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1. JUDICIAL PRONOUNCEMENTS

a) Demand is not sustainable when e-way bill has generated by seller in bill to ship model mentioning place of delivery of ultimate buyer and no discrepancy is found between invoice and e-way bill

(Additional Commissioner Grade-2 Vs M/s Sleevco Traders, 2023-VIL-62-SC)

Facts:

- Petitioner received the purchase order from K.R. Industries, Sandila U.P for supply of PVC Resin. Thereafter, petitioner directed the SAFE Climber, Thane, Maharashtra to directly ship the goods to K.R Industries.
- Accordingly, tax invoice was received, wherein name of petitioner was shown under head of buyer and consignee was shown as K.R. Industries Sandila.
- The seller issued the tax invoice and charged IGST and generated the e-way bill where sender name and ship to K.R Industries was mentioned.
- Further, when the goods entered in State of U.P, the petitioner without taking delivery of the goods, handed over the tax invoice after charging CGST and SGST.
- Thereafter, the same was intercepted by Mobile Squad who detained the vehicle on the ground that said tax invoice raised by petitioner was not supported by e-way bill.
- The petitioner contended before the Mobile squad that e-way bill generated by seller at Maharashtra is still valid, therefore, for same transaction two e-way bills cannot be generated.
- However, SCN was issued under Section 129(3) of the CGST Act and Petitioner submitted reply to the SCN and without considering the same, respondent passed an order to deposit tax and penalty.
- Feeling aggrieved by the order passed by the respondent, petitioner filed the writ petition before the Hon'ble Allahabad HC wherein the Hon'ble High Court quashed the tax and penalty.
- Thereafter, respondent filed the appeal before the Hon'ble Supreme Court.

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Held:

- It is not the case that the goods which were coming from Maharashtra, the delivery of the goods was taken from transporter and the goods were unloaded in the business premises and thereafter, goods were again sent from the business premises.
- Further, the delivery of the goods has not been disputed by the petitioner and the validity of the e-way bill generated by Maharashtra Party was valid up to the date of detention and passing of order, meaning thereby, there is not any violation or contravention of the Section 129(3) of the CGST Act.
- It is not in dispute that the goods which are coming in pursuance of the purchase order of petitioner from Maharashtra which were to be delivered to the buyer of the petitioner i.e. K.R Industries is different than the goods mentioned in the tax invoice given by the petitioner.
- Further, the difference of value mentioned which occurs only on charges of CGST and SGST on the tax invoice issued by petitioner cannot be any contravention of the provisions of the CGST Act and read with 138A of the CGST Rules, when the petitioner is in possession of valid invoice and e-way bill.
- The petitioner was in possession of valid document i.e., e-way bill and accompanying with the goods, therefore, the authorities ought to have release the vehicles.
- The Hon'ble HC relying upon the decision passed on identical set of facts in the case of **Assistant Commissioner (S.T) and others Vs M/s Satyam Shivam Paper Pvt. Ltd. 2022-VIL-06-SC**, quashed the proceeding against the petitioner and allowed the writ petition.
- Accordingly, the Hon'ble SC uphold the decision passed by the Allahabad HC and dismissed the SLP filed by the respondent.

b) GST registration cannot be cancelled for past period for which the returns has already been filed

(M/s Ashish Garg Proprietor Vs Assistant Commissioner of SGST Delhi, 2023-VIL-476-DEL)

Facts:

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- The petitioner filed an application for cancellation of GST registration dated 20.07.2019. In this regard, respondent issued a notice seeking additional documents for processing the same.
- Thereafter, the concerned officer passed an order rejecting the petitioner application for cancellation of GST registration.
- Further, another cancellation application has been filed to cancel the GST registration with effect from 30.06.2019. However, almost after nine-month respondent issued another notice seeking additional information.
- Since, the petitioner had closed his business almost two years ago, the information sought by the respondent has not been provided and thus, the respondent passed an order rejecting the application for cancellation of his registration.
- Thereafter, SCN was issued on the ground that petitioner had not filed returns for continuous period of six months.
- Pursuant to SCN, the Adjudicating Authority cancelled the petitioner GST registration with retrospective effect from 02.07.2017.
- Aggrieved by the retrospective cancellation of GST registration, the petitioner filed a revocation application wherein the said application was allowed and registration was restored.
- Accordingly, petitioner filed the writ petition before the Hon'ble HC on the ground that whether registration can be cancelled to include the period for which returns were already filed by the petitioner.

Held:

- There is no material on record to justify the retrospective cancellation of GST registration by the Adjudicating Authority.
- The reasons for proposing cancellation of GST registration stated in SCN is non filing of returns and thus, retrospective cancellation cannot extend to include the period for which returns were filed by the petitioner.
- It is not in dispute that the petitioner had regularly filed the returns till 30.06.2019 and respondent issued the SCN dated 30.06.2021 on account of non-filing of returns by the petitioner for continuous period of six months.

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Hence, said power to cancel the registration retrospective date is exercised arbitrarily.

- The fact that petitioner had not filed the returns for a continuous period of six months, the ground on which cancellation was proposed, does not in any manner justify the retrospective cancellation from the date that registration was granted.
- Accordingly, the Court directed the concerned authorities to process the petitioner application for cancellation of GST registration with effect from 30.06.2019.

c) Input tax credit cannot be claimed beyond the statutory time limit provided under Section 16(4) of the CGST Act

(M/s Thirumalakonda Plywoods Vs the Assistant Commissioner, 2023-VIL-472-AP)

Facts:

- The petitioner was sole proprietorship registered under the GST law. Due to the Covid-19 pandemic, the Government had extended the due date for filing of GSTR-3B return of March, 2020 to June, 2020.
- However, the petitioner filed the GST return in the month of November, 2020.
- On account of late filing of return, the petitioner received the SCN wherein it has been alleged that petitioner has furnished the GSTR-3B return after the prescribed time limit and therefore, ITC availed by the petitioner for March, 2020 shall not be available as the same is not consonance with the time limit prescribed under Section 16(4) of the CGST Act.
- It is pertinent to mention here that the said SCN was issued through private gmail-id by not following the procedure prescribed under Rule 142(1) of the CGST Rules wherein, the petitioner submitted the detailed reply of SCN and sought an opportunity of personal hearing under Section 74(5) of the CGGST Act.
- Thereafter, without considering the reply, the respondent sent a personal hearing notice stating that petitioner has not file a reply and nor opted for personal hearing.

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- Pursuant to the said notice, the tax authorities confirmed the SCN and issued the order and sought the reversal of ITC along with interest and penalty.
- Feeling aggrieved by the order passed by the respondent, the petitioner filed the writ petition before the Hon'ble HC on following grounds:
  - Whether imposition of time limit for claiming ITC under Section 16(4) of the CGST/APGST Act violates the Article 14,19(1)(g) and 300A of the Indian Constitution?
  - That the non-obstante clause in Section 16(2) of the CGST/APGST Act would prevail over Section 16(4) of the CGST/APGST Act.
  - Whether acceptance of Form GSTR-3B returns of March 2020 filed on 27.11.2020 by the petitioner with late fees will exonerate the delay in claiming the ITC beyond the period specified under Section 16(4)?

Held:

- Section 16(2) of the CGST Act, prescribes the eligibility criteria which is essential condition for claiming ITC whereas Sub-Section 3 & 4 of Section 16 impose conditions or limitation for claiming ITC.
- Therefore, even if an assessee passes the basic eligibility criteria imposed under Section 16(2) of the CGST Act, he will not be entitled to claim ITC if his case falls within the limitation prescribed under Section 16(3) and 16(4) of the CGST Act.
- Section 16(2) restricts the credit which is otherwise allowed to only such cases where conditions prescribed in it are satisfied. Therefore, Section 16(2) in terms only overrides the provisions which enables the ITC prescribed under Section 16(1) of CGST Act.
- Further, in view of *non obstante* clause, Section 16(2) overrides sub section 4 of Section 16 is examined, no doubt Section 16(2) starts with *non obstante clause as* "Notwithstanding anything contained in this Section".
- The general purpose of a non obstante clause has been explained in plethora of decisions wherein in the case of **Union of India Vs G.M Kokil and other MANU/SC/0210/1984** the Hon'ble SC observed that it is well-known that a non obstane clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may

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be found either in the same enactment or some other enactment, that is to say, to avoid the operations and effect of all contrary provisions.

- On a bare perusal of the abovementioned judgment, it can be inferred that the legislature had intended to give the overriding effect to the enacting part of the provisions succeeding to the *non obstante* clause over the rest of the provisions.
- Section 16(2) restricts the credit which is otherwise allowed to only such cases where conditions prescribed in it are satisfied. Therefore, Section 16(2) only overrides the provisions which enables the ITC i.e. Section 16(1). This is evident from the use of negative sentence in Section 16(2) of the CGST Act are satisfied, ITC will not be available.
- Further, non obstante clause is a mere a restricting provision, an interpretation that the other restricting provisions will not have effect of that the restricting provision will restrict other restricting provisions cannot be accepted for the reason that there is no contradiction between the restricting clause followed by *non obstante* and restricting provisions.
- Section 16(2) and 16(4) of the CGST Act are two different restricting provisions whereas Section 16(2) provides the eligibility conditions and Section 16(4) imposed the time limit. However, both the provision has no inconsistency between them.
- Accordingly, Section 16(4) of the CGST Act being a non-contradictory provision and capable of clear interpretation, will not be overridden by non obstante provision under Section 16(2) of the CGST Act.
- In view of the above, the Court answered on abovementioned issues as follows:
  - Input tax credit is a mere concession/ rebate/ benefit but not a statutory or constitutional right and therefore, imposing conditions including time limitation for availing the said concession will not amount to violation of any statute and operative spheres of Section 16 and constitutional provisions under Article 14,19(1)(g) and 300-A are different and hence infringement does not arise.
  - Section 16(2) of CGST/ APGST Act, 2017 has no overriding effect on Section 16(4) of the said Act as both are not contradictory with each other. They will operate independently.

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- The condition stipulated in Section 16(2) and 16(4) of the CSGT Act are mutually different and both will operate independently. Therefore, mere filing of the return with delay fee will not act as springboard for claiming ITC. The collection of late fees is only for the purpose of admitting the returns for verification of taxable turnover of the petitioner but not for consideration of ITC. Such a statutory limitation cannot be stifled by collecting late fee.

d) No interest and penalty applicable on availment of eligible transitional credit given up later

(M/s Nithya Packaging Pvt Ltd Vs the Assistant Commissioner of GST and Central Excise, 2023-VIL-469-MAD)

Facts:

- At the time of implementation of GST, the petitioner had faced difficulty in transitioning ITC on capital goods. Thereafter, the petitioner took a decision to avail ITC, which it could not transition under Section 140 of the CGST Act.
- The said Tran-1 Credit was also confirmed by the sanctioned authority.
- Meanwhile, respondent initiated the proceeding to recover the amounts from the petitioner, which has culminated in the impugned order.
- Accordingly, issue before the Hon'ble HC was that whether the petitioner can be mulcted with the interest and penalty even though the credit which was taken has been sanctioned and merely because the petitioner had also filed returns to transition the same credit.

Held:

- It is not in dispute that petitioner is entitled to transitional credit and by the sanction order (Tran-1 Credit), the Superintendent of GST and Central Excise, has also confirmed said credit.
- Merely because the petitioner had filed subsequent return and had given up the same would not mean that the petitioner can be subjected to pay interest and penalty.

