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The GST Bulletin

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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

In this Issue.....

S. No.	Particulars
1.	GST News
2.	GST Judicial Precedents
	❖ Whether goods can be detained and confiscated on the grounds that supplier of the Petitioner has purchased the goods from a vendor engaged in outward supply without paying any tax? [M/s Shiv Enterprises Versus State of Punjab And Others (Punjab and Haryana High Court)]
	❖ Levy of GST on membership fees collected from members by the Club [The Poona Club Limited (AAR Maharashtra)]
	❖ Whether exemption is available on hiring of buses by Public Transport Division from Andhra Pradesh State Road Transport Corporation (APSRTC)? [The Principal Commissioner Central Tax, Guntur CGST Commissionerate (AAAR Andhra Pradesh)]
	❖ Whether the time limit for taking ITC is to be counted from the date of invoice or period of providing services? [M/s. Vishnu Chemicals Limited (AAAR Andhra Pradesh)]

GST News

Sales or Purchase of Crypto are Within Ambit of GST: CBIC Chairman

Dated 16-02-2022

As the debate over the legitimacy of cryptocurrencies continues, CNBC-TV18's Timsy Jaipuria caught up with Vivek Johri, the chairman of the Central Board of Indirect Taxes and Customs (CBIC) and asked him about their stance on taxing the crypto ecosystem.

"There is more than one aspect of cryptocurrency that intersects with the goods and services tax (GST). When it comes to services being provided by an exchange that deals with sale or purchase of crypto – those services are within the ambit of GST," said Johri.

"The other aspects of crypto which requires some examination are how to deal with mining of crypto, sale or purchase of crypto per se whether it's a supply of goods or services and the third aspect would be where a crypto is used to make payment by way of a barter for goods and services that are otherwise supplied," he said.

Johri further said, "These are the other aspects that I can think of which require some detailed examination. CBIC is in the process of examining these aspects and thereafter there is a procedure to be followed of taking it to the law committee and to the GST council and we will have some finality on that in due course," he said.

Source : CNBC TV 18

GST – Judicial Precedents

1. Detention of Goods and Vehicle

Whether goods can be detained and confiscated on the grounds that supplier of the Petitioner has purchased the goods from a vendor engaged in outward supply without paying any tax?

M/s Shiv Enterprises Vs State of Punjab [Punjab and Haryana High Court]

Facts: Petitioner sold copper scrap to one M/s. Mittal Engineering Industries. While the goods were in transit in vehicle, the same were checked. Driver of the vehicle produced requisite documents, i.e. invoice and E-way Bill. Despite the documents being in order, the same were detained on the pretext that the 'genuineness of the tendered documents need verification from regular bills of A/c'. After filing reply to Form MOV-02, the petitioner received a communication dated 11.09.2021 whereby he was informed that on verification, it has been found that inward supply to the sellers/suppliers of the petitioner is from one Balbir Enterprises. Said Balbir Enterprises is not having inward supply and is only engaged in outward supply without paying any tax. Thus, the petitioner proceeded under Section 129(6) & 130(1) of the PGST/CGST Act, 2017.

Held: It is virtually impossible for a trader to ascertain as to whether input tax has been paid by his predecessors or not and it is for this reason also that the claim to input tax credit has been made subject to scrutiny and assessment. It is the fundamental legal principle embedded in legal maxim "LEX NON COGIT AD IMPOSSIBILIA"-That the law does not compel a man to do that which he cannot possibly perform". Once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so.

From the pleadings on record, it is clear that there is no allegation that the petitioner has contravened any provision of the Act or the rules framed thereunder much less with an intent to evade payment of tax. The authorities are well within their power to check the goods in transit. In case goods in transit are being transported in contravention of any provision of the Act or the rules framed thereunder, the goods are liable to be seized and detained as per provision of Section 129 of the Act. However, in case the goods in transit are accompanied with the documents as prescribed under the Act, authorities need not proceed under Section 129 of the 2017 Act. Respondent No.4 is directed to release conveyance and goods in question forthwith

GST – Judicial Precedents

2. Supply

Levy of GST on membership fees collected from members by the Club

The Poona Club Limited [AAR Maharashtra]

Facts: The applicant, seeking an advance ruling in respect of the following questions:

1. Whether membership fee collected from members at the time of giving membership is liable to tax under CGST/SGST Act?
2. Whether the annual subscription and annual games fee collected from members of club is liable to tax under CGST/SGST Act?

Held: In view of the amended Section 7 of the CGST Act, 2017, it is found that the applicant club and its members are distinct persons and the fees received by the applicant, from its members are nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality, which has been cited by the applicant to support its contention that it is not rendering any supply to its members and GST is not leviable on the fees collected from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017 and therefore, the applicant has to pay GST on the said amounts received from its members.

