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs to regularly monitor the progress made in this regard so that the timelines mentioned in the Hon'ble Supreme Court's order dated 22.07.2022 and 02.09.2022 are strictly adhered to by the field formations.

Where any communication is required to be made by the central tax officer with the applicant for the purpose of verification of TRAN-1/ TRAN-2, through a mode other than through the portal, the same should be made with the use of DIN, as per the guidelines mentioned in the CBIC Circular No. 122/41/2019-GST dated 5th November 2019.

GST News

GST Department steps up anti-evasion drive

Date: 09-11-2022

Stepping up its anti-evasion drive, the goods and services tax (GST) wing of the Central Board of Indirect Taxes and Customs (CBIC) has started a process of issuing show-cause notices to thousands of entities for alleged evasion or under-payment of tax.

It has already issued notices in about 20,000 cases among 34,000 scrutinised for tax evasion in 2017-18, the year in which the comprehensive indirect tax was rolled out, sources said. The tax department reckons that evasion by the entities in the year were to the tune of Rs 2,000 crore. It is also sending out notices to another lot of 35,000 cases for the year 2018-19, the sources added.

Read more at:

<https://www.financialexpress.com/economy/gst-dept-steps-up-anti-evasion-drive/2792454/>

GST News

Bombay HC Frowns on AO's 'Patently Illegal' Order, Advises Training for Officers

Date: 17-10-2022

While allowing a taxpayer's plea seeking withdrawal of an order passed by tax authorities, which granted only seven days to file a reply to a show cause notice (SCN), the Bombay high court (HC) asked the tax authorities to donate Rs10,000 to the PM Cares Fund.

"The order was erroneous because, in the SCN, only seven days were given to reply to the notice, and on the eighth day, the order came to be passed. Therefore, the question of not paying (the tax along with interest) within 30 days of the issue of the notice will not arise," the bench of justice KR Shriram and justice AS Doctor says.

Criticising the approach of assessing officers (AO) while passing orders contrary to the basic provisions of the goods and service tax (GST) law without application of mind, the HC stated that such acts are adding to the already overburdened dockets of the court.

Read more at:

<https://www.moneylife.in/article/gst-bombay-hc-frowns-on-aos-patently-illegal-order-advises-training-for-officers/68646.html>

GST News

One-time offer to settle minor GST offences in works

Date: 18-10-2022

The government is considering a Goods and Services Tax (GST) dispute settlement scheme offering a one-time opportunity for businesses to settle tax cases and avoid litigation, officials aware of the development said.

It will be a time-bound scheme covering only minor GST offences while offering a one-time opportunity to settle past disputes under excise duty, service tax and customs duty, they said.

Read more at:

<https://economictimes.indiatimes.com/news/economy/policy/one-time-offer-to-settle-minor-gst-offences-in-works/articleshow/94951015.cms>

Delay in GST Council meeting may hit reforms

Date: 21-10-2022

It is almost four months since last meeting took place but there is still no indication about when the next meeting will happen. Technically, the meeting should be held at least once in three months. Experts feel that delay in holding the meeting is likely to have an impact on reform measures and new initiatives under GST.

Read more at:

<https://www.thehindubusinessline.com/economy/delay-in-gst-council-meeting-affects-online-gaming-casinos-horseracing-and-other-sectors/article66026426.ece>

GST – Judicial Precedents

1. Returns

Amendment in GSTR-1 after the time prescribed for making such amendment in order to rectify the mistake of mentioning wrong GSTIN number against the invoices raised

M/s Mahalaxmi Infra Contract Ltd. Vs GSTN [Jharkhand High Court]

In the instant case it appears that on account of an inadvertent error, the entry relating to Tax Invoice No. 01/2018- 19 dated 17th January 2019 could not be reflected in the GSTR-1 filed by the petitioner against the GSTIN of Eastern Coalfields Limited. Instead, it was quoted in the GSTIN of Respondent No. 6 MIPL-NKAS (JV) which was not the recipient of such supplies.

The Honorable High Court held that the instant case does not present any additional tax impact, or loss of revenue for the State Exchequer and, in fact, such correction of relevant returns in case of the petitioner i.e.,GSTR-1, GSTR-2A in case of the recipient would allow the recipient to rightly avail the ITC against the tax paid under Tax Invoice issued by the petitioner. The interest of justice would be served if the petitioner is allowed to make the necessary correction in GSTR-1 form for January 2019. Petition disposed off.

GST – Judicial Precedents

2. Supply

Whether receipt of liquidated damages on account of delay in delivering of the contract and other non-performance amounts to Supply?

