Consolidated Legal Zine and Updates Volume- XII December

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Switching job without serving notice period? You may have to pay 18% GST on entire salary

Tax

Priyabrata Prusty
Updated Dec 06, 2021 | 11:06 IST

According to a recent ruling by AAR, in the case of notice pay, the company is actually "providing a service" to an employee and hence GST should be applied on that.

CA TUSHAR AGGARWAL

CA GEETIKA SHRIVASTAVA

However, some of the tax experts are of the opinion that the AAR ruling does not portray the correct position of law. "In the absence of any positive act on part of the employer by allowing exit to employees during the notice period, the element of supply is grossly missing. Resultantly, such a transaction completely falls outside the ambit of GST," said **CA Geetika Shrivastava, Executive Partner, Tattvam Advisors**.

CA Tushar Aggarwal, Founder Partner, Tattvam Advisors said their view is supported by the decision of Madras High Court in the case of M/s GE T&D in which it held that Section 66E(e) of the Finance Act, 1994, was not attracted as the employer has not 'tolerated' any act of the employee, but has only permitted a sudden exit upon being compensated by the employee in this regard. "However, the ratio of above decision has been disregarded by the Advance Ruling Authority for the reason that same relates to service tax regime and is not applicable under GST."

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Arrest under GST still remains a grey area

By Tushar Aggarwal, Kushagrah Mehta, ET CONTRIBUTORS - Last Updated: Dec 15, 2021, 12:05 PM IST

Synopsis
If the GST commissioner has a 'reason to believe' that the person has committed some offense and the amount of tax evasion is more than 5 crore, then he can order his arrest.

Misuse of these rules for the purpose of meeting revenue objectives will result in harassment of taxpayers, which is not the intention of these laws. Finally, all departments must obey the landmark ruling in D.K. Basu v. State of West Bengal, in which the Supreme Court established certain guidelines to be followed while conducting arrests.

The provisions under GST have reignited the discussion over tax terrorism and appear to run counter to the government's aspirations to develop a tax administration that is for the benefit and welfare of the taxpayers.

(Tushar Aggarwal is Co Founder Tattvam Advisors, Kushagrah Mehta is Associate at Tattvam Advisors)

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Business News › Small Biz › GST › Changes in GST: Here's what to expect from Jan 1

Changes in GST: Here's what to expect from Jan 1

By Tushar Aggarwal, ET CONTRIBUTORS · Last Updated: Dec 30, 2021, 10:17 AM IST

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Synopsis
The government must combat bogus invoicing but while doing so it is pertinent to take care of taxpayers and compliance burden of the businesses.

Implications of the change

This change has been made by inserting a provision in the Act itself, which rules out the possibility of challenging the condition on any account but constitutionality of the provision. Businesses now need to introduce stringent contractual terms with the supplier to offset the loss caused in case they fail to upload invoices or upload incorrect invoices of supplies provisioned to recipients under GSTR-1 or due to any other technical flaw. Simultaneously it is important to have a robust and timely reconciliation setup.

In a nutshell, the situation calls for a robust compliance system, vendor management, sufficient contractual safeguards and stringent measures for recovery of the amount paid to the supplier.

(Tushar Aggarwal is Founder Partner, Tattvam Advisors and Geetika Shrivastava is Executive Partner, Tattvam Advisors)

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Home › Finance › News » OPINION: GST Input Tax Credit Changes From January 1 — Things To Ask Your Vendor, How To Protect Your ITC And More

How can businesses protect their ITC now? Vendor agreements.

With such draconian provisions being brought in GST, it is imperative for the businesses to safeguard themselves by introducing such stringent and unwavering clauses in their vendor agreements.....

Improving in-house processes will be the key to ensure ITC is not lost

In order to avoid any such complexities, businesses should proactively build in-house processes for the relevant stakeholders such as accounts payable team, tax team, finance team etc. to ensure legitimate ITC is not lost.

Other practical solutions to make sure businesses don't lose ITC

Time to time reconciliations from the data available on portal before taking ITC, rigorous follow up with vendors for timely reporting of their invoices, email communications with the suppliers.....

Concluding remarks

As a closing remark, it won't be improper to state that having such restrictive provisions runs absolutely contrary to the intention behind introduction of the GST regime which was to eliminate the cascading impact of taxes.....

Note: This is an opinion piece by CA Tushar Aggarwal, Founder Partner Tattvam Advisors & CA Geetika Shrivastava, Executive Partner Tattvam Advisors.

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GST
Supreme Court Decisions

COMMRS. OF GST & C.E VS. M/S CITI BANK N.A 2021-VIL-91-SC-ST

The interchange fee is received for the service rendered by the card-issuing banks, hence liable to be subjected to service tax

Facts:

The respondent, Citi Bank, registered with the Service Tax Commissionerate, Chennai was found to be receiving interchange fees without paying service tax for the same. Over a span of time, four show cause notices were issued to it for periods prior to 01.07.2012 and also thereafter. The respondent argued that it was not performing any service so as to make it liable to pay service tax on the interchange fees and it was merely the interest that was earned by the Bank in the credit card transaction of the customer. Thereafter, the Principal Commissioner, Service Tax, found that the respondent bank to be rendering service and there was no evidence to show that the acquiring bank was paying tax for the amount earned by Citibank. However, the Tribunal, relying on its judgment ***M/s ABN Amro Bank v. Commissioner of Central Excise and Customs*** set aside the order of the Principal Commissioner.

Held: The Hon'ble Supreme Court held that:

- The services rendered by the issuing Bank falls under the ambit of Section 65(33a) of the Finance Act
- The issuing bank renders service in the credit card transaction as the issuing bank earns an amount for the service rendered to the card holder, which does not seem to enter the measure of service tax
- Interchange Fee is not in the nature of interest. Reference has been made to the case of ***Ferro Alloys Corpn. Ltd. V A.P. State Electricity Board and Another 1993 Supp (4) SCC 136,*** it was stated that there was no creditor debtor relationship between Citibank (issuing bank) and the card Associations or acquiring bank
- The role of issuing bank is indispensable in the credit card transaction and the risk it takes in settling the amount, constitutes rendering service and **not merely transaction in money**
- The concept of value added tax cannot mean that if the tax is already paid by the acquiring bank in this case, on the amount of interchange fee, for the service provided by the respondent as issuing bank, the respondent bank should be called upon to pay the service tax all over again as it would constitute double taxation

UNION OF INDIA VS. AAP AND COMPANY 2021-VIL-93-SC

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GSTR-3B is the valid return under Section 39 of CGST Act

Facts:

This appeal was filed by the department against the ruling passed by Gujrat High Court in the case of ***AAP and Co. v. Union of India 2019-VIL-314-GUJ*** wherein, it was observed that Form GSTR-3B is not a return under Section 39 of the CGST Act and it is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified.