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- The difficulty arose only on account of technical glitches in the web portal at the time of implementation of GST.
- The petitioner cannot be penalized as the credit itself was allowed after the implementation of GST by sanction order.
- Accordingly, order seeking interest and penalty on the petitioner is unsustainable and quashed.

e) Visit by taxpayer and brief telephonic conversation with the tax officer cannot be equated to the personal hearing

(M/s Jupiter Exports Vs Commissioner of GST, 2023-VIL-467-DEL)

Facts:

- In adjudication of SCN, the respondent passed an order confirming the demand to the petitioner without affording any opportunity of personal hearing.
- Feeling aggrieved by the order passed by the Adjudicating Authority, the petitioner filed a writ petition before the Hon'ble HC on the ground that same has been passed in gross violation of the principles of natural justice.

Held:

- When the statute itself provides that hearing is required to be given to the person against whom an adverse decision is contemplated, it cannot be contended on behalf of the authorities that same is not mandatory.
- Be that as it may, the telephonic conversation for a brief period cannot be substitute for personal hearing.
- The opportunity of hearing, which the officer is statutorily required to give to the person against whom an adverse decision of contemplated, is not an empty formality, and is well-recognised principle of *audi alteram partem,* which is provided under Section 75(3) and 75(4) of CGST Act.
- Moreover, when the law requires that the provisions of Section 75(4) and 75(5) of the CGST Act specifically require that an opportunity of hearing "shall" be granted where the request is received in writing, the same cannot be denied or be substituted by a telephonic conversation.

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- In the present case, there is violation of the principles of natural justice and further the Court observed that how any person could observe that a telephonic conversation and the visit of the representative can be considered as personal hearing.
- Accordingly, the Hon'ble HC set aside the demand notice and remanded the matter to pass a fresh order after affording opportunity to be heard.

f) Refund is eligible for duty paid by mistake on exempted goods

(M/s Targos Chemicals India Pvt Ltd Vs UOI, 2023-VIL-460-GUJ)

Facts:

- Petitioner had received the purchase order for supply of goods at the concessional rate of IGST at the rate of 0.1% in terms of **Notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017**
- However, the petitioner supplied the goods to the buyer of full duty under an error of IGST rate at the rate of 18% instead of the concessional rate of 0.1%.
- Thereafter, petitioner filed the refund claim for the amount paid in excess. However, respondent issued deficiency memo to which petitioner submitted all relevant documents.
- Further, SCN was issued to the petitioner and pursuance to the said SCN, petitioner submitted its explanation wherein without taking consideration of the submission, the respondent passed an order.
- Aggrieved by the order passed by the respondent, petitioner filed the writ petition before the Hon'ble HC.

Held:

- Duty is cast upon the registered recipient to export the goods within a period of 90 days from the date of issue of tax invoice by the registered supplier.
- Petitioner has placed on record the invoice which is of 30.06.2019 and thereafter, the buyers has exported the goods under the shipping bill dated 06.07.2019 and therefore, condition of Notification No 41/2017 has been fulfilled.

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- The Hon'ble HC relied upon the decision passed in the case of **Bonanzo Engineering & Chemical Pvt. Ltd VS Commissioner of Central Excise 2012 (4) SCC 771,** the Hon'ble Apex Court has held that merely because by mistake, the assessee paid duties on the goods which are exempted from payment does not mean that the goods would become liable for the duty under the Act.
- Accordingly, the Hon'ble Court quashed the order passed by the respondent and directed to refund the amount with interest.

g) No adverse order can be passed without providing opportunity of personal hearing and due consideration of reply filed

(M/s HT Media Limited Vs UOI, 2023-VIL-458-DEL)

Facts:

- The SCN was issued to the petitioner wherein in the said SCN it has been alleged that *"tax has not been paid or short paid or refund has been released erroneously or input tax credit has been wrongly availed"* but does not disclose any detailed reasons for proposing demand.
- The impugned SCN did not clearly specify the grounds on which a demand was proposed to be raised. Although, in the impugned SCN table mentioning the quantum of tax and interest was clearly mentioned.
- Further, the petitioner was called upon to appear for personal hearing on a date earlier than the time provided to file a reply.
- However, petitioner submitted its reply after the thirty-nine days and requested the concerned officer to afford an opportunity of being heard.
- Admittedly, the concerned officer didn't afford opportunity of being heard and passed the impugned order.
- Feeling aggrieved by the order passed by the respondent, the petitioner filed the writ petition before the Hon'ble HC.

Held:

- In the reply to impugned SCN, the petitioner requested the concerned officer for affording an opportunity to be heard and therefore, it cannot be contended by respondent that petitioner has not opt for personal hearing.

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- It is apparent that the concerned officer hasn't considered the reply furnished by the petitioner.
- An opportunity to be heard is not required to be mere formality. It is to enable the Noticee to represent its case before the concerned officer.
- The purpose of eliciting a reply to the SCN is to enable the Noticee to place his stand on record. Thus, it is apposite that the Noticee be permitted to file a reply prior to being afforded a hearing.
- Accordingly, the Hon'ble HC set aside the impugned order and directed the concerned officer to pass a fresh order after affording due opportunity to be heard.

h) Appeal against intimation issued in Form DRC-03 can be filed manually in the absence of any option being made available on portal

(M/s Savita Oil Technologies Ltd Vs The UOI, 2023-VIL-457-BOM)

Facts:

- The petitioner was aggrieved by intimation issued in Form GST DRC-05. In pursuance to the same petitioner deposited the disputed tax under protest and to that effect, the challans was already issued to the petitioner.
- Further, petitioner intended to file an appeal assailing such intimation by electronic means by using electronic portal, the petitioner could not file the same as the portal didn't have windows to file an appeal in such cases.
- Thereafter, petitioner approached the respondent to file an appeal manually, however, respondent didn't accept the manual filing on the ground that appeals are required to be filed by using electronic portal.
- Accordingly, petitioner filed the writ petition before the Hon'ble Court on the ground that not allowing the filing of an appeal manually would amount to arbitrariness an incorrect interpretation of Section 107 of the CGST Act.

Held:

- As per the provision mentioned under section 107 of the CGST Act, the petitioner has legitimate right to file an appeal being aggrieved by intimations issued in Form DRC-05.

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- Merely because electronic portal does not make a provision for filing an appeal against an intimation issued in Form DRC-05, the petitioner cannot be faulted for such technical reason
- Therefore, it cannot be countenanced that statutory right of appeal available to the petitioner shall go in the vain.
- Accordingly, the Court held that till an appropriate provision is made for acceptance of such appeal electronically, the filing of such appeal is required to be permitted by manual method.

i) Issuance of fresh show cause notice again for same cause of action covering same period against order passed by Appellate Authority is bad in law

(M/s Ambey Mining Pvt Ltd Vs the Deputy Commissioner of State tax, Ranchi, 2023-VIL-455-JHR)

Facts:

- The Deputy Commissioner of State Tax, Ranchi straight away issued a summary order confirming the interest demand to the assessee.
- However, Deputy Commissioner of State Tax, Ranchi before passing the said order didn’t issue any SCN as mandated under Section 73 of JGST Act.
- Feeling aggrieved by the impugned order, the petitioner challenged the order before the Joint Commissioner of State Tax (Appeal), Ranchi.
- Thereafter, the joint Commissioner of State Tax (Appeal) set aside the order and allowed the appeal filed by the petitioner and determined the interest as NIL.
- However, after more than 20 months of passing of Appellate Order the Assistant Commissioner of State Tax initiated fresh proceeding and issued the impugned SCN to the petitioner for the same period and for the same cause of action which is already adjudicated by the Appellate Authority.
- Further, it is pertinent to mention here that in the fresh SCN period which is not covered in the previous appellate order is also included.
- Feeling aggrieved by the issuance of fresh SCN for the same cause of action even after the adjudication by the Appellate Authority, the petitioner filed the writ petition before the Hon’ble High Court.

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Held:

- The Joint Commissioner of State Tax Ranchi (Appeal) has passed an appellate order and thereafter, no further appeal was filed by the department and thus it is evident that same has attained finality and therefore the same issue or cause of action cannot be re-agitated in a fresh proceeding as the same is contrary to settled proposition of law.
- The Court reliance upon the decision passed in the Apex Court in the case of **CCE Vs Prince Gutkha Ltd. 2015-VIL-285-SC-CE,** wherein it was held that adjudicating authority dropping earlier demand accepting explanation of assessee, issuance of second SCN on same cause of action is not permissible.
- It is pertinent to mention here that Section 107(11) of the CGST Act provides that Appellate Authority cannot remand the matter back. In such circumstances, to bypass the embargo of law, restarting fresh proceeding by lower authority amounts to doing something indirectly which cannot be done directly.
- In continuation to the above, Section 107(11) of the JGST Act provides that no power is vested on the Appellate Authority to remand the matter to the Deputy Commissioner of State Tax, Ranchi and Assistant Commissioner of State Tax to initiate a *denovo* proceeding and the said authority has rightly did not remanded the matter back.
- Therefore, Deputy Commissioner of State Tax, Ranchi and Assistant Commissioner of State Tax are not vested with power to issue the impugned SCN.
- Accordingly, the Court held that department cannot re-agitate and issue fresh SCN again for the same cause of action covering same period against the order has been already passed by the Appellate Authority.

j) Ownership of goods to be determined first before imposing penalty on the assessee

(M/s GMR Enterprise Vs State of U.P and 2 Ors., 2023-VIL-454-ALH)

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- The goods of the petitioner were intercepted by the respondent during the transportation within the State.
- The allegations of the petitioner is that goods were accompanied by the tax invoice and e-way bill, which clearly indicates that ownership of the goods belongs to the petitioner.
- However, the department issued the notice in the name of driver and subsequently orders determining liability of tax on the premises that the consignee has not accepted the goods to have been purchased and therefore, goods to be treated as not traceable to a registered dealer.

Held:

- The goods were in transit accompanied by the tax invoice and e-way bill which indicates that goods to be owned by the petitioner.
- The **Circular No 76/50/2018-GST, dated 31.12.2018** clearly states that if the goods are accompanied with the invoices then either the consignor or the consignee ought to be deemed to be the real owner.
- Therefore, in the instant case the department is not justified in proceeding to hold the goods did not belong to registered dealer without dealing with question of ownership of such goods in transit.
- Further, the Hon'ble HC relied upon the decision passed in the case of **M/s Shahil Traders Vs State of U.P 2023-VIL-445-ALH** wherein it was held that question with regard to ownership of the goods to be determined before the levying penalty.
- Accordingly, the Hon'ble HC ordered to issue the fresh consideration and quashed the impugned order passed by the respondent.

k) Assessee is entitled to get refund of sum deposited against levy of penalty along with interest

(M/s Dhansar Engineering Company Pvt. Ltd Vs the State of Jharkhand, 2023-VIL-450-JHR)

Facts:

- The truck of the respondent was seized on account of non-production of permit by the truck driver. Since, the truck in question was seized and order was

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passed by the Commercial Tax Officer, IB Dhanbad imposing the penalty under Section 72(6) of the JVAT Act.

- Further, the petitioner preferred an appeal wherein the Appellate Authority set aside the order imposing penalty, and remanded the matter back to the authority, imposing penalty for determination of claim afresh.
- Thereafter, petitioner filed the revision petition under Section 80(2) of the JVAT Act contending that once the order is set aside then there is no occasion to remand the matter afresh to the Adjudicating Authority.
- Accordingly, the Tribunal set aside the order of the Appellate Authority and no writ petition was preferred by the Department.
- Since, the penalty order is set aside, the petitioner filed the representation before the Joint Commissioner of Commercial Taxes, Dhanbad Division, to refund the penalty amount with statutory interest.
- Subsequent, to the filing of writ petition the respondent refunded the amount that is deposited in the form of penalty.
- The issue before the Hon'ble Court for determination was as to "whether the petitioner would be entitled for interest in terms of Section 55 of the JVAT Act under inherent power under Article 226 of the Constitution of India on the amount of penalty retained by Respondent despite the order passed by Appellate Authority and Commercial Taxes Tribunal"

Held:

- Article 265 of the Indian Constitution provides that no tax shall be levied or collected except by authority of law and therefore, all acts relating to imposition of tax providing, *inter alia*, for the point at which tax is to be collected, the rate of tax its recovery must be carried strictly accordance with law.
- Further, the Court reliance upon the decision passed in the case of **Corporate Bank Vs. Sarswati Abharansala & Anr. (2009) 1 SCC 540** wherein it was held that if a tax has been paid in excess of tax specified, save and except the cases involving the "principles of unjust enrichment" excess tax must be refundable and the State is furthermore bound to act reasonably having regard to equality clause contained in Article 14 of the Constitution of India.