GST – Judicial Precedents

3. Exemption

Whether exemption is available on hiring of buses by Public Transport Division from Andhra Pradesh State Road Transport Corporation (APSRTC)?

The Principal Commissioner Central Tax, Guntur CGST Commissionerate [AAAR Andhra Pradesh]

Facts: APSRTC approached the Authority for Advance Ruling seeking clarification whether the transaction of hiring/leasing of buses by the APSRTC to the Public Transport Division (PTD) of Government of Andhra Pradesh is eligible for the exemption under Entry 22 of Notification No 12/2017-Central Tax (Rate)?

The Authority for Advance Ruling Andhra Pradesh in its orders in AAR No.25/AP/GST/2021 dated 20.07.2021 held:

The transaction of hiring/leasing of buses by the APSRTC to the Public Transport Division (PTD) of Government of Andhra Pradesh is eligible for the exemption under Entry 22 of Notification No 12/2017 Central Tax (Rate).

Held: In the instant case, the appellant classifies the transaction as 'leasing of movable and immovable assets', which is more of a general description. Whereas, the lower authority classified the same under Heading 9966 or Heading 9973 - On perusal of relevance of both the entries, Heading 9966 fits into the most specific description and should naturally be preferred over the general description as suggested by the appellant.

Section 2 (42) of Motor Vehicles Act, 1988 defines State Transport undertaking, clearly envisages the possibility of this service being run / carried on by the Central Government or a State Government. In the instant case, the PTD, the state government department which is running this service shall by definition be termed as the 'State Transport undertaking'.

The ruling of the AAR upheld.

GST – Judicial Precedents

4. Input Tax Credit

Whether the time limit for taking ITC is to be counted from the date of invoice or period of providing services?

M/s. Vishnu Chemicals Limited [AAAR Andhra Pradesh]

Facts: For the purpose of storing the raw material as well as finished goods, the applicant needed some additional storage space and therefore, entered into lease agreements with M/s. Usha Tubes and Pipes Pvt. Ltd., for leasing of godowns. The appellant submitted that monthly rental bills were received from M/s UTPL regularly till March 2018. But for the months from April 2018 to March 2019, M/s UTPL issued a single tax invoice dated 01.04.2020 mentioning in the description as Rental charges for the months from April 2018 to March 2019 by showing rent month-wise for 12 months. The invoice mentioned CGST as 26,64,090/- and SGST of ₹ 26,64,090/- on total taxable value of ₹ 2,96,01,000.

The appellant had approached the Authority for Advance Ruling seeking a clarification whether the invoice dated 01.04.2020 is eligible for input tax credit if claimed before filing GST return for September 2021 or Annual return for 20-21 in terms of Sec 16 (4). The Authority for Advance Ruling Andhra Pradesh in its orders in AAR no.21 /AP/GST/2021 Dt.20.07.2021 ruled as under:

Question 1: Whether the tax invoice dated 01.04.2020 issued by the supplier of service for the rental service supplied for the period 01.04.2018 to 31.03.2019 is hit by the limitation for claiming ITC under Section 16 (4) of the CGST/SGST Act, 2017.

Answer: The invoice referred pertains to the services rendered in the financial year 2018-2019 and hence it is 'hit by the limitation for claiming ITC under Section 16 (4).

Question 2 : If the applicant avails ITC on such invoice after 01.04.2020 and before filing GST return for September 2021/Annual Return for 2020-2021, whether it amounts to violation of condition stipulated under sub- section(4).

Answer : Affirmative.

Aggrieved by the above ruling, the appellant has filed the present appeal.

GST – Judicial Precedents

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Held: The 'Supply of Service' here is 'Renting of immovable property'. The supplier of service issued a tax Invoice dated 01.04.2020 covering the period from 01.04.2018 to 31.03.2019. Therefore, the supply of service pertains to the financial year 2018-19. The date on which the invoice issued was 01.04.2020 and hence appears that the invoice issued pertains to the financial year 2020-21. However, the date of invoice or the period to which an invoice pertains will be determined only by the period of supply covering which the said invoice was issued. Therefore, in the instant case, irrespective of the date of Invoice (which is leading to mis-interpretation of the period of Invoice), the same is pertaining to the period of supply covered by the said invoice i.e. 2018-19.

In the instant case, as the invoice pertains to the financial year 2018-19, vide Section 16 (4), the recipient is entitled to take ITC on the same before furnishing of Return "under Section 39 for the month of September, 2019 following the end of financial year 2018-19 to which such invoice pertains or furnishing of the relevant annual return for the year 2018-19, whichever is earlier.

Thus, the appellant is not eligible to claim Input Tax Credit on the disputed invoice dated 01.04.2020 that was issued covering the supply of services pertaining to the period from 01.04.2018 to 31.03.2019 - the ruling of the AAR upheld.

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