Held:

In respect of the above, the Hon'ble Supreme Court while overruling the judgement passed by Gujrat High Court observed as follows:

- That the observation made by Gujrat High Court has already been expressly overruled by three judge bench of Supreme Court in the case of ***Union of India v. Bharti Airtel Ltd. & Ors., 2021-VIL-87-SC.***
- It has been observed by the Apex Court that the present appeal filed by the department is in the same terms with the ruling passed by ***Bharti*** *(supra)* case. Hence, the judgement of Gujrat High Court stands overruled.
- The Apex Court eventually fortified that GSTR-3B is a valid return under Section 39 of CGST Act.

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GST
High Court Decisions

LAXMI ORGANIC INDUSTRIES LTD Vs. UNION OF INDIA AND ORS. 2021-VIL-833-BOM

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Rejection of manual filing of refund application alongwith online will make rule 97A of CGST Rules redundant

Facts:

Petitioner failed to upload "Statement 5B" along with refund applications online. Consequently, the petitioner applied manually on 10th June, 2021 and 22nd June, 2021 for F.Y.s 2018-19 and 2019-2020. Such applications were returned without being processed with an instruction that in terms of Circular No. 125/44/2019-GST dated 18th November 2019 (hereafter "the impugned circular", for short), a refund application has to be filed in FORM GST RFD 01 on the common portal and the same has to be processed electronically, with effect from 26th September 2019.

Held: The Hon'ble High Court held that:

- Although the Departmental Officer are under an obligation to follow the terms of the Circular No. 125/44/2019-GST, however, it is axiomatic that the Officers are also equally bound by the CGST Act and the CGST Rules and could not have turned a blind eye to Rule 97A of the CGST Rules, 2017, which provide for manual filing and processing

- Since rule 97A contains a non-obstante clause, it is intended to override rules 89 to 97 of the CGST Rules

- The plain and simple construction of rule 97A of the CGST Rules is that despite rule 89 providing for electronic filing of applications for refund on the common portal, in respect of any process or procedure prescribed in Chapter X any reference to electronic filing of an application on the common portal, shall also include manual filing of the said application

ARCELORMITTAL NIPPON STEEL INDIA LTD Vs ASSISTANT COMMISSIONER 2021-VIL-840-GUJ

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Any discrepancy in show cause notice would render the proceeding infructuous

Facts:

The petitioner is an integrated steel manufacturer with a manufacturing facility comprising of pellet making, iron making, steel making etc. The finished goods manufactured by the petitioner are exported and cleared to the Special Economic Zone (SEZ) and such supplies are reckoned as 'Zero Rated' supply in terms of Section 16 of the Integrated Goods and Service Tax (IGST) Act. The supplier being entitled to refund of ITC in respect of the goods and services used for making Zero Rated supplies, made two separate refund applications for the period from July, 2019 to September, 2019, for refund of unutilized compensation CESS under Section 54 of the CGST Act. The petitioner has received two notices dated 11.03.2020 and 04.03.2020. Both the show-cause notice sought to reject the refund application on vague and unclear grounds. Consequent to the show-cause notices, order of rejection was passed. Aggrieved by the refund rejection order, the petitioner approached the High Court under writ jurisdiction.

Held: The Hon'ble High Court held that:

- The only ground assigned for proposing the rejection of the claim for refund is the "others" with a remark that "error in adjusted total turnover."
- A notice since is a foundation of any proceedings and if the same is not clear and is vague, the very edifice is extremely weak and based on hollow foundation
- Petitioner has rightly stated that in absence of proper reasons in the show cause notices, neither it would be in a position to file any reply nor appear in person for hearing
- In light of the discrepancies mentioned in the show-cause notice, the writ petition was allowed and the impugned refund rejection order was set aside

MADHAV COPPER LIMITED Vs STATE OF GUJARAT 2021-VIL-841-GUJ

For exercising power u/s 83 of CGST Act, there must be sufficient reason for department to protect revenue's interest

Facts:

A show cause notice dated 22.07.2020 has been issued in the FORM GST DRC-01 for the financial years 2017-18, 2018-19 and 2019-20 on the ground that the suppliers' GSTN had been cancelled ab-initio and hence, the petitioner has been asked to pay the tax of Rs. 2,37,20,365/- for the year 2017-18, Rs. 7,90,31,782/- for the year 2018-19 and Rs. 15,81,616/- for the year 2019-20. A search was conducted on 23.12.2020 and the petitioner was summoned on 06.01.2021 by the D.G.G.S Tax Intelligence, Surat Zonal Unit exercising the powers under Section 70. Search of the business as well as residential premises of petitioner culminated in provisional attachment of bank account, immovable properties, the vehicles, movable properties and the personal properties of the Directors
The petitioner approached High Court under writ jurisdiction seeking various reliefs

Held: The Hon'ble High Court held that:

- The provisional attachment as in aid of something else and its purpose is to protect the revenue. Its validity would be depend on strict observance of statutory pre-conditions. The formation of Commissioner's opinion must have proximate and live nexus to protection of revenue interest. Commissioner's opinion must be based on tangible material regarding statutory requirements
- In absence of any kind of pendency of proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 of the CGST Act, it is not permissible for the authority to invoke powers under Section 83 for the purpose of provisional attachment
- Writ petition was disposed without entering the merits of the case directing the respondent to conclude the proceeding and pass the order after adjudicating the show-cause notice

M/s RADHEMANI AND SONS Vs. UNION OF INDIA & Othrs 2021-VIL-862-CHG

Word ‘subsequently held’ in Section 77 of the CGST Act, 2017, inter-alia, includes discovery of fault by the tax-payer himself

Facts:

Petitioner filed an application for refund claim of Rs.12,69,255/- as per the provisions prescribed under Rule 89(1) of CGST Rules, 2017 on account of excess payment of IGST in February, 2018 in GSTR 3B return for the tax period February, 2018. After considering the said application, a show cause notice dated 31.03.2020 was issued by the Deputy Commissioner. Issuance of show-cause notice culminated into refund rejection order. Aggrieved by the refund rejection order, petitioner filed an appeal before the Additional Commissioner. The appellate authority held that invocation of Section 77 of CGST Act, 2017 and Section 19 of the IGST Act, 2017 can only be done by the department and it would not arise *suo-moto.* Consequently, the appeal was rejected. Aggrieved by the rejection of appeal, petitioner approached High Court under writ jurisdiction.

Held: The Hon’ble High Court held that:

- Word "subsequently held", in the scheme of Section 77 of the CGST Act, 2017 read with Section 19 of IGST Act, 2017, inter-alia include the situation where the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State or inter-State respectively

- In light of this observation, the proceeding was remanded back to the appropriate authority for reconsideration

M/s PIONEER CARBIDE PVT LTD Vs. UNION OF INDIA & ORS 2021-VIL-860-MEG

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Time for filing revised Form GST TRAN-1 under Rule 117 of the CGST Rules, 2017 can be extended by the Commissioner

Facts:

Mistake was made by the petitioner while submitting a declaration electronically in form GST TRAN-1 under Rule 117 of the CGST Rules, 2017. In connection with the erroneous declaration, a show-cause notice was issued by the department. Said show-cause notice was challenged by the petitioner before the Hon'ble Meghalaya High Court.