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- Although, the State has refunded the amount to the petitioner subsequent to filing of writ petition, there has been inordinate delay of around a decade in refunding the amount.
- Further, the Hon'ble HC reliance upon the decision passed in the case of **Union of India Vs Tata Chemicals (2014) 6 SCC 335** wherein the Hon'ble SC held that State having received money without right and having retained and used it; is bound to make the party good the said money and the obligation to refund money received and retained without right implies and carries with it the right of interest
- In view of the above, the Hon'ble HC held that the petitioner is entitled for refund immediately pursuant to the order passed by the Tribunal.
- Therefore, in view of the provisions of Section 42(2) of JVAT Act, the petitioner is entitled to get the 6% interest from the date of issuance of excess demand notice till the date of refund actually made.

l) Cancellation of GST registration without providing the reason in the SCN is cryptic in nature

(M/s Arhaan Ferrous & Non Ferrous Solutions Pvt Ltd Vs the Superintendent,2023-VIL-442-AP)

Facts:

- The respondent issued the show-cause-notice for cancellation of the GST registration of the petitioner wherein, the reason of cancellation is not clearly mentioned on the impugned SCN.
- The reason for issuing the show-cause-notice is very cryptic and undiscernible wherein the reason mentioned under the impugned SCN was *"Non-compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed"*
- Feeling aggrieved by the impugned SCN, the petitioner filed the writ petition before the Hon'ble HC.

Held:

- The reason for issuing SCN is very vague and cryptic in nature and therefore, SCN gives no scope for the petitioner to submit an affective reply.

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- Further, the designation and office of the issuing authority are also not mentioned in the impugned SCN.
- Therefore, these defects are sufficient to strike down the notice at the threshold and accordingly, order issued by the respondent are liable to be set aside. However, it is discretion upon the authority to issue a fresh SCN.

m) Rejection of supplementary refund claim is not sustainable due to technical error and lacunae in electronic system

(M/s Shree Renuka Sugars Ltd Vs State of Gujarat,2023-VIL-439-GUJ)

Facts:

- The petitioner filed the refund application of unutilized ITC in making zero-rated supply of goods for the FY 2020-21 and 2021-22.
- Due to inadvertent arithmetical error from the side of employee the petitioner could not filed the refund of correct amount that is required to be filed.
- The said refund amount was sanctioned by the respondent and however, when the petitioner realized the error thereafter, filed a supplementary refund claims for the left amount that was required to be filed.
- The respondent refused to sanction the refund of balance amount on specious basis that category under which supplementary claims were lodged was not applicable in the present case.
- Feeling aggrieved by the refusal of the sanctioned authority, the petitioner filed the writ petition before the Hon'ble High Court.

Held:

- In the present case, the petitioner has shown "any other" as the category because refund application for said period had already been made under clause 7(c) i.e. accumulated category for export of goods without payment of tax and same has been sanctioned and refunded.
- As the petitioner already filed the refund application under clause 7(c) and therefore, supplementary application for the refund of the balance amount of refund cannot be filed on the portal.

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- Therefore, there was no option available for the petitioner to submit the application under the category "any other" thereby, this is nothing but a technical error and for such technical error, the claim cannot be rejected without examining the same.
- It is settled principal of law that benefit which, otherwise a person is entitled to once the substantive conditions are satisfied, cannot be denied due to technical error or lacunae in electronic system.
- Therefore, claim of the petitioner for refund of the left out amount cannot be rejected merely on technically and that too when substantive conditions are satisfied.
- Accordingly, the Court quashed and set aside the order and directed the respondent to allow the petitioner to furnish manually of the left out refund amount.

n) Expiry of e-way bill by just three hours due to mechanical fault of vehicle would not attract the penalty proceedings

(M/s Aryavrata Steel Pvt Ltd Vs. Inspector of CGST, AntEvasion,2023-VIL-434-CAL)

Facts:

- Petitioner was transporting the goods along with the valid e-way bill.
- However, due to the mechanical fault in the vehicle, the validity of the e-way bill was expired by three hours due to mechanical fault in the vehicle.
- On account of the expiry of e-way bill, the respondent confiscated the goods and imposed the tax and penalty.
- Further, petitioner filed the appeal and however, the appellate authority dismissed the appeal by confirming the order of the Adjudicating Authority.
- Aggrieved by the order passed by Appellate Authority, the petitioner filed the writ petition before the Hon'ble HC.

Held:

- Considering the facts and circumstances of the case and taking into consideration that period of expiry of e-way bill is very minor.

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- The e-way bill is expired by three hours and reason for such expiry is supported with relevant documents and therefore, order of the Adjudicating Authority and Appellate Authority are liable to be set aside.
- Accordingly, the petitioner is entitled to get refund of the tax and penalty that has been deposited.

o) Refund allowed by the Appellate Authority in favour of assesse cannot be withhold by the Department

(Advance Systems Vs the Commissioner of Central Excise and CGST, 2023-VIL-431-DEL)

Facts:

- The petitioner filed two refund applications pertaining to input tax credit in respect of exports made under the Letter of undertaking.
- Respondent acknowledged the receipt of the said claims however, the said acknowledgement was not uploaded online and was not processed.
- Thereafter, petitioner again filed the applications for refund on 20.04.2022, however, the respondent did not process the same within the stipulated period and issued SCN proposing denial of refund.
- Petitioner sought time to respond the SCN, but same was rejected and issued the order.
- Thereafter, Petitioner filed the appeal before the appellate authority wherein the said authority partly allowed the petitioner claim for refund but the respondent failed and neglected to process the petitioner claims for refund.
- Petitioner once again filed the claim for refund on the basis of the Order-in-Appeal.
- However, the respondent rejected the said refund application on the ground that said application is deficient as it was not accompanied by an undertaking to the effect that petitioner would refund the sanctioned amount along with interest in case it is found that requirements of Section 16(2)(c) read with Section 42(2) of the CGST Act, does not complied with in respect of the refund amount.
- Feeling aggrieved by the rejection order by the respondent, the petitioner filed the writ petition before the Hon’ble High Court.

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Held:

- Respondents are not required to raise any deficiency memo after the petitioner has succeeded in appellate proceedings. The petitioner had filed the application in the requisite form (GST RFD-01) along with the necessary declarations and undertaking.
- Respondent denied the refund application on certain grounds, which was subject matter of appellate proceeding.
- The petitioner had succeeded in its appellate proceeding, thus there is no question of the respondent to raise any deficiency or once again petitioner is required to furnish any undertaking or declaration which has been done at the initial stage.
- Accordingly, the Court directed the respondent to sanction the refund claim as preferred by the petitioner to the extent as accepted by the Appellate Authority along with the applicable interest in terms of the CGST Act.

p) Cash cannot be seized as it does not form a part of stock in trade

(Dhanya SreeKumari Vs the State Tax Officer (IB), 2023-VIL-414-KER)

Facts:

- The Petitioner is running an industrial unit involved in manufacture and sale of Idly/Dosa batter, Parotta, Chappati, etc.
- On inspection conducted by the 1st respondent, certain amount of cash along with pay-in-slips for depositing an amount were seized in pursuance to the order issued on 13.06.2022.
- The Petitioner contended that the seizure of cash prompting the power available under sec 67 of the CGST Act is not feasible.
- Further, the Petitioner with no eminent action taken by the respondent on the aforementioned representation filed the present writ petition on the same subject matter including the demand to quash the order dated 13.06.2022 wherein the seizure of cash was ordered.
- The respondent stated that it was evident on preliminary verification that tax evasion had taken place. Further, the respondent contended that the seizure

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of cash was justified and was in accordance to the law as the word 'things' in section 67(2) includes cash also. The respondent invited the Hon'ble High court's attention to the decision in ***Smt.Kanishka Matta V. Union of India &Ors*** ([2021] 89 GSTR 56 (MP)-2020-VIL-411-MP), ***BA Continuum India Pvt.Ltd.V. Union of India and Others*** ([2021] 89 GSTR 73 (Bom)- 2021 –VIL -185-BOM) and the decision of Hon'ble Delhi High Court in WP(C) No.12499/2021 wherein the contention of the Court was that cash can also be seized under Section 67 of the CGST Act.

Held:

- It was held that the authority to seize "things" may include cash in appropriate cases but in the present investigation aimed and detecting the tax evasion under the CGST Act, the court fails to see how the cash can be seized and the cash did not form the part of the stock-in-trade of the Petitioner's business.
- The finding of the cash might be justified if the officer was attached to the Income Tax Department but in context of the GST Act such findings are irrelevant.
- Further, the authorities had also seized pay-in-slips which would show that the cash was intended to be deposited in the Bank and cash not being the stock-in-trade of the Petitioner shall not have been seized.
- The writ petition stood disposed off and the respondents were directed to release the cash that was being seized from the Petitioners.

q) Inadvertent mentioning of incorrect invoice no or port code in export transaction shall not result in denying of IGST refund as there no double benefit of the IGST refund and a higher duty drawback

(Sunlight Cable Industries Vs. The Commissioner of Customs, NS II AND 2 Ors., 2023-VIL-410-BOM)

Facts:

- The Petitioner had filed GST Return in Form No. GSTR-1 for the month of August 2017 and inadvertently mentioned as incorrect Invoice No. and Port Code in respect of export transaction made vide Tax Invoice No. SUN/03/2017-18 and corresponding Shipping Bill No. 8360082.

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- Further, on realising such mistake, the Petitioner filed an amended/corrected Return for the month of January 2018 in Form No. GSTR-1 amending particulars with respect to the said Tax Invoice No. SUN/03/2017-18 correcting the invoice number and the Port Code.
- Further, the Petitioner submitted an Annexure in the prescribed format establishing concordance between the Tax Invoice and Shipping Bill in pursuance of circulars of the Department of Revenue (Central Board of Excise and Customs) and requested for release of refund of IGST amount.
- The refund was not being made, the Petitioner requested to look into the matter to the Commissioner of GST and despite of all compliances and request, there was no response. Then, the Petitioner lodged a grievance in regard to the IGST refund with the Central Public Grievance Redress And Monitoring System ("CPGRAMS") and the same was acknowledged.
- The said grievance has been disposed on the ground that the Petitioner had availed a higher duty drawback on its exports under the said Export Invoice and corresponding Shipping Bill.
- On such backdrop, the Petitioner is before the Court praying that the decision to close the case of the Petitioner on IGST refund be quashed and set aside and also the Respondents to grant IGST refund to the Petitioner.

Held:

- In the present matter, it is not disputed that the present matter is for the refund of integrated tax paid on goods or services exported out of India had become applicable.
- Further, there is no factual foundation for the department to say that the Petitioner had availed a higher duty drawback on its exports under the said Export Invoice and corresponding Shipping Bill and, in fact, such a conclusion is contrary to the record, subject matter of consideration by the authorities.
- In the present case, the Petitioner is entitled to a refund of the IGST paid on the exports in question, as it is certain that this is not a case where the Petitioner is availing any double benefit that is of the IGST refund and a higher duty drawback.