M/s. Achampet Solar Private Limited [AAAR, Telangana]

Held: The CBIC has issued Circular No. 178/10/2022-GST dated: 3.8.2022 related to GST applicability on liquidated damages. As per the circular where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to do or abstain from doing anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

GST – Judicial Precedents

3. Authority for Advance Rulings

Interpretation of term ‘proceedings’ for applying to Authority for Advance Rulings

M/s. Shalby Limited, (Shalby Hospital) [AAAR Gujarat]

Facts: The applicant sought Advance Ruling on certain issue with Gujarat AAR. After pronouncing the ruling, the GAAR received a letter from the Additional Commissioner of State Tax (Enforcement), stating that the appellant was issued GST DRC-01A by the state tax authorities regarding commencement of investigation against them on the issue raised by them in their application for advance ruling. AAR observed that appellant had withheld information and declared its previous ruling void ab-initio in terms of Section 104 of CGST Act, 2017. Being aggrieved by the said Order, assessee filed instant appeal.

Held: Initiation of investigation can be said to be the start of proceedings to safeguard government revenue. Further, the appellant was also issued Form GST DRC-01A Part A which was intimation of liability - the use of words ‘any proceedings’ in proviso to Section 98(2) of CGST Act will encompass the investigation initiated against the appellant and also notice of intimation of tax liability - It is trite law that when one comes for justice one should come with clean hands. The appellant has indeed not revealed the fact of proceedings/investigation pending against them before the State Tax department on the same issue which was sought in application for advance ruling. Accordingly, the invocation of Section 104 of CGST Act by the AAR and declaring its earlier advance ruling void ab initio is legal.

GST – Judicial Precedents

4. Input Tax Credit

Whether ITC on expenses like Rent, Advertisement expenses, commission etc. is available for a person dealing in buying and selling of second hand goods?

M/s. Attica Gold Private Limited [AAR Karnataka]

Held: Rule 32(5) says that a taxable supply provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price. If the value of such supply is negative, then it shall be ignored. Rule 32(5) clearly bars availment of input tax credit on the purchase of those second hand goods which he is supplying, however there is no restriction on the availment of input tax credit in respect of input services or capital goods.

After going through section 16 of CGST Act 2017 i.e Eligibility and conditions for taking input tax credit we can see that there is no bar on the registered tax payer to claim input tax credit on input services and corresponding expenses like Rent, Advertisement expenses, commission, Professional expenses, other like expenses and capital Goods while being under Margin Scheme (Rule 32(5) of CGST Rules). The Applicant can claim input tax credit on the expenses in respect of input services and capital goods subjected to section 16 to 21 and rules 36-45 of CGST Act and Rules 2017.

GST – Judicial Precedents

5. Refunds

Rationale of fixing 'Budgetary Support' cannot be questioned, Supreme Court upholds Delhi High Court Order

M/s Hero Motocorp Ltd. vs Union of India [Supreme Court]

The appellant, Hero Motocorp Ltd., was aggrieved by the action of the department rejecting their claim of 100% budgetary support in lieu of the pre-existing 100% outright excise duty exemption for ten years from the date of the commencement of commercial production, as provided for by the said O.M. of 2003 issued by the Government of India.

Before the advent of the new GST regime, both of the appellant's units were enjoying a full refund of the central excise duties paid by them as provided for in the exemption notification dated 25th June, 2003, pursuant to the Office Memorandum dated 17th February, 2003. After the commencement of the new GST regime, here too, the benefit being enjoyed by the appellant was reduced to 58% through the implementation of the Budgetary Support Policy.

Held: Rejecting the plea, the Apex Court observed that the Central and State Governments had given various incentives of Central Excise and Value Added Tax (VAT) and Central Sales Tax (CST) so as to encourage investment in those States. "It also took notice of the fact that such incentives could not be continued as supplies would need to be made on payment of tax to permit flow of tax to the destination state. The solution that was suggested was to provide for budgetary apportionment in the State and the Central budgets for reimbursing the tax paid to those units which enjoyed tax exemption up to a specified period."

Even on the ground of change of policy, which is in public interest or in view of the change in the statutory regime itself on account of the GST Act being introduced as in the instant case, it will not be correct to hold the Union bound by the representation made by it, i.e. by the said O.M. of 2003. Further, this would be contrary to the statutory provisions as enacted under Section 174(2)(c) of the CGST Act. The appellants are permitted to make representations to the respective State Governments as well as to the GST Council - appeal dismissed.



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