Held: The Hon'ble High Court held that:

- The present matter is governed by Rule 117 of the CGST Rules, 2017. On plain reading of the rule, a registered person who has submitted a declaration electronically in the relevant form is entitled to revise the declaration and file it afresh within the period stipulated under Section 117 of the CGST Rules, 2017

- There is also a possibility of the 'time for filing the revised declaration' to be enlarged by a general order or a specific order of the Commissioner as the expression "or such further period as may be extended by the Commissioner" suggests

- In such an event, the time for filing a declaration under the relevant Rules, including under Rule 117 of the CGST Rules, 2017 which is relevant in the present case, would stand extended

M/s BRIGHT STAR PLASTIC INDUSTRIES VS. ADDL. COMMRS OF SALES TAXES, 2021-VIL-865-ORI

To attribute a case of fraud in availing ITC from non-existence supplier, the department has to satisfy a threshold of showing that purchaser indulged in transactions with full knowledge

Facts:

The petitioner is engaged in the business of manufacturing and trade of Poly Vinyl Chloride (PVC), iron scraps etc. A Show Cause Notice were issued to petitioner under Rule 22(1) of the OGST Rules, 2017 for cancellation registration on the ground that "petitioner have claimed ITC (Input Tax Credit) of Rs. 2,04,650,06 against fake invoices issued by non-existent supplier". Thereafter, the petitioner applied under Section 30 of the OGST Act for revocation of the cancellation of registration which got rejected by the authority. Hence, this Writ Petition.

Held: The Hon'ble High Court held that:

- On the date the purchases took place there was no means for the Petitioner to know that entity which had a valid GST number, was in fact non-existent
- To attribute fraud in such circumstances to the Petitioner, as a purchasing dealer, the Department would have to satisfy a high threshold of showing that the purchaser indulged in the transactions with the full knowledge that the selling dealer was non-existent
- The Department has failed to show that the Petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence

Therefore, the impugned order rejecting the Petitioner's application for revocation of its cancellation of registration and the impugned appellate order rejecting the Petitioner's appeal are set aside.

M/S LGW INDUSTRIES LTD. VS. UOI 2021-VIL-868-CAL

Availment of Input Tax Credit cannot be denied on the ground that purchases made by petitioners are from non-existing suppliers

Facts:

The petitioners in this case had approached the Hon'ble High Court against the series of notices issued by the department wherein, the department had disallowed the petitioners their right to claim the input tax credit on the following ground:

- suppliers from the whom the petitioners/buyers are claiming to have purchased the goods in question are all fake and non-existing,
- the bank accounts opened by those suppliers are on the basis of fake documents and petitioners' claim of benefit of input tax credit are not supported by the relevant documents,
- petitioners have not verified the genuineness and identity of the aforesaid suppliers who are registered taxable persons (RTP) before entering into any transaction with those suppliers; and
- the registration of suppliers in question has already been cancelled with retrospective effect covering the transactions period in question

Held: The Hon'ble High Court held that:

- The Hon'ble High Court subject to further verification observed that it cannot be said that the petitioners were at fault in complying with the obligations required under GST law before entering the transactions in question or for verification of the genuineness of the suppliers in question
- Further, the Hon'ble Court has decided to accept the writ petition and remanded the matter back to the department to consider the cases of the petitioners on the issue of their entitlement of benefit of input tax credit
- It has been held that petitioners shall be given the benefit of input tax credit in question after fulfilling following conditions:
  - Upon verification it is found out that transactions in question are genuine and supported by valid documents
  - Payments on purchases in question along with GST were actually paid or not to the suppliers
  - Transactions in question were made before the cancellation of registration of those suppliers
  - Duly considering the judicial precedents referred in the present matter

RAM PRASAD GANGA PRASAD VS. ASSISTANT COMMISSIONER, STATE TAX, 2021-VIL-890-CAL

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Opportunity of hearing afforded by way of allowing to make any written representation does not amount to violation of principle of natural justice

Facts:

By way of present Writ Petition, the petitioner have challenged the impugned order of adjudication on the ground that the same is without jurisdiction and there is violation of principle of natural justice by not affording them opportunity of personal hearing.

Held: The Hon'ble High Court held that:

- Section 75(4) of the CGST Act, 2017 simply says about hearing and not about personal hearing
- Opportunity of hearing may be afforded either by way of allowing the petitioners to make any written representation for their case or it may be by allowing personal hearing
- In this case, petitioners were allowed to make written representation and when petitioners have not asked for personal hearing and petitioners have not been able to show any provision of relevant laws mandating the authority to give personal hearing, question of violation of principles of natural justice does not arise
- The Authority who has issued the show-cause-notice and passed the adjudication order is having inherent jurisdiction under the statute to exercise the jurisdiction of adjudication in the case of petitioners
- If the petitioner is not satisfied with the impugned adjudication order, forum for statutory alternative remedy already available to the petitioners

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GST
Appellate Advance Rulings

M/s PREMIER SALES PROMOTION PVT LTD, 2021-VIL-74-AAAR

Vouchers being traded are goods and are not actionable claims taxable under Section 7 of the CGST Act, 2017

Facts:

The Appellant is engaged in the business of providing market services in area of resourcing and supply of E-Vouchers and specialises in Consumer Promotions, Loyalty programs etc. The appellant entered into an agreement with merchants for purchase of vouchers which in turn sold them to their clients. Thereafter, the appellant filed an application to the Authority of Advance Ruling on the issue of applicability of GST on transactions of sale of vouchers to which the Authority of Advance Ruling held that that supply of vouchers was taxable and time of supply in all three cases would be governed by Section 12(5) of the CGST Act, 2017 and rate of tax on supply of vouchers was18% GST. Being aggrieved by the ruling given by the AAR, the appellant has filed the present appeal.

Held:

The AAAR held as follows:

- The Applicant is into sale of vouchers and the same has a value and an ownership gets transferred from one person to another and ultimately to the beneficiary, so they are considered as movable property and hence are considered as "goods" and taxable under the GST Law. The order of the AAR is sustained.
- The vouchers are tangible and movable whereas the actionable claims are intangible and movable, therefore the vouchers in the hand of the Applicant are not actionable claims and the supply of vouchers is a supply of goods under Section 7 of the CHST Act, 2017

TATTVAM ADVISORS

GST
Advance Rulings

M/s DADAJI HOSPITALS PRIVATE LIMITED, 2021-VIL-438-AAR

The medicines, consumables, Surgical, etc. used in the course of providing healthcare services provided to the patient admitted in the hospital for treatment would be considered as composite supply of health care services

Facts:

The applicant is the owner of a multispecialty hospital and equipped with latest infrastructure and competent medial staff provides primary health care and secondary health care services including diagnostics, basic and special medical and surgical services, treatments, etc. to patients. The Applicant has approached the Authority for Advance Ruling to determine whether-

i. the medicines, consumables, Surgical etc. used in the course of providing health care services to the patient admitted in the hospital for treatment, surgery or diagnosis would be considered as composite supply of health care services.
ii. Supply of medicines, consumables etc. to patients admitted in hospitals exempted under notification No.12/2017 read with Section 8(a) of CGST Act