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- Hence, the Respondents are directed to refund to the Petitioner the IGST paid by the Petitioner in respect of the goods exported, i.e. zero rated supply, under shipping bills in question being an amount of Rs. 21,41,451/- with simple interest at 7% per annum with effect from 22nd February 2018 and the same shall be released in two weeks of the receipt of the authenticated copy of the present order by the concerned officer, authorised to release the amounts.

r) Provisional attachment of bank account ceases to be in operation after expiry of one year unless a fresh provisional attachment order is issued

(Bharat Parihar Vs State of Maharshtra Thr. PP Office and Ors, 2023-VIL-408-BOM)

Facts:

- In the instant case, the petitioner filed the writ petition before the Hon'ble High Court for challenging the provisional attachment of the bank account under Section 83(1) of the CGST Act (vide order dated 21st April 2022) by the respondent and the communication issued in the form of a letter to the bank (dated 19th April 2023) at a date which is few day's priors the expiry of one year i.e., 21st April 2023 on which the provisional attachment would have ceased to have effect.
- The respondent contended before the Hon'ble High Court that a fresh order was passed prior to the ceasing of the provisional attachment order dated 21st April 2022, which had been noted on the order sheet and copy of which was annexed to the reply of the Respondents.
- Further, respondent contended that since, the fresh attachment order was passed, the attaching of the Bank account shall be valid. Although, the Respondent did not dispute the fact that the letter dated 19th April 2023 is only a communication to the bank.
- Being aggrieved by the attachment order, the petitioner filed the writ petition before the Hon'ble High Court.

Held:

- It has been observed that the Respondent was not able to prove the issuance of the fresh attachment order before the expiry of one year from the date of

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original provisional attachment by which date the provisional attachment order would have ceased to operate by virtue of the provisions of Section 83(2) of the CGST Act.

- Merely noting in the order file of the concerned Officer cannot constitute an order without a formal order as the law may mandate being passed and most importantly such order being communicated to the affected person, whose bank account is attached.
- Respondents has not disputed that letter of 19th April 2023 is only a communication to the bank, to retain provisional attachment of the account. Also, the said communication letter cannot be regarded as a fresh order under Section 83(1) for provisionally attaching the petitioner's bank account.
- Hence, considering the provisional attachment of petitioner's bank account as illegal and invalid by virtue of the provisions of Section 83(2) of the CGST Act,
- Accordingly, the Hon'ble High Court quashed and set aside the extension of the provisional attachment of communication letter dated 19th April 2023 under the provision of Section 83(2) of the CGST Act.

s) Services received pertaining to sale and purchase of goods from one country to another country without brining said goods to India is not liable to service tax.

(M/s Sharda Cropchem Ltd Vs. Commissioner of CGST & CE, Mumbai West, 2023-VIL-679-CESTAT-MUM-ST)

Facts:

- The Appellant was engaged in marketing and sale of agrochemicals in overseas market as merchant trader i.e., the Appellant purchased goods from one country and sell the same to another country without brining said goods to India.
- Further, Appellant paid purchase commission, sales commission, insurance premium on insurance of goods, legal fees to legal consultants and advocates for attending appellant's matters in foreign country, professional charges, advertising expenses etc. in foreign countries.
- The Appellant suo moto paid service tax along with interest for delayed payment totally amounting to Rs.7,85,13,768/- for the above stated services

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received and consumed in foreign country for the period from 01.10.2007 to 31.12.2012.

- Subsequently, Appellant filed a claim for refund of the entire service tax along with interest paid by them on the ground that the services were rendered outside India and also were received outside India and, therefore, were not liable for service tax.
- Thereafter, refund sanction order was passed. However, the said order was reviewed by the jurisdictional commissioner and an appeal was filed against the said order.
- After due procedure of law, impugned order was passed holding the service tax was correctly paid by the Appellant and rejected refund claim.
- Being aggrieved, the Appellant has filed present appeal.

Held:

Technical Member:

- The Technical Member of the Hon'ble CESTAT, Delhi noted that even if a person has a fixed establishment in India, but the services are provided and consumed in foreign country, then they are not chargeable to service tax in terms of Section 64 of Finance Act, 1994. The provisions of said section will operate when the person is having a fixed place of business in India and services are provided from outside India and consumed in India.
- It was held that in the present case, the services were not consumed in India. Therefore, service tax was not liable to be paid by the Appellant. Accordingly, the Appellant was eligible for the refund.

Judicial Member:

- In addition to the above, the Judicial Member of the Hon'ble CESTAT, Delhi held as under:
- Section 66A under Clause 2 read with Explanation No. 1 reads as *"A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country"*.

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- The said provision also clearly goes in favour of the Appellant since the Appellant not only had branch office in China but also it was operating through agencies to carry out the business of trading in two or more different foreign countries.
- Further, without satisfaction of the conditions of Section 66A, Rule 3 of the Taxation and Services (Provided from outside India and Received in India), Rules 2006 could never be made applicable to the appellant.
- The Appellant had received services from overseas service providers in foreign countries through its branches and agencies in respect of its traded goods for which it cannot be fastened with the liability of service tax as a 'deemed service provider' in India only for the reason that invoices are raised in its Indian address and payments are made from India. Moreover, services were sought, received and consumed outside India and tendered to the Appellant's agency or branch office located abroad.
- Allowed the appeal and set aside the impugned order.

t) Individual services in a composite contract cannot be artificially vivisected to demand service tax

(M/s Maa Kalika Transport Pvt. Ltd. Vs. Commissioner of CGST & CE, Rourkela, 2023-VIL-637-CESTAT-KOL-ST)

Facts:

- The appellant had entered into various agreements with their customers for transportation of coal wherein scope of work includes multiple services in form of loading, unloading, handling, providing trucks, obtaining delivery orders, obtaining mining permissions etc.
- The Department was of the view that the appellant was providing 'cargo handling services' and accordingly issued SCN proposing demand of service tax along with applicable interest and penalty by invoking extended period.
- The appellant claimed that they provided 'transportation of coal services' where services receivers are liable to pay tax under RCM. Accordingly, they have not collected tax from their customers.
- After due procedure of law, the demand was confirmed vide impugned order on the basis of the data received from income tax department.

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- The appellant being aggrieved has preferred the present appeal.

Held:

- Hon'ble CESTAT, Kolkata observed that the subject agreement is a composite contract primarily for the purpose of transportation of coal and the activity of loading, unloading, handling, providing trucks etc. are incidental and ancillary to the transportation service. Further, no separate consideration is being charged for said activities.
- Further, held that composite contract cannot be artificially vivisected to arrive at the value of service for each activity in light of the *Circular No. 104/07/2008-S.T. dated 06.08.2008* and *Circular No. 186/5/2015-ST dated 05.10.2015*.
- Accordingly, the contracts were essentially meant for transportation of goods and other activities were naturally bundled along with this this principal service. Thus, the liability of payment of service tax was not on the appellant but the service recipient as per Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994.
- Further, the appellant was not providing cargo handling services as the said services were clarified to be provided by cargo handling agencies like Container Corporation of India, Airport Authority of India, Inland Container Depot Container Freight Stations.
- Further, held that demand cannot be raised merely on the basis of the data received from the Income Tax Department, without any corroborating evidence to substantiate that the value received were in connection with taxable service rendered by the appellant.
- Further, held that extended period could not have been invoked as there was no suppression of facts on part of the appellant and that the department was itself unclear about the classification of the subject services.

u) Substantial benefit of availment of Cenvat credit cannot be denied on the grounds of procedural lapse. Further, no service tax leviable where consultation services are provided in respect of immovable property located in non-taxable territory

(Shri Ajay Mishra Vs. Commissioner of Service Tax, Delhi-III, 2023-VIL-634-CESTAT-DEL-ST)

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Facts:

- The appellants are engaged in providing the taxable services of "Consulting Engineer Service" (CES) to their major clients for providing consultation for road, bridges, tunnels etc. to their clients having office in taxable territory.
- Search was conducted at the corporate office of the appellant and based on the documents/ information recovered/ received during the search proceedings, the Department formed an opinion that the Consulting Engineers Services as provided for a road in Jammu & Kashmir are not exempted from the levy of service tax as the said services are being provided in taxable territory and have no relation with immovable property.
- Further, found the difference in the value shown for the services rendered by the appellants in balance sheets vis-à-vis ST-3 returns during the period from financial year 2010-2011 to 2013-2014.
- Further, observed that the cenvat credit was availed on the strength of such invoices, which were not issued to the registered premises of the appellants.
- Accordingly, SCNs were issued invoking extended period and proposing demand of service tax and cenvat credit along with applicable interest and penalty.
- After due process of law, the demands were confirmed by the impugned order.
- Being aggrieved, the appellant has preferred the present appeal.

Held:

Leviability of service tax on consulting engineering services:

- The agreement entered into by the appellant with NHAI evidenced that the role and functions of the independent engineer quoted therein include all the role of consulting engineers as defined under Section 65(31) read with Section 65(105)(g) of the Finance Act, 1994 and accordingly the appellant is providing consulting engineer for construction of road in the territory of Jammu and Kashmir.
- Further, appellant had to visit the said site in non-taxable territory for providing the said services irrespective of the fact that some consultation could be possible while being in his office situated in taxable territory.

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- Further, even though both the parties i.e., the appellant and their client have their Head Offices in taxable territory, but the provision of service is outside taxable territory i.e., in the State of Jammu and Kashmir as the services are being provided are in relation to immovable property located in the State of Jammu and Kashmir.
- Further, Circular bearing *Notice No. 14/2004 dated 28.04.2004* also clarified that the service tax is not applicable to the services provided in the State of J&K irrespective of the service provider being from the said State or otherwise.
- Moreover, as per S. No. 13A of the *Mega Notification No. 25/2012 dated 20.06.2012*, services provided by way of construction, erection, commissioning, installation etc. of a road bridge, tunnel or terminals for road transportation for use by general public is exempt from service tax.
- Accordingly, Hon'ble CESTAT, Delhi held that appellant is not liable to pay service tax on supply of subject services.

Eligibility of cenvat credit:

- Hon'ble CESTAT, Delhi observed that only the address mentioned in the invoice is different from the registered address, but the appellant were found existing on the address mentioned in the invoice with explanation of the circumstances about shifting to the different address. Hence the objection about address is nothing but simply a procedural lapse. Substantial benefit of availment of cenvat credit cannot be denied on the grounds of procedural lapse. Accordingly, cenvat credit has been properly availed by the appellant based on the invoices.

Invocation of extended period:

- Hon'ble CESTAT, Delhi held that once it is admitted fact that the appellant was regularly filing returns, the department cannot allege suppression. Further, the appellant was not liable to pay tax on consulting engineering services and rightly availed cenvat credit. Thus, extended period cannot be invoked for issuing subject SCN.

2. AAR/AAAR

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v) Supply of food at nominal cost either directly or indirectly through third party vendor to the employees shall be taxable under GST law

(Kothari Sugars And Chemicals Limited, 2023-VIL-30-AAAR)

Facts:

- The Appellant is engaged in the manufacture of sugar, molasses, denatured ethyl alcohol, and ethyl alcohol. Further, they have two manufacturing units located at Kattur and Sathamangalam, wherein around 300 workers have been employed and as per Factories Act, 1948, the Appellant needs to set up canteen facility for the benefit of its employees and workers.
- The Appellant had filed an application before the Hon'ble Authority for Advance Ruling, seeking clarification on the following question:

  'Whether recovery of nominal amount from the employees for making payment to the third-party service provider, providing food in canteen as mandated in the Factories Act, 1948, would attract tax under GST?
- The Authority for Advance Ruling vide its Order No. 20/AAR/2022 dated 31.05.2022 - 2022-VIL-173-AAR ruled as follows:

  The canteen services provided by the Applicant at a nominal cost either directly or through third party. Such supply of food is the supply of services and doesn't form a part of employment contract. Further, the nominal cost recovered from salary as deferred payment is consideration for the supply of GST is liable to be paid.
- Aggrieved of the decision of AAR, the Appellant filed the present appeal before the Appellate Authority for Advance Ruling.

