

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
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GST News

Norm for GST Council to meet every quarter, convene 'urgently': Mitra to Sitharaman

Date : 17.11.2022

Citing regulations for the Goods and Services Tax (GST) Council, Principal Chief Advisor to West Bengal Chief Minister Amit Mitra urged Union Finance Minister Nirmala Sitharaman in a letter on Wednesday to call for a meeting of the Council “urgently”. Mitra said the Council has not met over the last four-and-a-half months, in violation of the Rule 6 of the Procedure & Conduct of Business Regulations of the GST Council, according to which it has to meet once in a quarter of a financial year.

“May I draw your kind attention to Rule 6 of the Procedure & Conduct of Business Regulations of the GST Council in pursuance of Article 279A (8) of the Constitution. Rule 6 clearly states that “The Council shall meet at least once in every quarter of the financial year.” Yet, in utter violation of this solemn provision, you have not called a single meeting of the Council (physical or virtual) over the last four and a half (4) months. Not even an intimation of any exigency was communicated to the Minister of State, Finance, of West Bengal or any other Member of the GST Council,” Mitra said.

Read more at:

<https://indianexpress.com/article/business/economy/norm-for-gst-council-to-meet-every-quarter-convene-urgently-mitra-to-sitharaman-8272664/>

GST Updates – TNGST Circular

Procedures for initiation of action on non-filers of returns under TNGST Act, 2017

Circular No - 14/ 2022 – TNGST dated : 12.11.2022

Instructions regarding clarity on the roles and responsibilities and procedures to be followed by the Proper Officers and also clear demarcation between Territorial and Intelligence Divisions were issued in the earlier Circular. It was instructed in the circular that:

- a. Primary responsibility of ensuring timely filing of returns rests with the Assessing Officer. With the help of sub-ordinates, he should secure compliance of the filing of returns. If return is not filed, the registered tax payers shall be contacted over phone, by sending SMS / emails / letters to them. They shall be persuaded by the Assessing Officer to see that the returns are filed.
- b. If persuasion is unsuccessful, a warning letter cum notice under Section 46 may be issued by the jurisdictional officer highlighting how non -filing would attract legal consequences like penalty, late-fee, interest etc. Continuous non-filing attracts action under Section 46 of the TNGST Act, 2017, and further under Section 62 of the TNGST Act, 2017. Action for field verification and a report on GST FORM 30 in the cases where the jurisdictional officer has bonafides belief that the non-filer may not be operational in the registered premises, procedure to be followed and action to be taken under Section 29 for cancellation of registration was also instructed.
- c. Assessment of return non filers:- In respect of the registered person who fails to file returns under Section 39, even after expiry of time limit in the notice issued under Section 46, the Proper Officer shall proceed to assess the tax liability under Section 62 of the Act for the said person.

GST Updates – TNGST Circular

2. Vide reference second cited, detailed circular with regard to cancellation has also been issued in this regard.
3. The powers for cancellation for registration is vested with Proper Officer under Section 29(2) of the TNGST Act 2017 and Rule 21 of the TNGST Rules 2017, read with Notification no.18/2022 – Central Tax dated 28.9.2022 with effect from 01.10.2022, and in Notification no.19/2022 – Central Tax dated 28.9.2022 with effect from 01.10.2022 as follows:

SL No.	Event	Initiation of Cancellation
1	Tax payers filing monthly returns in Form GSTR-3B	Not filed for a continuous period of six months.
2	Tax payer filing returns under RMP scheme.	Not filed returns in GSTR-3B for 2 continuous tax periods.
3	Composition tax payer filing return in GSTR-4	Beyond three months from the due date of furnishing the said return.