Held:

The Authority for Advance Ruling has observed as under;

- In the instant case it was held that the amount medicines, consumables, surgical etc. used in course of providing health care services is provided to patient admitted in hospital for treatment, surgery or diagnosis is not segregable and part of the healthcare treatment package then it would be considered as composite supply of health care services in terms of the Section 2(30) of CGST Act, 2017 where principal supply is health care service by a clinical establishment
- In case, pharmacy located in hospital premises is owned by a separate person then medicines / surgical / consumables supplied by such pharmacy to in-patient for use in course of health care service provided by hospital cannot be termed as composite supply - Supply of medicines, consumables etc. to patients admitted in hospitals are exempted in Para 2 (zg) of Notification No. 12/2017-CT (Rate), dt. 28.6.2017, only when condition of health care service and conditions given in the said Notification is fulfilled

M/s SIKKA PORTS & TERMINAL LTD, 2021-VIL-437-AAR

TATTVAM ADVISORS

Input Tax Credit available on services of operation and maintenance of vessels used in port and terminal handling services

Facts:

The applicant company runs and operates a port and terminal handling facilities at Sikka Port, Gujarat for receipt of crude oil and other feedstock. Sikka Port was developed by the Applicant company in 1990s as a captive port for RIL's refinery project. The Applicant expanded its port and terminal handling facilities such as three SPMs, sub-sea pipelines, crude and product pipelines, marine tank farms, sea water outfall system and support vessels comprising of marine support vessels, diving support vessel, three tugs and two pilot boats, all with a view to handle the increase in the quantity of the crude and products that was likely to transit through the port for the new refinery. For this purpose, the Applicant entered into a long term contract "Agreement for the Receipt Handling Storage and Evacuation of Crude, Petroleum and Petrochemical Products''. The Applicant has approached the Authority for Advance Ruling to determine whether

- Whether the Applicant is entitled to avail Input Tax Credit on services procured for the operation and maintenance of Diving Support Vehicle owned by them and used for supplying port and terminal handling services.
- Whether the Applicant is entitled to avail Input Tax Credit on services procured for hiring and for operation and maintenance of Security Patrol Vessel used by it for supplying port and terminal handling services

Held:

The Authority for Advance Ruling has observed as under,

- In the instant case it was held that the services supplied by various contractors to applicant is not limited to mere repair and maintenance of vessels but the essence and substance of the contracts is much wider than that. Section 17(5)(aa), Section 17(5)(ab) and the Section 17(5)(b)(i) CGST Act, 2017 which covers blocked credit does not come into the play in the present case
- Further, the Applicant company is entitled to avail Input Tax Credit on the services availed for the operation and maintenance of DSVs on the services procured for the Operation and maintenance of SPVs

M/s GWALIOR DEVELOPMENT AUTHORITY, 2021-VIL-441-AAR

GST applicable on maintenance charges and lease rent received on lease of residential land

Facts:

The applicant is a company that provides residential land on lease. The Applicant has approached the Authority for Advance Ruling to determine the following questions:

- Whether GST is leviable on the residential land provided on lease basis for which lease premium is charged by the applicant.
- Whether GST is leviable on the maintenance charges and lease rent received on such residential land.

Held:

The Authority for Advance Ruling has observed as under:

- In the instant case it was clarified that the applicant has only stated the Notification no. 12/2017 and as per the related provisions of the GST Act amount received as lease premium, lease rent and maintenance charges are in relation to the residential land and is exempted and no GST is leviable on it
- The exemption notification grants exemption to services by the way of renting residential dwelling for residential use. But in the present matter of lease of land on which the building is constructed, the building does not attain the character of the leasehold property and only the lease of land' is renewed
- So in the instant case the following has been decided by the Authority which is as follows:
  - GST is leviable on the residential land provided on the lease basis
  - GST is leviable on the maintenance charges and lease rent received by the applicant on such residential land

M/s PORTESCAP INDIA PRIVATE LIMITED 2021-VIL-464-AAR

Services of renting of immovable provided by local authority are chargeable in the hands of SEZ under reverse charge

Facts:

The applicant is engaged in the manufacture of customized motors in India and exports the said goods. Further, the applicant procures Rental Services from SEEPZ, SEZ Authority. The applicant has approached the Authority for Advance Ruling to determine whether GST is payable under reverse charge mechanism on procurement of domestic services like renting of immovable property services from SEZ Authority in accordance with Notification No. 13/2017-C.T. (Rate) & 03/2018- C.T. (Rate) dated 25.01.2018.

Held:

The Authority for Advance Ruling has observed as under:

- As per Section 7(5)(b) of the IGST Act supply of goods or services or both, to or by a Special Economic Zone developer or a Special Economic Zone unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce and the subject transaction will be in the course of Inter-State trade or commerce and therefore the provisions of the IGST Act, 2017 will be applicable in the subject case
- Further, Notification No. 10/2017-IT (Rate) dated 28.06.2017, as amended by Notification No. 3/2018-IT (Rate)-dated 25.01.2018 clearly states that in case of supply of services by any local authority, by way of renting of immovable property, to a person registered under the CGST Act, 2017, the person receiving the said service has to discharge GST on the transaction
- Therefore, the subject case satisfies all the conditions of Notification No. 10/2017-I.T. (Rate) dated 28.06.2017 as amended, and hence as per section 5(3) of IGST Act, 2017, the applicant is liable to pay IGST under Reverse Charge Mechanism

M/s VIJAYNEHA POLYMERS PRIVATE LIMITED 2021-VIL-453-AAR

There is no availability of input tax credit to the contractors supplying the services of the works contacts

Facts:

The applicant company has constructed a factory building where they have hired works contractors for the execution of contract in two different ways which are as follows:

- Where the applicant provided the material and the construction services provided by the contractor
- Both the material and services provided by the contractor

The construction includes foundation of machinery, rooms for chillers, boilers, generators etc., erection of electrical poles, laying of internal roads, factory building, internal drainage, etc. The Applicant has approached the Authority for Advance Ruling to determine whether they are entitled to avail input tax credit on the amount charged by the contractors for the services provided to the applicant.

Held:

The Authority for Advance Ruling has observed as under:

- In the instant case it was held that input tax credit cannot be availed on the works contact services for construction of an immovable property except for the erection of plant and machinery
- Input tax credit can be availed on plant and machinery fixed to earth by foundation or structural support as explained under Section 17 of the Act
- Plant and machinery would not include building or any other civil structure in relation to the factory premises
- Input tax credit cannot be availed on goods and services or both received by a tax payer for construction of immovable property on his own account
- Hence it was held that the applicant is eligible for input tax credit to the extent of machine foundation only

M/s TIME EDUCATION KOLKATA PRIVATE LIMITED, 2021-VIL-454-AAR

Clarity on the Rate of Tax applicable on the supply of spaces for advertisement and sale of "Other advertisement Space"

Facts:

The applicant is a company that is in the business of the purchase and supply of the advertisement space to the customers. The applicant in the course of supply of the advertisement space they are also supplying artwork. The Applicant has approached the Authority for Advance Ruling to determine whether the supply of artwork along with the space leads to the supply of the advertisement space or supply of other services.