Held:

- In the present matter, the subject issue pertains to the transaction between the Appellant/ employer and employees, i.e., with respect to the food/beverages being supplied by Appellant/ employer to employees for a consideration, although at subsidized rates, but not with regard to the transaction between the caterer (third party vendor/service supplier) and the Appellant/employer. This aspect is also evidenced by the fact that the employer

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pays the total consideration for the supply of food/beverages to the caterer/service supplier; and the Appellant/employer in turn supplies the above said food/beverages to their employees.

- There are two different transactions n the gamut of supply of food/beverages to the employees of the Appellant. They are:
  - Supply of food/beverage by the caterer/service supplier to employer; and
  - Supply of food/beverages by the Appellant/employer to their employees.
- In the present case, the Appellant does not enter into an agreement with employees for providing common service both to the appellants and employees by a third party caterer, but here the third party caterer provides service to the Appellant who in turn provides such service within the factory premises to the employees at the reduced subsidized price.
- Further, the Appellant had established the canteen in their premises and has been bearing a part of the cost for providing the food/beverages to their employees and a part of the cost is being collected from employees, as fixed by the Managing Committee of the Appellant.
- The supply of the food/beverages, although at subsidized rates, by the Appellant/employer to their employees is certainly an activity amounting to supply of service and attracts levy of GST on that part of the consideration being charged for such supply. Hence, the decision by the AAR is upheld.

w) Benefit of exemption can be availed only after proving that the grant has been received from the Central Government

(M/s Cochin Port Trust, 2023-VIL-153-AAR)

Facts:

- The Applicant is engaged in providing "Port Services". The Indian Coast Guard, (hereinafter referred to as ICG) and the Board of Trustees of Port of Cochin (referred to as CoPT in the MoU) has entered into an MoU for construction of Jetty for ICG by CoPT at a cost approved by the competent authority for the purpose, on Deposit Work terms as per MoU dated 03.04.2017.
- The Applicant had filed an application before the Hon'ble Authority for Advance Ruling, seeking clarification on the following questions:

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- Whether having regard to the background and details including the scope of work of the Deposit work contained in the MoU entered into between CoPT and Indian Navy, what is the nature of the services rendered by CoPT under the MoU? Whether it would be treated as a "Works Contract" as per Section 2(119) of the CGST Act or as a Composite Supply for services as per Section 2(30) of the CGST Act or a mixed supply as defined in Section 2(74) of the CGST Act?
- Whether, CoPT being a Govt entity, as defined in the CGST (Rate) Notification No. 32/2017 dated 13.10.2017, avail the benefit of exemption Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017, as amended and not levy tax on the invoice on Indian Coast Guard?
- If, for any reason, the benefit of exemption notification 12/2017 dated 28.06.2017 cannot be availed, whether, having regard to the background and details including the scope of work of the Deposit work contained in the MoU entered into between CoPT and ICG, whether CoPT is eligible to take the benefits of reduced rate of 12% GST as per Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017, in respect of the services provided by it to ICG under the MoU?
- Whether, having regard to the background and details including the scope of work of the Deposit work contained in the MoU entered into between CoPT and ICG, whether the contractors engaged by CoPT to execute works as envisaged in the MoU, would be eligible to take the benefits of reduced rate of 12% GST as per Notification No. 24/2017 Central Tax (Rate) dated 21.09.2017, in respect of the services provided by them to CoPT?
- If CoPT is eligible to take the benefit of the reduced rate of 12% GST as per Notification No. 24/2017 - Central Tax (Rate) dated 21.09.2017 or the benefit of exemption Notification No. 12/2017 dated 28.06.2017 read with CGST (Rate) Notification No. 32/2017 dated 13.10.2017 from the date of inception of the work, whether it is entitled to claim a refund of the excess remittance of GST (6% if 12 % is the rate applicable) or full amount of tax (if exemption notification is applicable) as the case may be, remitted from the date of applicability of the said notifications?

Held:

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- In the present matter, the first, second and the third question asked by the Applicant are admissible before the present Authority for Advance Ruling.
- The first question raised is regarding the classification of the nature of services provided by the Applicant i.e., the Applicant has to execute the contract for the Construction of Jetty for ICG at Fort Kochi on turnkey basis as "Deposit Work".
- As per Section 2 (119) of the CGST Act, 2017 and the terms & conditions of the MOU dated 03.04.2017, the activity undertaken by the Applicant for the Construction of Jetty for ICG squarely falls within the ambit of "Works Contract".
- The second question pertains to whether the Applicant is entitled to the exemption as per the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 32/2017- Central Tax (Rate) dated 13.10. 2017.
- As per the Notification No. 32/2017- Central Tax (Rate) dated 13.10. 2017 inserted a new entry as Sl. No. 9C in Notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017, the following condition shall be satisfied for the exemption under the above entry:
  - The supply should be a supply of service;
  - The supplier should be a government Entity;
  - The recipient must be Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority; and
  - The consideration must be received in the form of grants from Central Government, State Government Union territory or local authority.
- The first three conditions mentioned above are fulfilled by the Applicant but the fourth condition is not satisfied as there is nothing in the MOU dated 03.04.2017 or in any other document submitted with the application to show that the consideration for the services is received by the applicant in the form of grants from the Central Government.
- The third question raised by the applicant is whether they are eligible to take the benefit of the reduced rate of 12% GST as per Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017, in respect of the services provided by it to ICG under the MoU.

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- In this context, as per the Sl. No. 3 of the Notification No. 11/2017 - Central Tax (Rate) dated 28.05.2017 as substituted by Notification Nos. 24/2017 Central Tax (Rate) dated 21.09.2017 which was further amended by Notification Nos. 31/2017 Central Tax (Rate) dated 13.10.2017; 46/2017 Central Tax (Rate) dated 14.11.2017; 17/2018 Central Tax (Rate) dated 26.07.2018 and 03/2019 Central Tax (Rate) dated 29.03.2019, the services provided by the Applicant as per the MoU dated 03.04.2017 are eligible for the concessional rate of GST of 12% [6% - CGST + 6% - SGST].

S. No.	Questions	Ruling
1.	Whether having regard to the background and details including the scope of work of the Deposit work contained in the MoU entered into between CoPT and Indian Navy, what is the nature of the services rendered by CoPT under the MoU? Whether it would be treated as a "Works Contract" as per Section 2(119) of the CGST Act or as a Composite Supply for services as per Section 2(30) of the CGST Act or a mixed supply as defined in Section 2(74) of the CGST Act?	The activity undertaken by the Applicant for the Construction of a Jetty for ICG as per MoU dated 03 04.2017 squarely fails within the ambit of "Works Contract" as defined in Section 2(119) of the CGST Act, 2017.
2.	Whether, CoPT being a Govt entity, as defined in the CGST (Rate) Notification No. 32/2017 dated 13.10.2017, avail the benefit of exemption Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017, as amended and not levy tax on the invoice on Indian Coast Guard?	No. The service provided by the Applicant to the ICG as per MoU dated 03.04.2017 is not eligible for exemption under the entry at Sl. No. 9C of Notification No. 12/2017 CT (Rate) dated 28.06.2017 as inserted by Notification No. 32/2017

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		CT (Rate) dated 13.10.2017.
3.	If, for any reason, the benefit of exemption notification 12/2017 dated 28.06.2017 cannot be availed, whether, having regard to the background and details including the scope of work of the Deposit work contained in the MoU entered into between CoPT and ICG, whether CoPT is eligible to take the benefits of reduced rate of 12% GST as per Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017, in respect of the services provided by it to ICG under the MoU?	The Applicant is eligible for the concessional rate of GST of 12% [6% - CGST + 6% - SGST] as per the entry at Item (vi) of Sl. No.3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended in respect of the services supplied as per the MoU dated 03.04.2017 for which the time of supply as determined in terms of Sections 13 and 14 of the CGST Act, 2017 falls between 21.09.2017 and 17.07.2022.
4.	Whether, having regard to the background and details including the scope of work of the Deposit work contained in the MoU entered into between CoPT and ICG, whether the contractors engaged by CoPT to execute works as envisaged in the MoU, would be eligible to take the benefits of reduced rate of 12% GST as per Notification No. 24/2017 Central Tax (Rate) dated 21.09.2017, in respect of the services provided by them to CoPT?	No ruling can be given since the question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the Applicant.

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5.	If CoPT is eligible to take the benefit of the reduced rate of 12% GST as per Notification No. 24/2017 - Central Tax (Rate) dated 21.09.2017 or the benefit of exemption Notification No. 12/2017 dated 28.06.2017 read with CGST (Rate) Notification No. 32/2017 dated 13.10.2017 from the date of inception of the work, whether it is entitled to claim a refund of the excess remittance of GST (6% if 12 % is the rate applicable) or full amount of tax (if exemption notification is applicable) as the case may be, remitted from the date of applicability of the said notifications?	No ruling can be given since the question is not covered by any of the matters enumerated in sub-section (2) of Section 97 of the CGST Act, 2017.

x) Interest free refundable deposit constitutes to be a supply but exempted under the Exemption Notification

(M/s Choice Foundation, 2023-VIL-152-AAR)

Facts:

- The Applicant possess the expertise and experience in operating premier educational institutions in the State of Kerala and M/s Choice Estates and Constructions Pvt. Ltd. (CECPL) is engaged in the business of construction, development and maintenance of infrastructure and the Applicant proposes to enter into a joint venture agreement with the CECPL for the joint operation of an educational institution on the property.
- As per the proposed terms of the joint venture, each of the parties, i.e., the applicant and CECPL shall be individually responsible for areas within their expertise and shall be jointly responsible for the operation of the educational institution.
- The Applicant has filed the application before the Authority for Advance Ruling for the following:
  - Who would be the recipient of service in the proposed joint venture?

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- Choice Estates and Constructions Private Limited, who would be the recipient of service in the proposed joint venture?
- Whether the amount which would be paid by the students to the educational institution proposed to be jointly operated by the applicant and Choice Estates and Constructions Pvt Ltd by way of the proposed joint venture would be liable to GST?
- Whether the applicant's share in revenue from the educational institution would be liable to GST?
- Whether Choice Estates and Constructions Pvt Ltd.'s share in revenue from the educational institution would be liable to GST?
- Whether the interest free refundable deposit proposed to be made by the applicant with Choice Estates and Constructions Private Ltd (CECPL) would be liable to GST?

Held:

- In regard to the question 1 and 2, in the proposed transaction does not fall under the purview of any of the clauses of section 97 (2) of the CGST/KSGST Act, 2017 and in case of the second question, the Applicant is neither a supplier nor a recipient.
- In regard to the question 3 and 5, these are not at all in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the Applicant. Hence, as per the definition of the Advance Ruling, the said questions are not qualified to be included in the Application for Advance Ruling.
- The service in question would be a service rendered by an educational institution to the students enrolled with it and as per Entry 66 of Notification No.12/2017-CT (R) dated 28.06.2017, the rate of tax would be NIL, the same being exempt from GST.
- In regard to question 4 that "whether the applicant's share in revenue from the educational institution would be liable to GST?" i.e. "whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."

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- In this regard, the person supplying the goods or services or both is the supplier and supply is a broader term which inter alia includes the transaction by a constituent to the person formed by such constituents.
- In the present matter, the education institution is the person formed as an outcome of the joint venture and supplies educational services to the students and the revenue is of the educational institution.
- Further, as per the Applicant the revenue is being shared by the Applicant and the CECPL, who is being the providers of the input services to the educational institution which being a separate person and hence, the part of the total revenue received by the educational institution, which is paid to the applicant is the consideration received by the applicant for the service they provide to the educational institution. It constitutes supply under the Heading 9983 - Other professional, technical and business service - of scheme of classification of services and is taxable @ 18% (CGST-9% & SGST-9%) as per Sl. No. 21 (ii) of the Notification No. 11/2017-Central Tax (Rate) dated 28/06/2017 and S.R.O 370/2017 dated 30/06/2017 of Government of Kerala.
- In regard to the sixth question, the CECPL has made the entire initial investment towards the property and infrastructure of the educational institution proposed to be operated by the Applicant and CECPL, the Applicant shall towards such investment pay to CECPL an interest free refundable deposit of a mutually agreed fixed amount which shall be held by CECPL during the term of the proposed agreement. The said deposit shall be repayable by CECPL to the applicant upon expiry or termination of the proposed agreement, whichever is earlier.
- Such a interest free refundable deposit constitutes to be a supply but exempted under the Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 and S. R. O. No. 371/2017 dated 30/06/2017.