4. In the reference 3rd cited, it was instructed that there is equal responsibility on the part of the Deputy Commissioners and Joint Commissioners of the Zone and Division respectively in ensuring filing of returns within the time prescribed under the Act. Though 90% of the revenue is derived from 37,740 tax payers, the fact remains that at the end of the every month, revenue is realised from only 90% of the above mentioned tax payers. Timely collection of returns is the most important item of work in the territorial division. From 20th to 30th of every month, priority is to ensure that all returns of these tax payers who are contributing 90% of the revenue are filed before the end of the month.
5. Further, it was instructed that all the Joint Commissioners are directed to fix responsibility to the respective Proper Officers and the Deputy Commissioners in the following manner:-

GST Updates – TNGST Circular

5.1 AU the top payers of the Commercial Tax District / Zone, the Deputy Commissioners concerned shall personally ensure filing of returns within the time period not exceeding 30th of the succeeding month

5.2 The Proper Officers of the respective assessment shall follow up with the tax payers and monitor continuously until filing of returns within the time period not exceeding 30th of the succeeding month

6. Even after issue of above instructions to watch the return filing meticulously, the status of non-filing of such top revenue tax payers, is increasing month on month. This is due to non-monitoring of the filing of returns by the top taxpayers. There may be cases where the top tax payers fail to file returns for more than 6 months. Proper action at the appropriate time is not taken by the Proper Officers in such cases. Strict supervisory action and continuous monitoring in this regard is to ensure compliance in filing of returns in due date.

7. Hence, the responsibilities and procedures to be followed in respect of non-filers are reiterated as below:-

(I) Assessment of non – filers of Form GSTR 3B

- i. When a registered tax payer fails to file return under Section 39 of the TNGST Act, 2017, on the due date, action under Section 46, is initiated automatically by the GSTN System and a notice as per Rule 68 of the TNGST Rules, 2017, in FORM GST-3A is generated and issued electronically on the day preceding the last day of the month.

Hence, the following action has to be taken after the due date for filing return, till the date of generation of FORM GSTR - 3A electronically.

- (a) **Proper Officer**: Every Proper Officer has to contact the defaulter over phone for reminding to file the pending returns. E-mails shall be sent to the defaulter's authorized signatory for the same purpose.

GST Updates – TNGST Circular

- (a) Proper Officer : Every Proper Officer has to contact the defaulter over phone for reminding to file the pending returns. E-mails shall be sent to the defaulter's authorized signatory for the same purpose.
 - (b) Territorial Deputy Commissioners: The Deputy Commissioners shall personally watch the filing of returns by the top 100 tax payers of their respective zones contributing 90% of the Revenue and for any default in filing of such returns, the Deputy Commissioner concerned would be held responsible
 - (c) Territorial Joint Commissioners : The Territorial Joint Commissioners shall closely monitor the progress of return filing by the top registered tax payer contributing 90% of the Revenue and see that the returns are filed in time.
- ii. The Registered tax payer on receipt of FORM GSTR- 3A, shall file the return within 15 days from the date of receipt of the said FORM GSTR- 3A notice. For those who file the returns within 15 days, the notice issued in FORM GSTR-3A shall be deemed to have been withdrawn. The details of defaulters who fail to file FORM GSTR-3B returns even after expiry of FORM GSTR-3A time limit, is reflected in the Proper Officer's back office login.
 - iii. The Proper Officer should initiate the task to take action under Section 62 of the TNGST Act, 2017, to assess the turnover under best of judgment taking in to account all the relevant materials available or gathered in respect of defaulting registered tax persons.
 - iv. The assessment order in FORM GST ASMT- 13 along with summary in FORM GST DRC-07 thereof shall be uploaded electronically. In respect of the assessment order passed under Section 62, it has been specifically stated that the said assessment order shall be deemed to have been withdrawn if the registered person furnishes a valid return within thirty days of service of the assessment order.