Held:

The Authority for Advance Ruling has observed as under:

- In the instant case it was clarified that as per the Notification No. 11/2017-CT (Rate), there has been a clear distinction made between the sale of advertisement space and the sale of "Other advertisement Space"
- The SAC of the space for advertisement and print media is 998362 on which the applicable tax rate is 5%
- The SAC of the supply of artwork along with the space falls under "Other advertisement space" is 998366 on which the applicable tax rate is 18% and the same falls under item (ii) of serial no. 21 of the table

M/s MAHINDRA SPLENDOUR CHS LTD, 2021-VIL-450-AAR

Applicability of GST on various activities performed by a Housing Society

Facts:

The applicant is a housing society which manages, maintains and administers the society's property and raises funds to achieve the objects of the society as per its Bye-Laws. The Applicant has approached the Authority for Advance Ruling to determine whether the applicant is liable to pay GST on the contribution received from its members.

Held:

The Authority for Advance Ruling has observed as under:

- In the instant case it was clarified that the applicant and the its members are distinct person and various charges received would be supply of goods/services as a separate entity and as per amended Section 7 of the CGST Act, 2017 the same is taxable under the Act
- The amount collected towards Sinking Fund, Repair Fund etc. is collection of amount as overall maintenance of the society and the said amount would be taxable
- The amount collected by the society on account of property tax, electricity charges, etc., along with other statutory charges would be excluded while calculating the threshold limit of Rs.7,500/-
- Since the applicant is not selling the water per se and instead pumping of the said which is rendering of services, the Notification 2/2017-CTR date 28.06.2017 pertaining to goods will not be applicable
- As per the provisions of ITC the goods supplied for the activities of repair and maintenance is covered under Section 17(5)(d). The input tax credit on GST paid on such goods will not be available to the extent of capitalisation on account of construction services

M/s SHAPOORJI PALLONJI AND COMPANY PVT LTD, 2021-VIL-477-AAR

TATTVAM ADVISORS

Setting up of plant and its operation and maintenance are two different supplies bearing different tax rates

Facts:

Applicant are engaged in setting up of Wet Limestone Flue Gas Desulphurisation and operation & maintenance of the said plant. The Applicant has approached the Authority for Advance Ruling to determine whether

- Whether the combined service of setting up the plant and operation & maintenance be a composite supply and if yes, what would be principal supply
- If the supply is considered as a composite supply of works contract services, whether the said supply to be provided by the applicant would fall under the entry no. 3(iv)(e) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended time to time?
- GST rate applicable and the SAC/HSN

Held:

The Authority for Advance Ruling has observed as under,

- The setting up of FGD plant and the O&M of the same are two different supplies and price of each supplies is separately indicated. So it does not constitute a composite supply
- The setting up of plant merits classification under SAC 995429 and attracts GST at the rate of 12% in terms of entry No. 3(iv)(e) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017
- Further, the Operation & Maintenance of the plant merit classification under SAC 9985, as "Business Support" service and attracts GST at the rate of 18%, in terms of entry No. 23(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017

M/s INDIANA ENGINEERING WORKS (BOMBAY) PVT LTD, 2021-VIL-473-AAR

Electricity/Water charges paid as per meter reading and collected from the recipients is liable to GST

Facts:

The applicant has leased out its office premises and also providing utilities such as electricity, water and internal maintenance for the said premises. The Applicant has approached the Authority for Advance Ruling to determine the following questions:

- Whether electricity and water charges paid by the Applicant as per meter reading and collected from the recipients at actual on reimbursement basis are liable to GST
- Whether the Appellant acts as a Pure Agent in the present situation

Held:

The Authority for Advance Ruling has observed as under:

- The electricity charges and water charges paid by the Applicant as per meter reading and collected from the recipients are to be included in the value of services of renting of immovable property even if such charges are collected at actual on reimbursement basis as these are essential services without which the licensee cannot run its business from the rented premises
- The Applicant does not qualify as pure agent for collection and payment of these charges and hence the same will attract levy of GST

M/s INTEGRATED DECISIONS AND SYSTEMS INDIA PVT LTD, 2021-VIL-472-AAR

Transportation services to the employees cannot be treated as supply and GST is not leviable on the said services

Facts:

The Applicant is engaged in providing software development and support services to its holding company located outside India, provides transportation facility to its employees.

The Applicant has approached the Authority for Advance Ruling to determine the following:

- Whether part recovery of 'renting of motor vehicles services'/ 'cab services' from employees in respect of the transport facility provided to them would be treated as 'supply' as per provision of GST and whether GST is leviable on the same and if GST is leviable how the value of said supply will be determined keeping in mind that employee and the applicant are related party as per provisions of GST law
- Further if the GST is leviable on the transportation services provided by the applicant then whether Input Tax Credit is admissible in respect of GST paid on inward supply of 'renting of motor vehicles service' which are used for employees

Held:

- The part recovery from the employees for the transportation services provided would not be treated as supply as the Applicant is not in the business of providing transportation services and facility provided by them is also not integrally connected with their business and hence cannot be said to be in furtherance of the business. Hence, GST is not leviable on the same
- As the GST is not leviable the question of admissibility of Input Tax Credit does not arise

ESSEL MINING & INDUSTRIES LTD. 2021-VIL-486-AAR

TATTVAM ADVISORS

Upfront payment made to State Govt. to be adjusted against future payments is treated as advance liable to GST

Facts:

The Applicant is engaged in the business of mining and minerals and has obtained various mining sites across country on lease for excavating minerals. For obtaining mines, the applicant made upfront payment to government and said upfront payment was adjusted in full at earliest against amount payable to government production of minerals. The applicant has filed the present application seeking advance ruling on issue that upfront payment made by applicant to State Government was in nature of deposit in terms of Section 2(31) of the MPGST Act, 2017 or was in nature of advance paid to determine time of supply in terms of section 13(3) of the MPGST Act, 2017.

Held:

The Authority for Advance Ruling has observed as under:

- Upfront payment made to the State Govt. is treated as advance against revenue share from date of allotment of mines and GST is payable on this advance from date of allotment of mines to applicant
- Upfront payment made by applicant to State Government is in nature of advance from date of allotment of mines on lease to applicant for determining time of supply as per the Section 13(3) of CGST Act and applicant is liable to pay GST from date of allotment of mines on lease by government as upfront payment made by Applicant to State Government is an advance
- There is clear provision in law for liability of GST in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis in case of applicant under the provision of Section13(3) of MPGST Act, therefore applicant is liable to pay service tax from date of allotment of mines on lease by government payment made to State Government is an advance

NEW PANDIAN TRAVELS PRIVATE LIMITED, 2021-VIL-480-AAR

TATTVAM ADVISORS

The exception at S. 17(5)(a)(B) of the CGST ACT, 2017 is not available for the activity undertaken only for renting/hiring of the Motor Vehicles

Facts

The Applicant is engaged in transporting passengers as a rent-a-cab operator by providing the motor vehicle on hire or rental basis either directly to passengers or to the organizations. The applicant has filled the present application seeking advance ruling on the following issue:

i. whether the GST paid on the motor cars of seating capacity not exceeding 13 (including driver) leased or rented to customers or registered will be available for ITC in terms of Section17(5)(a)(A) of CGST Act, 2017
ii. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will be available to it as input tax credit (ITC) in terms of Section 17(5)(a)(B) of CGST Act, 2017
iii. Whether the supply of services by way of renting or leasing or hiring motor vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies?