S. No.	Question	Ruling

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1.	Vis-a-viz the Applicant, who would be the recipient of service in the proposed joint venture?	No ruling can be given since the question on which advance ruling is sought does not fall under the purview of any of the clauses of section 97 (2) of the CGST/KSGST Act, 2017.
2.	Vis-a-viz Choice Estates and Constructions Private Limited, who would be the recipient of service in the proposed joint venture?	No ruling can be given since the question on which advance ruling is sought does not fall under the purview of any of the clauses of section 97 (2) of the CGST/KSGST Act, 2017 and also this question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
3.	Whether the amount which would be paid by the students to the educational institution proposed to be jointly operated by the applicant and Choice Estates and Constructions Pvt. Ltd. by way of the proposed joint venture would be liable to GST	No ruling can be given since the question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
4.	Whether the Applicant's share in revenue from the educational institution would be liable to GST?	Yes, the service supplied by the Applicant to the educational institution i.e., the joint venture is liable to Goods and Services Tax as per Notification No. 11/2017-Central Tax (Rate) dated 28/06/2017 and

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		S.R.O 370/2017 dated 30/06/2017 of Government of Kerala.
5.	Whether Choice Estates and Constructions Pvt. Ltd.'s share in revenue from the educational institution would be liable to GST?	No ruling can be given since the question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
6.	Whether the interest free refundable deposit proposed to be made by the Applicant with Choice Estate and Constructions Private Ltd., (CECPL) would be liable to GST?	It constitutes a supply under the CGST/KSGST Act, 2017 but exempted from GST as per Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 and S. R. O. No. 371/2017 dated 30/06/2017.

y) Netting off of balances of one GSTIN by another GSTIN of the same company is not a supply by itself and only mere flow of money

(M/s Malabar Gold Private Limited, 2023-VIL-151-AAR)

Facts:

- The Applicant has multiple branches and is engaged in the retail and wholesale of jewellery. The Applicant transfers gold bars of specified quantifies to jewel makers for making ornaments and purchases ornaments from them, where the jewel maker would charge making charges apart from the transaction value of ornaments sold to the Applicant and against the said purchases, the Applicant would net off by the way of book adjustment the value of the gold bars given to them and would ultimately charge only the value of making charges.
- Sometimes, the sale of gold bar would be made by one GSTIN of the Company whereas the purchase of the ornaments would be made by another GSTIN and later on the respective GSTIN would be making book adjustments to square off the receivables/payables.
- The Applicant presented following question to seek advance ruling:

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i. Whether net off of receivables of one GSTIN by another GSTIN of the same company, or net-off of receivables with payables of supplier of goods/ service would amount to payment to the vendor meet the compliance requirements of Section 16(4) of CGST Act, 2017.
ii. Whether such adjustments would trigger any nature of supply between the two GSTINs.

Held:

- In the present case, the Applicant purchases diamonds from MBMG Pvt. Ltd, bullion from banks and other vendors, jewellery from jewel makers, certain other goods like stationery, packing materials etc and avails many services such as advertisement services etc for its various branches. The vendors or service providers issue the invoices to concerned branches / GSTINS and payment for those invoices is made by the Head Office.
- In the instant case, the goods are delivered and services are provided to various branches of the Applicant and the supplier /vendor raises invoices in the GSTIN of the respective recipient GSTIN. The respective various branches of the MGPL are recipients of goods or/and services, not the person who actually makes the payment, as the definition of the term recipient states that a recipient is a person who is liable to pay consideration, but such consideration could be settled by another person.
- Further, on reading the Explanation 2 to sub-section (2) and clause (b) of sub-section (3) of Section 12 and Explanation (ii) to sub-section (2) and clause (a) of sub-section (3) of Section 13 it is evident that the entry in the books of accounts of the supplier / recipient is recognised as a mode of payment under GST law.
- It is evident that the settlement of the mutual debts through book adjustment by netting off of receivables of one GSTIN by another GSTIN of the same company, or net off of receivables with payables of supplier of goods/service is a valid mode of payment of consideration for the receipt of goods and/or services and it satisfies the requirement of the second proviso to sub-section (2) of Section 16 of the CGST Act, 2017.

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- The second question to be answered is whether book adjustments of the amount payable by one GSTIN by another GSTIN would amount to supply between the two GSTIN's. in case where there is only arrangement of settlement of dues / payment of consideration for the goods and / or services received by one GSTIN by another GSTIN or payment of consideration by the Head Office in respect of goods and/or services received by different branches having different GSTIN's the transaction involved is mere transaction in money and there is no separate supply of goods or services other than the supplies already received by the respective GSTIN's and such transactions do not come under the meaning and scope of the supply and no liability for payment of GST arises on account of such transactions

S. No.	Question	Ruling
1.	Whether net off of receivables of one GSTIN by another GSTIN of the same company or net-off of receivables with payables of supplier of goods/service would amount to payment to the vendor meeting the compliance requirements of Section 16(4) of CGST Act, 2017.	Yes. The Applicant can pay the consideration for inward supplies by way of net off of receivables of one GSTIN by another GSTIN of the same company, or net-off of receivables with payables of supplier of goods/service. The input tax credit is admissible when consideration is paid through book adjustment as detailed above, subject to the other conditions and restrictions prescribed in Sections 16, 17 and 18 of the CGST Act, 2017 and the rules made there under.
2.	Whether such adjustments would trigger any nature of supply between the two GSTINs.	The arrangement of settlement of dues / payment of consideration for the goods and / or services received by one GSTIN by another GSTIN or payment of consideration by the Head Office in respect of goods and / or services received by different branches

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		having different GSTINS as detailed do not come within the meaning and scope of supply as defined in Section 7 of the CGST Act, 2017. However, the transactions of the nature as detailed would constitute separate supplies as defined in Section 7 of the CGST Act, 2017 and each such supply would be liable to GST as applicable.

z) Providing PG/Hostel services are akin to guest house and lodging services and not residential dwelling and therefore not exempted under GST

(M/s Srisai Luxurious Stay LLP, 2023-VIL-149-AAR)

Facts:

- The Appellant is engaged into the business of developing, running, subletting and managing paying guest accommodation, service apartments, flats aimed to suit all types of customers.
- Further, the Applicant has specially focused on provision of Boarding and Lodging facilities to the inhabitants and ancillary services to the inhabitants such as Meals which includes Breakfast, Lunch and Dinner, fully furnished rooms, etc.
- The Applicant contends that removal of entry number 14 of notification no. 12/2017-Central Tax (Rate) came into existence with effect from 18.07.2022 and post the said notification, the tax rate @12% has been levied on renting of accommodation for hotel/inn/guesthouse etc.
- Further, the Applicant relied on the case of ***Taghar Vasudev Ambarish Vs The Appellate Authority for Advance Ruling, Karnataka in W.P. No. 14891 of 2020 (T-Res) - 2022-VIL-110-KAR***, wherein it was held that private hostels are covered under the category of residential dwellings and as such covered under exemption vide entry number 12 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

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- The Applicant had filed an application before the Hon'ble Authority for Advance Ruling, seeking clarification on the following questions:
  a. Whether PG/Hostel Rent paid by inhabitants qualify for GST exemption, since they are used as residential dwelling? Exemption entry No. 12 of Notification No.12/2017 dated 28th June 2017.
  b. Whether the charges collected towards allied additional services provided by the LLP would be considered as a bundled service along with the service of providing of Hostel/Paying guest?
  c. Whether GST on reverse charge will be applicable on the rental to be paid to the landowners?

Held:

- In the present matter, the Applicant admits that it has been providing Boarding and Lodging facilities to the inhabitants of the hostel, claims that the immovable property being used for providing accommodation is a residential dwelling and is used as residence by the inhabitants and thereby the rent received on such accommodation qualifies for GST exemption in terms of entry number 12 of Notification 12/2017-Central Tax (Rate) dated 28.06.2017.
- Further, the residential dwelling is neither defined in the Notification nor in the CGST Act/Rules. But as per the Education guide on Taxation of services, issued by the CBIC under erstwhile Service Tax Law, at para 4.13.1 interpret the term 'residential dwelling' in terms of the normal trade parlance as per which it is a residential accommodation, but does not include hotel, motel, inn, guest house, camp- site, lodge, house boat, or like places meant for temporary stay.
- In the present case, the Applicant in its own admission claims to be providing PG/hostel' services which inter alia refer to 'paying guest accommodation/hostel' services and are akin to guest house and lodging services and therefore can't be termed as 'residential dwelling'.
- Further, as per the admission of the Applicant that the inhabitants are charged as per the number of people sharing the room and also the cooking of food by the inhabitants is also not allowed, such characteristics are not of a residential dwelling.

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S. No.	Questions	Ruling
6.	Whether PG/Hostel Rent paid by inhabitants qualify for GST exemption, since they are used as residential dwelling? Exemption entry No. 12 of Notification No.12/2017 dated 28th June 2017.	PG/Hostel Rent paid by inhabitants do not qualify for GST exemption under Sl. No. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as the services provided by Applicant are not akin to renting of residential dwelling for use as residence.
7.	Whether the charges collected towards allied additional services provided by the LLP would be considered as a bundled service along with the service of providing of Hostel/Paying guest?	The allied additional services provided by the LLP are not naturally bundled services with the applicant's Hostel/Paying guest accommodation service.
8.	Whether GST on reverse charge will be applicable on the rental to be paid to the landowners?	GST on reverse charge will be applicable on the rental to be paid to the landowners by the Applicant as the services of the Applicant are leviable to GST and thus the Applicant has to obtain GST registration.

aa) Activity of charging of EV's through Public Charging Stations is not supply of goods but supply of service taxable @18%

(M/s Chamundeswari Elecricity Supply Corporation Limited, 2023-VIL-147-AAR)

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- The Applicant is engaged in the sale of energy and transmission and distribution of electricity. Further, the Applicant intends to set up various public charging station (PCS) on its own for charging electric vehicles (EVs).
- The Applicant would be providing the electric energy to the PCS and all electric vehicles can access these PCS and the Applicant would like to issue tax invoices and collects "Electric Vehicle Charging Fee".
- Further, it includes two components being (a) 'Energy Charges', and (b) 'Service Charges'. 'Energy Charge' refers to the number of units of energy consumed and the 'Service Charge' refers to the services provided by the charging station, i.e. the cost of setting up the service station and running the same.
- The Ministry of Power in its guidelines dated 13.04.20218 clarified that charging of an EV battery by a charging station involves 'a service' requiring the consumption of electricity by the charging station and the activity does not involve any sale of electricity but the charging of an EV battery by a charging station involves 'a service' requiring the consumption of electricity by the charging station and hence as per the Ministry of Power, the activity does not involve any sale of electricity, but a service.
- The Applicant has filed the application before the Authority for Advance Ruling for the following:
  - Whether charging of electric battery – which involves two components – is an activity of 'supply of electrical energy' (as supply of goods) and 'service charges' (as supply of service); or
  - Whether the 'supply of electrical energy' and 'service charges' – both components – to be treated as 'supply of service' as held by the Ministry of Power, vide its Clarification dated 13-04-2018; and
  - If the 'supply of electrical energy' and 'service charges' are treated as two different components, then whether the 'supply of electrical energy' is exempt as per serial number 104 of Notification No. 2/2017-Central Tax (Rate), dated 28-06-2017 (HSN 2716 00 00) and 'service charges' is taxable as per Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017;

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- If both the components are treated as 'supply of service', then the Service Accounting Code and the rate of tax applicable under the GST and the relevant notification, may please be clarified;
- Whether the GST collected, which is treated as output tax, can be set- off against the input paid by the Corporation on its inputs and input services, as provided under Rule 42 and 43 of the GST Rules.