GST Updates – TNGST Circular

(II) Assessment of Non - Filers of QRMP Return :

a) Non-filers of returns in forms GSTR-3B (Regular / QRMP) :-

- i. If the registered tax payer fails to file monthly returns in Form GSTR-3B, for continuous period of six months or quarterly return filer in Form GSTR-3B for two consecutive tax period, besides Best of Judgement orders issued under Section 62 and consequent recovery action, under Section 79, the Proper Officer shall initiate cancellation and suspend the registration of the Registered Tax Payer as provided under Section 29 (2), of the TNGST Act, 2017.

b) Non-filers of filers GSTR-4 (Composition tax payer)

- ii. In respect of Composition tax payer, the Proper Officer shall prepare a list of defaulters and action shall be taken under Section 29 of the TNGST Act 2017. As per the amended provision, as the due date for furnishing GSTR-4 is 30th April, cancellation shall be initiated beyond three months from the date of furnishing such return. Hence, the cancellation shall be initiated in August and cancellation orders shall be issued before the end of September.
- iii. The procedure as prescribed in the TNGST Act, shall be followed while cancelling the Registration of the return defaulters. After the registered tax payer's registration is cancelled, within 15 days from the date of issue of cancellation proceedings, the Proper Officer shall verify the place of business to ascertain as to whether the cancelled tax person is continuing business. If business is being carried out by the said person, the Proper Officer should report to the Intelligence Wing for inspection through the concern Joint Commissioner (ST) along with his / her report.
- iv. On receipt of the report from the concerned Joint Commissioner (ST), the concerned Joint Commissioner (Intelligence) shall conduct inspection immediately on place of business of the tax payer whose registration has been cancelled.

GST – Judicial Precedents

1. Detention of Goods

Aggrieved Person can be the consignee of the goods for filing an appeal even if the adjudication order for detention of goods and vehicle was passed against the driver of the vehicle

Mehndihasan Rahemtulla Hariyani vs Deputy Commission [Calcutta High Court]

Facts: The Deputy Commissioner initiated a proceeding under Section 129 of the CGST Act, 2017 against the driver/person-in-charge of the vehicle. W.r.t the same, the petitioner's proprietorship concern namely, M/s Akash Trading Co. filed an appeal under Section 107 of the CGST Act, 2017 against the said order passed by the Deputy Commissioner. The appellate authority was of the view that the adjudication order was passed against the driver of the relevant vehicle and the petitioner's concern being the consignee in respect of the goods had no right to challenge the said order passed by the adjudicating authority.

Held: Section 107 of the West Bengal Goods and Services Tax Act, 2017 makes it clear that "any person aggrieved" by any decision or order passed under the Act may appeal to the appellate authority within the time limit prescribed in the Statute. Though the adjudication proceeding was initiated and passed against the driver/in-charge of the vehicle in question, the petitioner's concern being the consignee of the goods, had a reason to be aggrieved by the said order of the adjudicating authority.

The appellate authority will hear the appeal as has been filed by the petitioner's concern in accordance with law and dispose of the same within a period of one month from the date of communication of this order.

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 Ruling

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. Demand and Recovery

Supreme Court direction for implementation of a system for electronic (digital) generation of a Document Identification Number(DIN) for all communications sent by the state tax officers

Pradeep Goyal Versus Union of India & Ors. [Supreme Court]

Held: It cannot be disputed that implementing the system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons would be in the larger public interest and enhance good governance. It will bring in transparency and accountability in the indirect tax administration, which are so vital to efficient governance. Even the Central Government has also taken a decision and as such implemented the DIN system of Central Board of Direct Taxes and on and from 01.10.2019, as every CBDT communication will have to have a Document Identification Number (DIN). But, as on today, only two States, namely, the States of Karnataka and Kerala have implemented the system for electronic (digital) generation of a DIN in the indirect tax administration, which is laudable and to be appreciated.

In view of the implementation of the GST and as per Article 279A of the Constitution of India, the GST Council is empowered to make recommendations to the States on any matter relating to GST. The GST Council can also issue advisories to the respective States for implementation of the DIN system, which shall be in the larger public interest and which may bring in transparency and accountability in the indirect tax administration. Therefore, we dispose of the present writ petition by directing the Union of India / GST Council to issue advisory / instructions / recommendations to the respective States regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration, which is already being implemented by the States of Karnataka and Kerala. We impress upon the concerned States to consider to implement the system for electronic (digital) generation of a DIN for all communications sent by the State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest.



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