Held:

The Authority for Advance Ruling has observed as under,

- Section 17(5)(a)(A) of CGST Act, 2017 allows ITC of GST paid on purchase of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), only when the taxable person makes further supply of such motor vehicles. The taxable outward supply in this case does not include further supply of such purchased motor vehicles. In the case at hand, the supply made by the applicant is rental/hire of such vehicles and the activity of transportation of employee/associates is undertaken by the Vendor. Thus, in as much as the activity undertaken by the applicant is only renting/hiring of the Motor Vehicles with the operators and not undertaking transportation of passengers, the exception at S. 17(5)(a)(B) is not available to the applicant
- Supply of services by way of renting or leasing or hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply. Therefore, ITC is not admissible on Motor Vehicles procured as the same is restricted at Section 17(5)(a)(A) of the Act

TATTVAM ADVISORS

SERVICE TAX/CUSTOMS

STYROLUTION INDIA PVT LTD VS. C.C.E 2021-VIL-685-CESTAT-AHM-CE

TATTVAM ADVISORS

There is no need of ISD registration in case of one manufacturing unit

Facts:

The appellant had one manufacturing unit and their marketing office is located at Mumbai during the period April 2011 to October 2015. The appellant have entered into service agreement with various companies and for the services received under these agreements the appellant make payment in foreign currency and also pay service tax thereon under reverse charge as per service tax law. Further, the appellants availed Cenvat credit on these services. Thereafter, a Show cause notice was issued to appellant seeking to deny Cenvat credit on certain input services alleging that appellant did not take ISD registration for its Mumbai office from which it had transferred credit and also order was passed disallowing Cenvat credit on certain services along with demand of interest and imposition of penalty. Hence, the present appeal.

Held: The Hon'ble CESTAT observed that:

- As per agreement effective from 01.01.2011, service provider has to provide various services for the appellant and the appellant has claimed that it has only one manufacturing unit
- Revenue has not produced any evidence otherwise, thus there is no need of ISD Registration and there is no categorical finding of Commissioner on nature of services and where same are used
- In statement of Manager, Warehousing and Stores, he has not clarified where these services have been used and purpose of availing these input services

Therefore, the matter is remanded back to Adjudicating Authority to give clear finding in respect of each of this service disputed for the purpose of Cenvat credit

SHIRPUR GOLD REFINERY LTD Vs. C.C.E. - AHMEDABAD-I 2021-VIL-699-CESTAT-AHM-CE

Refund of CENVAT credit cannot be denied if the credit taking documents are in the name of head office

Facts:

Appeals were filed against the orders-in-appeal passed by Commissioner (Appeals). The Commissioner (Appeals), via its order, upheld the refund rejection order of CENVAT Credit availed on Banking and Financial Services and Insurance Services used for export of finished goods i.e. Gold jewellery. Aggrieved by the order of the Commissioner (Appeals), the appellant preferred an appeal before the Hon'ble CESTAT Ahmedabad.

Held: The Hon'ble CESTAT held that:

- Appellants have claimed the refund in respect of the input service used in relation to export of finished goods, when Notification No. 41/2007-ST did not exist. Therefore, the refund is correctly governed by Rule 5 read with Notification No. 27 of 2012-CE(NT), and rejection of refund referring to Notification 41/2007-ST is absolutely incorrect being not relevant

- If the documents relied for the purpose of availing the CENVAT credit is bearing the name and address of the Mumbai office (Head Office), the refund cannot be rejected only on this ground since the service for which the refund is claimed is attributed to the appellant's factory (Ahmedabad entity)

MACQUARIE GLOBAL SERVICES PVT LTD Vs. COMMISSIONER OF CE & ST, GURGAON-I - 2021-VIL-704-CESTAT-CHD-ST

For a service to be called 'intermediary service', there has to be two distinct services and three person involved

Facts:

The appellant had filed the refund claims in terms of Rule 5 of CENVAT Credit Rules, 2004 for refund of unutilized CENVAT credit availed on input services used in providing taxable services i.e. Business Support Services, Information Technology Services and Management, Maintenance and Repair Services. The Deputy Commissioner, vide his Order-in-Original rejected the refund by holding that the services provided by the appellant are in the nature of "Intermediary Services". Aggrieved by the said order, the appellant preferred an appeal which also culminated into rejection order. Then appellant then approached Hon'ble CESTAT.

Held: The Hon'ble CESTAT held that:

- While considering the issue on the ground of 'intermediary services' both the authorities below have at no stage identified the existence of three persons.
- The intermediary should be the person who is facilitating the provision between the other two persons.
- For a transaction to be said to called an 'intermediary' transaction, there should be two distinct services and three persons involved and in the instant case there is no such scheme.

COMMRS. OF C.E & S.T, Vs M/s INDUSTRIAL HANDLING, 2021-VIL-864-CAL-ST

TATTVAM ADVISORS

"Support Services of Business or Commerce" comes under the scope of service tax retrospectively or prospectively

Facts:

The appellant is engaged in the services of providing material handling equipment on hire. The Commissioner of Central Excise, Haldia Commissionerate, Kolkata alleged that the applicant provided the service of material handling with the help of material handling equipment such as crane and that the same is apparently covered within the meaning of "Support Services Business or Commerce" as defined under Section 65 (104c) of the Finance Act came into effect from 1st May, 2006 vide Notification No. 15/2006-ST dated 24th April, 2006.
the question that whether the aforesaid activity comes under the scope of service tax category with effect from 1st May, 2006 or 16th May, 2008.
Aggrieved by the order passes by the authority an appeal was made to the Tribunal and an order was passed in favour of the appellant. Further, on being aggrieved by the order of the Tribunal, the revenue filed an appeal to the High Court of Calcutta and the decision of the Tribunal was upheld by this court.

Held:

- The Tribunal took a note of the definition inserted by the sub- clause (zzzzj) in clause 105 of the Section 65 of the Act, held that the activity of supply of material handling equipment such as Cranes, etc. is not leviable under the category of "Support Services of Business or Commerce" and it would come under the scope of service tax category with effect from 16th May, 2008. The same is being upheld by the Hon'ble High Court of Calcutta dismissing the appeal filed by the revenue.