Held:

- The present case, the main question is whether electric vehicle charging amounts to supply of electricity or not. The electricity is a moveable property and classified as goods and not supplied directly to the consumer rather it is converted into chemical energy. The Applicant also measures the 'Energy Charges' in the number of units of energy consumed for undertaking the said activity of charging of battery and not the amount of electricity transmitted to the con'umer for his further application or usage. Thus, the activity of charging of electric vehicle does not amount to supply of electricity or supply of any moveable property, but it is a supply of service.
- Further, the Applicant's activity of charging of battery does not involve sale of electricity to any person as the owner of the EV is allowed to use the infrastructure/facilities that are provided by the charging station and therefore, the said activity amounts to supply of service, for which the applicant admittedly collects Electric Vehicle Charging Fee as consideration. Thus, the impugned activity amounts to supply of service in terms of Section 7(1)(a) read with Section 2(102) of the CGST Act 2017.
- The activity of charging battery of electrical vehicle is considered as supply of service, the applicability of Notifications 2/2017- Central Tax (Rate) and 12/2017-Central Tax (Rate) both dated 28.06.2017 does not arise.
- The Electrical Vehicle contains a motor to rotate the wheels that functions out of the energy sourced through the battery and thus the said vehicle qualifies to be a motor car. Thus, charging the batteries of such electric vehicles amounts to charging of the batteries of motor cars and thus the impugned activity squarely gets covered under SAC 998714 @ GST rate of 18% vide entry number 25(ii) for the impugned activity/service.

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S. No.	Question	Ruling
7.	Whether charging of electric battery - which involves two components - is an activity of 'supply of electrical energy' (as supply of goods) and 'service charges' (as supply of service); or	The charging of electric battery is an activity amounting to supply service, i.e., 'Battery Charging Service' for motors.
8.	Whether the 'supply of electrical energy' and 'service charges' - both components - to be treated as 'supply of service' as held by the Ministry of Power, vide its Clarification dated 13-04-2018.	The 'supply of electrical energy' and 'service charges' together are to be treated as 'supply of service'.
9.	If the 'supply of electrical energy' and 'service charges' are treated as two different components, then whether the 'supply of electrical energy' is exempt as per serial number 104 of Notification No. 2/2017-Central Tax (Rate), dated 28-06-2017 (HSN 2716 00 00) and 'service charges' is taxable as per Notification No. 11/2017-Central Tax (Rate), dated 28-06- 2017	The 'supply of electrical energy' and 'service charges' are not treated as two different components and thus the entry number 104 of Notification No.2/2017- Central Tax (Rate), dated 28-06-2017 and Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017 are not applicable to the instant case.
10.	If both the components are treated as 'supply of service', then the Service Accounting Code and the rate of tax applicable under the GST	The activity of the Applicant i.e. charging battery of Electrical Vehicle is treated as 'supply of service' that gets covered under

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	and the relevant notification, may please be clarified	SAC 998714 and attracts GST @18% in terms of entry No.25(ii) of the Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017, as amended.
11.	Whether the GST collected, which is treated as output tax, can be set-off against the input paid by the Corporation on its inputs and input services, as provided under Rule 42 and 43 of the GST Rules	The GST collected, which is treated as output tax, can be set-off against the input tax credit received by the applicant on its inputs and input services, in terms of Sections 16 & 17 of the CGST Act 2017 read with Rules 42 and 43 of the CGST Rules 2017.

bb) Services provided by an Approved Training Partner of NSDC under "Market led Fee-based Services Scheme" is exempt under GST

(M/s Interviewbit Software Services Private Limited, 2023-VIL-145-AAR)

Facts:

- The Applicant is operating the 'Scaler", an outcome based online transformative upskilling platform which aims to enhance the skills of working tech professionals.
- The Applicant intends to provide a course in participation with National Skill Development Corporation (hereinafter referred to as 'NSDC'), which is a Non-profit Company.
- The NSDC came up with a new scheme by name 'market led fee-based services' (hereinafter referred to as 'scheme') and the Applicant has entered into an agreement with NSDC to execute the above scheme and hence they are now an 'Approved Training Partner' of NSDC.
- The Applicant intends that the services rendered are exempted vide Entry 69 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017.

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- The Applicant presented following question to seek advance ruling:
  - iii. What is the applicable GST on the services provided by the applicant under the "Market led Fee-based Services Scheme"?
  - iv. Whether the applicant is eligible for exemption under entry 69 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

Held:

- In the present case, to avail the exemption under entry 69 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017, two conditions have to be fulfilled:
  - They have to be a training partner approved by the National Skill Development Corporation.
  - Services provided should be in relation to any other Scheme implemented by the National Skill Development Corporation.
- The Applicant is an approved training partner of National Skill Development Corporation and has submitted a copy of the certificate from NSDC certifying the same. Thus, the Applicant has satisfied the first condition.
- Further, the Applicant have entered into an agreement with NSDC for executing the "Market led Fee-based Services" scheme which is introduced and implemented by the NSDC. Thus, the applicant has satisfied the second condition also.

S. No.	Question	Ruling
3.	What is the applicable GST on the services provided by the applicant under the "Market led Fee-based Services Scheme"?	The applicable GST on the services provided by the Applicant under the "Market led Fee-based Services Scheme" is Nil.
4.	Whether the applicant is eligible for exemption under entry 69 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?	The Applicant is eligible for exemption under entry 69 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017.

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cc) Provision of Hostel accommodation students for residential purposes with fee less than Rs. 1,000/- per day during the period from 01.08.2021 to 12.07.2022 is exempted from GST liability

(M/s V S Institute & Hostel Private Limited, 2023-VIL-142-AAR)

Facts:

- The Applicant is engaged in providing hostel services to the students of educational institutions for a fixed term on annual basis.
- The Applicant has been renting the hostel rooms for residential or lodging purposes to the students of nearby educational institutions, undertaken from 01.08.2021. The Applicant provides residential facilities including food, electricity, Wi-Fi, water etc. as inclusive services. The same is covered under the definition of the 'Residential Dwelling'.
- Further, the rent received by the Applicant is below Rs. 1000/- per day per person and such a transaction is covered by Entry 12 and 14 of Notification No.12/2017-CT (Rate), dated 28.06.2017.
- The said exemption Notification exempts the transaction of renting of hostel rooms for residential purposes to the students who are charged less than Rs. 1000/- per day per person throughout the period.
- Further, as per the **Circular No.32/06/2018-GST dated 12.02.2018** clarified and reasserted the exemption of the renting of hostel for residential purposes for less than Rs. 1,000/- per day.
- The Applicant presented following questions to seek advance ruling:
  - Whether hostel accommodation provided by the Applicant to the students for residential purposes charging less than Rs. 1,000/- per day during the period from 01.08.2021 to 12.07.2022 is exempted from GST liability under the S. No. 12 and / or 14 of the Exemption Notification No. 12/2017-CT(Rate) dated 28.06.2017?
  - Whether hostel accommodation provided by the Applicant to the students for residential purposes charging less than Rs. 1,000/- per day during the period from 13.07.2022 till today and also similar transaction to be undertaken in future is exempted from GST liability under the S. No. 12 of

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the Exemption Notification No. 12/2017-CT(Rate) dated 28.06.2017 as amended vide Notification No. 04/2022-CT (Rate) dated 13.07.2022?

Held:

- In the present case, the Applicant has started providing the hostel service directly to the students of educational institutions without charging GST liability and it can be inferred that the nature of the service has not changed from 01.08.2021 only the provider of the services has changed.
- Sl. No. 12 and 14 of Notification No. 12/2017-Central Tax (Rate) dt 28.06.2017, nowhere the word Hostel has been mentioned. If the Government had intended to exclude Hostel services, then it would have been mentioned in the above list as the word Hostel is neither a new word or uncommon word. Also, the Room or unit accommodation services provided by Hostels is clearly mentioned under HSN code 996322.
- The services provided by such hostel, for residential or lodging purposes would be covered by the scope of notification entry where the declared tariff of a unit of accommodation below one thousand rupees per day till 17.07.2022.
- The principal notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 was amended by Notification No. 04/2022 Central Tax (Rate) dated 13.07.2022 w.e.f. 18.07.2022 wherein the entry No. 14 was omitted and through Notification No. 03/2022 Central Tax (Rate) dated 13.07.2022 w.e.f. 18.07.2022 Principal Notification No. 11/2017 Central Tax (Rate) entry at serial no. 7, the word 'above One Thousand Rupees but' was omitted. Hence from 18.07.2022 onward services provided by applicant will be covered by the relevant entry of Notification No. 11/2017 Central Tax (Rate) as amended and will be taxable @ 12% if unit accommodation per day is less than Rs 1000/-.

S. No.	Question	Ruling
1.	Whether hostel accommodation provided by the Applicant to the students for residential purposes charging less than Rs. 1,000/- per day during the period	Yes, hostel accommodation provided by the Applicant to the students for residential purposes charging less than

	from 01.08.2021 to 12.07.2022 is exempted from GST liability under the Sl. No. 12 and / or 14 of the Exemption Notification No. 12/2017-CT(Rate) dated 28.06.2017?	Rs. 1,000/- per day during the period from 01.08.2021 to 12.07.2022 is exempted from GST liability under the Sl. No. 12 and / or 14 of the Exemption Notification No. 12/2017-CT(Rate) dated 28.06.2017?
2.	Whether hostel accommodation provided by the Applicant to the students for residential purposes charging less than Rs. 1,000/- per day during the period from 13.07.2022 till today and also similar transaction to be undertaken in future is exempted from GST liability under the Sl. No. 12 of the Exemption Notification No. 12/2017-CT(Rate) dated 28.06.2017 as amended vide Notification No. 04/2022-CT (Rate) dated 13.07.2022?	No

dd) Services provided by a University to its affiliated colleges and students is exempted from payment of GST as per exemption notification

(University Of Calicut, 2023-VIL-137-AAR)

Facts:

- The Applicant is a statutory university established under Calicut University Act 1975, The university was established as teaching and affiliating university within the State of Kerala with territorial jurisdiction in revenue districts of Wayanad, Kozhikode, Malappuram, Palakkad and Thrissur.

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- The Applicant has been providing services to its affiliated colleges and students and grants affiliation to colleges on collection of affiliation and other incidental fees from colleges.
- The Applicant has filed the application before the Authority for Advance Ruling for the following:
    - Whether the activities or services being provided by the University to its affiliated colleges and students would fall under the "Scope of Supply" and thereby exigible to GST?
    - If query no. 1 is in the affirmative, then whether the supply of services by University is exempted under Entries 4 and 5 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and SRO 371/2017 dated 30.07.2017; being the services rendered by a Government authority by way of any activity in relation to the functions entrusted to a Panchayat and Municipality.
- The Applicant contends that as per definition of supply one of the essential ingredients is that the supply should be undertaken in the course or furtherance of business and in present case, it is only providing only education services and not carrying out any business activities.