M/S SRI PUGAL ASSOCIATES VS. COMMRS. OF GST&CE 2021-VIL-722-CESTAT-CHE-ST

TATTVAM ADVISORS

Limitation period does not apply in case of refund of service tax paid by mistake

Facts:

A show cause notice was issued to appellant proposing to demand under category of Construction of Complex Services. The proposed demand was confirmed vide Order-in-Original and the amount paid during investigation was appropriated. Thereafter, the appellant approached the First Appellate Authority who allowed the refund claim on ground that Service Tax liability in respect of Construction of Complex Service was only from 01.07.2010. The appellant made refund claim and Adjudicating Authority sanctioned refund claim holding that time-limit prescribed in Section 11B of the Central Excise Act, 1944 was not applicable. Further, First Appellate Authority allowed Revenue's appeal setting aside refund order. Hence, instant appeal was filed.

Held: The Hon'ble CESTAT held that:

- When service tax is paid by mistake then claim for refund cannot be barred by limitation, merely because period of limitation under Section 11B of the Central Excise Act, had expired
- In instant case, order of First Appellate Authority has become final since appeal filed against this order has withdrawn by Revenue accepting order passed by Commr. (Appeals), which indicates that tax collected is without authority of law
- Also, the liability itself for period covered herein is not there, as observed in Order-in-Appeal which casts serious doubt on bona fides of revenue when Show Cause Notice was issued demanding tax for disputed period and tax on service involved itself has introduced later, with effect from 01.07.2010

Therefore, the tax paid amounts to one paid under mistake of law. Hence, the impugned order of First Appellant Authority is set aside and that of Adjudicating Authority is restored.

N K IMPEX INDIA VS COMMISSIONER OF CUSTOMS, 2021-VIL-748-CESTAT-CHD-CU

SCN issued beyond 6 months from the date of confiscation of goods without order for extension under Section 110(2) of the Customs Act, 1962 not sustainable

Facts:

In the present matter, the goods in question were imported by M/s Findoc Impex and were sold to the appellant. The said goods were seized by the DRI. Thereafter, Show Cause Notice (SCN) was issued for the goods confiscated and request for provisional release was rejected by the Adjudicating Authority. An appeal was preferred by the appellant to the Tribunal and the matter was remanded back to the Adjudicating Authority for considering it for provisional release. In remand proceedings the goods were again absolutely confiscated. The appellant alleged that impugned goods were seized and SCN issued for absolute confiscation of goods was beyond the extended period of limitation of one year under Section 110(2) of the Customs Act, 1962. Hence, this appeal.

Held:

The Hon'ble CESTAT held that:

- The SCN must be issued within 6 months from the seizure of the goods and in the present matter the goods were seized on 02.07.2020 and the SCN was not issued within the 6 months till 01.01.2021, further no time period was extended by recording the reasons in writing as per the proviso to Section 110(2) of the Act. The SCN was issued was barred by limitation and is not sustainable
- Further, two parallel proceedings of confiscating the goods and on the other hand demanding the duty on the impugned goods cannot be continued together and the order to release the goods has been passed.

Important Updates

Notification No. 17/2021-TNGST dated December 03, 2021

TATTVAM ADVISORS

Powers and functions of Proper Officer under the TNGST Act, 2017 for faceless administration

Deputy Commissioner/ Assistant Commissioner/ State Tax Officer / Deputy State Tax Officer shall be a Proper Officer to exercise powers and perform functions conferred on them under the TNGST Act, 2017 in respect to the cases generated under the faceless administration for the subject matters mentioned in the table below:

Chapter	Section & Subject
XII- Assessment	61-Scrutiny of returns
	62 -Assessment of non-filers
XV-Demands and Recovery	73-Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.
	74-Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
	75-General provisions relating to determination of tax.
	76-Tax collected but not paid to Government.

Notification No. 16/2021-TNGST dated 03.12.2021

TATTVAM ADVISORS

Jurisdiction and the powers related to certain condition of the Officers

- *Vide* above notification it has been notified the jurisdiction of the officers mentioned in the Column 1 have jurisdiction over the whole state with subject to the conditions mention in Column 2

Designation of the Officers	Conditions with reference to the jurisdiction of the officers mentioned	
Deputy Commissioner (ST) LTU	The jurisdiction is limited to computer generated cases assigned to him/her under faceless administration for the purpose	
	Chapter of TNGST Act, 2017	Sections
Assistant Commissioner (ST)	Chapter-XII- Assessment	Section 61 and Section 62
State Tax Officer	Chapter-XV-Demands and Recovery	Section 73, Section 74, Section 75 and Section 76
Deputy State Tax Officer		

Notification No. 37/2021 - Central Tax dated 01.12.2021

Amendment in CGST Rules, 2017

Vide the above notification it has been notified that on the recommendation of Council the government has made the following rules to amend the CGST Rules, 2017, which are as follows:

- *In the **Rule 137**, the words "four years" has been substituted by the words "five years" w.e.f 30th day of November 2021*
- *In FORM GST DRC-03, the following have been inserted:*
  - *In the heading the words, letters and figures "or intimation of tax ascertained through FORM GST DRC-01A" shall be inserted after the words "or statement"*
  - *The words, letters, figures and brackets "Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC-01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)" shall be substituted against 3rd item in Column (3) for the word and letters "Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others (specify)"*
  - *The following shall be inserted against 5th item in column (1) after the words and figures "within 30 days of its issue", the words, letters, figures and brackets ", scrutiny, intimation of tax ascertained through Form GST DRC-01A, audit, inspection or investigation, others (specify)"*

F. No. 461404, Memo No. 5994 / GST-II, dated 30.11.2021 – Excise & Taxation Department, Haryana

TATTVAM ADVISORS

Mandatory review of restriction (blockage of ITC) by the Joint Commissioner and Deputy Commissioner of Haryana Tax Department

In pursuance of the guidelines for disallowing debit of electronic credit ledger under Rule 86A of the HGST Rules, 2017 issued vide No. 5960/GST-II, dated 24.11.2021, the Excise & Taxation Department, Haryana has come up with Circular F. No. 461404, dated 30.11.2021.

Given below are the relevant clarification spelled out in the circular: -

- The Deputy Commissioner of State Tax shall review the details of ITC blocked from 0 to 50 Lakhs and Joint Commissioner of State Tax shall review the details of ITC blocked above 50 Lakhs in their respective jurisdiction and find out reason thereof to ensure that conditions prescribed in sub-rule (1) of Rule 86A have been followed while blocking the ITC. In case the blockage is not in accordance with provision of law, the same may be cleared immediately

- If on the basis of review done by the officers as mentioned above, the officer is satisfied that conditions for disallowing debit of electronic credit ledger no longer exist, he may allow such debit

- Sub-rule (3) of Rule 86A provides that restriction (blocking of credit) shall cease to have effect after expiry of a period of one year from the date of imposing such restriction. In view of the same, ITC blocked for more than one year should also be reviewed

Notification No. F-A-3-08/2018-1-V-(85) - Madhya Pradesh SGST, dated December 2, 2021

Generation of e-way bill required for additional notified goods for intra-state movement in the state of M.P.

It has been notified by the State Tax Department, Madhya Pradesh that there will be requirement of generation of e-way bill for the additional notified goods for the movement within the state of Madhya Pradesh and has amended the original notification no. Notification No. FA-3-08/2018-1-V-(43) - Madhya Pradesh SGST, dated April 24, 2018.
The applicability of above requirement is for the following list of goods which are notified.

Sl. No.	Nature of Goods	Heading/Chapter
12	All types of Fabric	5007, 5111 to 5113, 5208 to 5212.5309 to 5311. 5407. 5408, 5512 to 5516, 5802 to 5804,5806, 5809, 5902 to 5903, 5906 to 5908, 5911, CHAPTER 60, CHAPTER 63 and 6505,
13	Articles of apparel and clothing accessories, knitted or crocheted / not knitted or crocheted	CHAPTER 61 and CHAPTER 62
14	Motor Vehicles and Accessories parts thereof	8701 to 8707
15	Rubber and articles thereof	CHAPTER 40

Notification No. F-A-3-08/2018-1-V-(85) - - Madhya Pradesh SGST, dated December 2, 2021 (Cont.)

Sl. No.	Nature of Goods	Heading/Chapter
16	All types. of Scraps including Ferrous and non - Ferrous	3915, 4401, 4706, 4707, 7001, 7112. 7204. 7404,7503, 7602, 7802, 7902, 8002, 8113, 8429, 8430,8548, 8101 to 8112
17	All types of Utensils	7323, 7418 and 7615
18	Cement and Cement products	2523
19	All types of Stone including Marble & Granite	2515 to 2521
20	Copper, Brass and its products	7401 to 7419
21	Aluminum and its products	7601 to 7616
22	Nickel and its products	7501 to 7508
23	Non-Alcoholic Beverage	2202
24	Fireworks & Explosive	3602 and 3604
25	All types of Crockery	6911 and 6912
26	All types of Cosmetics and Toilet articles	3301 to 3307

Notification No. F-A-3-08/2018-1-V-(85) - - Madhya Pradesh SGST, dated December 2, 2021 (Cont.)

Sl. No.	Nature of Goods	Heading/Chapter
27	Hardware goods	8301 to 8311
28	Plastics and articles thereof	3901 to 3926 and 4202
29	All types of Packing Materials including Ropes	3003, 3004, 3005, 3407, 3926, 4415, 6909, 7010, 8309 and 8424
30	Sanitary Goods	3922, 4803, 4818, 7324 and 7907
31	Pesticides	3808
32	Coal, Petroleum, Products, Bitumen, Emulsion and Bio-Diesel	2701 to 2715, 3403, 3819 and 3826
33	Dry Fruits	0801. 0802, 0804, 0806. 0811 and 0813
34	Kirana Goods	0402,0405,0406,0901,0902,0904,0906 to 0910, 1701, 1903, 3401 and 3402
35	Oil Seeds	1201 to 1207
36	Paints and Putty	3208 to 3214
37	Molasses resulting from the extraction or refining of sugar	1703

Notification No. F-A-3-08/2018-1-V-(85) - - Madhya Pradesh SGST, dated December 2, 2021 (Cont.)

Sl. No.	Nature of Goods	Heading/Chapter
38	Betel Nut Product known as Supari products include Betel Nut Supari	2106 9030
39	Mouth Freshener Or like preparations	2106 90 30
40	Mineral water and aerated water	2106 90 99
41	Chocolate & other Food preparations containing cocoa	1806

Circular No. 167 / 23 /2021 – GST, Dated 17th December 2021

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Clarifications on service supplied by restaurants through e-commerce operators in light of Notification No. 17/2021 dated 18.11.2021

The department have released a circular in the form of questionaire on certain issues in light of recent notification dated 18.11.2021 as per which the GST was leviable on restaurant services supplied by e-commerce operator.

1. Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?
No requirement to collect TCS and file GSTR-8 by ECOM on supply of restaurant service. On supply of other goods and service by ECO requirement to collect TCS shall continue to be applicable.

2. Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service?
There would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.

3. Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?
Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

4. What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?
The aggregate turnover of person supplying restaurant service through ECOs shall include the aggregate value of supplies made by the restaurant through ECOs.

Circular No. 167 / 23 /2021 – GST, Dated 17th December 2021 (Cont.)

TATTVAM ADVISORS

Clarifications on service supplied by restaurants through e-commerce operators in light of Notification No. 17/2021 dated 18.11.2021

5. Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?

No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply.

6. Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?

The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.

7. Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?

No, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash

Circular No. 167 / 23 /2021 – GST, Dated 17th December 2021 (Cont.)

TATTVAM ADVISORS

Clarifications on service supplied by restaurants through e-commerce operators in light of Notification No. 17/2021 dated 18.11.2021

8. Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?

On supplies other than restaurant services made through ECO, GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

9. Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?

In such a scenario ECO shall raise a separate invoice for restaurant service supplied by them under Section 9(5) and other GST compliance shall be on the supplier of goods and service (other than restaurant service).

Notification No. 40/2021 – Central Tax dated 29.12.2021 CGST(Tenth Amendment) Rules, 2021

Last Date to file GST Annual return and self-certified GST annual statement extended from 31st December till 28th Feb 2022

- *Vide* above Notification the Central Government has amended Rule 80 of Central Goods and Services Tax Rules, 2021 to extend the date of filing the GST Annual return and self-certified GST annual statement for the FY 2020-2021f from 31st December 2021 till 28th Feb 2022.

ITC shall be available to the registered person subject to fulfillment of following prerequisites:

(i) eligible credit in respect of invoices or debit notes which have been uploaded by the suppliers in section 37 in the statement of outward supplies in Form GSTR 1 or using IFF; and

(ii) the details of such invoices or debit notes have been communicated to the registered person in Form GSTR 2B under rule 60(7) ITC can be taken only to the extent of eligible credits which have been furnished by suppliers in section 37 in the statement of outward supplies in Form GSTR 1 or using IFF

Correlation of Customs Tariff between 2021-2022

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CHANGES IN HSN CODES AS PER HS-2022 w.e.f 01.01.2022

- The World Customs Organisation (WCO) has announced the New (Seventh) edition of HSN - HS-2022 w.e.f 01.01.2022.
- India being party to HS Convention will also align its First Schedule of Customs Tariff Act with HS-2022. The necessary changes required were already in placed in the Finance Act, 2021.
- The new HS-2022 have around 351 amendments at 6 Digit level whereas India follows 8-digit classification.
- In order to ease the transition for Exporter and Import and making the co-relation between HS2021 and HS2022 at 8-digit level, Customs have provided a correlation document(at 8-digit level).
- The Correlation document can be accessed on the CBIC Website at the link below:
- https://www.cbic.gov.in/resources//htdocs-cbec/deptt_offcr/Guidance%20Document%20on%20Correlation%20of%20Customs%20Tariff%20between%202021%20and%202022.pdf
- The Document provides - Annexure I which provides the coding and Annexure II which shows the HS code of both versions 2021 and 2022 along with the "correlation code".

46TH GST Council Meeting

Applicability of new rates in textiles w.e.f. 01.01.2022 have been deferred

- The GST Council's 46th meeting held on 31st December 2021 under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman has recommended to defer the decision to change the rates in textiles recommended in the 45th GST Council meeting. Consequently, the existing rates in textile sector would continue to be applicable beyond 1st January 2022

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Thank You