Held:

- The present case, the Applicant is providing services related to education but the services being provided by the Applicant falls under the term "business" defined under Section 2(17) of the CGST Act, 2017.
- Further, the definition of "business" under the GST Act is an inclusive definition and is so wide in its scope and amplitude that it not only covers all activities or transactions that were subjected to various taxes that were subsumed in GST but also functions undertaken by Central Government, State Government or Local Authority as such public authority.
- Hence, the services provided by the applicant to its affiliated colleges constitute a supply within the meaning and scope of "supply" as defined in Section 7 of the CGST Act, 2017.
- Further, to decide whether the supply is exempted under the entry at Sl. Nos. 4 and 5 of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017,

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the reference is made to The entry at Sl. Nos. 4 and 5 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 along with the entry Nos. 17, 18 and 19 of Eleventh Schedule of the Constitution that covers all types of education and education is also covered under entry No. 13 of the Twelfth Schedule of the Constitution.

- The education is a function entrusted to both Panchayath as well as Municipality under Article 243G and 243W respectively of the Constitution. University is a key institution of social change and development and the applicant being a Public University established under The Calicut University Act, 1975 an Act passed by the Legislature of the State of Kerala falls under the definition of "Governmental authority" in Para 2 (zf) of Notification No. 12/2017 CT (Rate) dated 28.06.2017. Therefore, the services provided by the applicant to its affiliated colleges are services by "Governmental authority" by way of activity in relation to function entrusted to a Panchayath and Municipality under Article 243G and 243W of the Constitution and accordingly exempted from payment of GST as per entries at Sl Nos. 4 and 5 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.

ee) Activity of allowing change of nature of the unnotified land subject to conditions and on payment of prescribed fees does not comes under the function entrusted to a Panchayat and is taxable under GST

(M/s Manappuram Finance Limited, 2023-VIL-136-AAR)

Facts:

- The Applicant is a Non-Banking Financial Company and its major business consists of income from gold loans, income from money transfer business, purchase and sale of foreign currency etc.
- The Applicant owns a land which is a wetland as per the records of the village authorities and want to change the description of the land from wetland to dry land in the village office records for the purpose of construction of office complex. For the said purpose, prescribed amount had to be remitted as a fee to the government as per provisions of Kerala Conservation of Paddy Land and wetland Act 2018.

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- Such payment is required under the provisions of the said Act with an objective of conservation or reclamation of paddy land and wetland in order to promote agriculture growth to ensure food security and to sustain the ecological system.
- The Applicant presented following question to seek advance ruling:

  Whether the reverse charge liability under Notification No. 13/2017 CT (Rate) dated 28.06.2017 is attracted on the payment made to the Government of Kerala under Section 27 A of The Kerala Conservation of Paddy Land and Wetland Act, 2018 for change of description of land from wetland to ordinary land in Government of Kerala village office records and permission for construction of office complex for the purpose of business.
- The contention of the Applicant is that the activity being undertaken by the State Government as a public authority in relation to a function entrusted to a Panchayat under Article 243 G of the Constitution is neither a supply of goods nor a supply of service in terms of Notification No. 14/2017 CT (Rate) dated 28.06.2017 and therefore there is no supply attracting GST liability and consequently reverse charge liability is also not attracted.

Held:

- As per the Notification No. 14/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 16/2018 - Central Tax (Rate) dated 26.07.2018, an activity shall be treated as neither a supply of goods nor a supply of service, if the following conditions are satisfied:
  - The activity shall be undertaken by the Central Government or State government or Union territory or local authority as public authority;
  - The activity shall be in relation to any function entrusted to a Panchayat under Article 243 G of the Constitution or in relation to any function entrusted to municipality under Article 243 W of the Constitution.
- Permitting the conversion of unnotified land which has been included as paddy land or wetland in the basic tax register maintained in Village offices for residential, commercial or other use subject to conditions and levy of fees cannot be considered as an activity in relation to any of the functions entrusted to Panchayat under Article 243 G of the Constitution as listed in Sl. Nos (1) Agriculture including agricultural extension; (2) Land improvement,

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implementation of land reforms, land consolidation and soil conservation; or (3) Minor irrigation, water management and watershed development of the 11th Schedule as contended by the Applicant.

- The activity of allowing change of nature of the unnotified land subject to conditions and on payment of prescribed fees in terms of the provisions of Section 27A of the Kerala Conservation of Paddy Land and Wetland Act 2008 as inserted by the Kerala Conservation of Paddy Land and Wetland (Amendment) Act, 2018 is an activity undertaken by the State Government as a public authority the same cannot be considered to be an activity in relation to any function entrusted to a Panchayat under Article 243 G of the Constitution.
- Therefore, the activity cannot be treated as 'neither a supply of goods nor a supply of service' in terms of Notification No. 14/2017 Central Tax (Rate) dated 28.06.2017 as amended. Hence, RCM is applicable on subject transaction.

ff) Input tax credit (ITC) for input and input services is not available to the assessee undertaking "consumer funded jobs"

(M/s Tata Power Delhi Distribution Limited, 2023-VIL-134-AAR)

Facts:

- The Applicant is engaged in providing various 'Consumer Funded Jobs' such as creating new connections for supply of electricity, load enhancement/ augmentation, electrification of un-electrified area, pole shifting, conversion of overhead lines into underground cables etc. at the specific request of its customers. However, the principal business of the Applicant is transmission and distribution of electricity.
- The Applicant presented following question to seek advance ruling:
  - Whether the input tax credit (ITC) for input and input services is available to the applicant in undertaking "consumer funded jobs"?
  - Whether input tax credit for the capital goods is available to the applicant in undertaking "consumer funded jobs" i.e. creating infrastructure for electricity distribution?

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- If it is held that the Applicant is eligible for ITC of tax paid on inputs and input services used in manner as stated in the application, then whether any amount of such ITC is required to be reversed under Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules?
- If it is held that the Applicant is eligible for ITC of tax paid on the capital goods used in manner as stated in the application, then whether any part of such ITC is required to be reversed under Section 17(2) of the CGST Act read with Rule 43 of the CGST Rules?

Held:

- In the present case, the moot issue is, whether input tax credit (ITC) for capital goods, input and input services is available to the Applicant undertaking "consumer funded jobs" i.e. creating infrastructure for electricity distribution and if so, whether any amount of such ITC is required to be reversed by the taxpayer under Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules.
- The government of India vide circular no. 34/8/2018-GST dated 01.03.2018 {Sr. No. 4(1), clarified that "Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST vide S. No. 25 of notification No. 12/2017-CT (R).
- The Applicant had challenged the same and is pending before the Hon'ble Delhi High Court.
- The Applicant also contends that the infrastructure such as transformers, network grid, etc are used for making outward supply of services the said infrastructure is deployed for provisioning of infrastructure support services and is ultimately used for distribution of electricity; that equipment such as Transformer, RMU etc., shall qualify as plant and machinery.

S. No.	Question	Ruling
3.	Whether the input tax credit (ITC) for input and input services is available to	No, as the inputs used for creating infrastructure for electricity transmission cannot

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	the applicant in undertaking "consumer funded jobs"?	be held to be used in the Business of taxable supplies i.e. the principal supply of "Electricity Transmission and Distribution"
4.	Whether input tax credit for the capital goods is available to the applicant in undertaking "consumer funded jobs" i.e. creating infrastructure for electricity distribution?	No, as the immovable property created by the Applicant does not fall under the category of "plant and machinery" therefore they are not eligible to claim Input Tax Credit.
5.	If it is held that the Applicant is eligible for ITC of tax paid on inputs and input services used in manner as stated in the application, then whether any amount of such ITC is required to be reversed under Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules?	Not relevant in view of (1)
6.	If it is held that the Applicant is eligible for ITC of tax paid on the capital goods used in manner as stated in the application, then whether any part of such ITC is required to be reversed under Section 17(2) of the CGST Act read with Rule 43 of the CGST Rules?	Not relevant in view of (2)

gg) Used/ secondhand gold jewelry or ornaments purchased from unregistered person shall be taxable under GST at the purchased value

(M/s Best Money Gold Jewellery Ltd, 2023-VIL-132-AAR)

Facts:

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- The Applicant purchased gold from unregistered persons who is general public and ornaments purchased are sold as such to the end consumers without changing the form /nature of such goods.
- The Applicant has filed an application before the Authority for Advance Ruling for the following question:

  In case the applicant has purchased used / second-hand gold jewellery or ornaments from persons who are not registered under GST and that at the time of sale of such goods there is no change in the form/nature of such goods and ITC will also not be availed on such purchase, if so the case, whether GST is to be paid only on the difference between the selling price and purchase price as stipulated under Rule 32(5) of CGST Rules, 2017?

Held:

- In the present matter, the issue to be decided is whether sub rule (5) of rule 32 of CGST Rules, 2017 is applicable on the determination of value of the supply by the Applicant.
- In the case of usual goods, the peak value in its span will normally be at the point of retail primary sales to the end customers. Such goods will suffer tax at all the value addition points till the peak of its value, i.e., up to the retail sales to the end consumer.
- Further, the intention of the Sub rule (5) to Rule 32 of the CGST Rules, 2017 is to reduce the tax burden on such goods, which have already suffered tax on its highest value, when supplied at a reduced price in the secondary market after usage but in the present case the goods such as gold and gold ornaments, the value is determined by the content, purity and fineness of the material contained.
- Further, with passage of time, not only does the value of gold decrease but moves upwards, showing a trend opposite to what sub rule (5) envisages and because of this reason and other related factor, the term 'second hand' does not hold any meaning when it comes to items such as gold, land, currency etc. In order to qualify for inclusion under the valuation of supply as envisaged under sub-rule (5) of rule 32, it has to be proved that the applicant is dealing in second-hand goods. Unfortunately, gold in any form fails to pass the test of 'second-hand goods'.

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- The supply made by the Applicant fails to comply with all the requirements specified under Rule 32 (5) of the CGST, Rules 2017. Hence cannot avail of the benefit of provisions stated under sub-rule (5) of CGST rules 2017.

hh) Treatment or process of body building by fabrication and other processes carried out on the chassis of a motor vehicle owned by others is the supply of service taxable

(M/s Aromal Autocraft, 2023-VIL-130-AAR)

Facts:

- The Applicant is engaged in bodybuilding on the chassis given by the customers on a job-work basis.
- The Applicant contends that the customers purchase chassis and hand over the same for fabricating the body and is providing the services for bodybuilding on motor vehicles by fabrication and charging fabrication charges on a lump sum basis.
- The Applicant providing manufacturing services or body building services on physical inputs (goods) or chassis owned by others and provided by the owner for body building and the applicant charges lump-sum fabrication charges (including certain material that would be consumed during the process of body building).
- The activity of bodybuilding shall not be treated as a supply of goods or motor vehicle as the activity carried out by the Applicant is not the supply of motor vehicle as the Applicant are not owning the chassis in the instant case.
- The Applicant has filed an application before the Authority for Advance Ruling for the following questions:
  - Whether the treatment or process of bodybuilding by fabrication land other processes carried out on chassis of motor vehicles owned by others is a supply of service?
  - If the above-stated activity of bodybuilding is considered as a supply of service in terms of the description given in paragraph 3 of Schedule II of the CGST Act, 2017 what will be the rate of GST applicable on such service?
  - What will be the service code (tariff) for the above-stated activity of bodybuilding carried out on another person's chassis of the motor vehicle?

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- If the above-stated activity of bodybuilding is not considered as a supply of services, what will be the nature of this supply, tariff code, and rate of GST for such supply?
- What would be the classification and applicable rate of tax for the activity of an accident repairing job on the vehicle supplied by the owner for such job if a lump sum price is charged that includes the cost of material and labour?

Held:

- As per Para 3 of the Schedule II of the CGST Act, 2017 which lists out the activities or transactions to be treated as supply of goods or supply of Services; any treatment or process which is applied to another person's goods is a supply of service and the fabricating the body on the chassis belonging to another person and hence the activity is squarely covered under Para 3 of Schedule II of the CGST Act, 2017 as a treatment or process which is applied to another person's goods and accordingly is a supply of services.

S. No.	Questions	Ruling
1.	Whether the treatment or process of body building by fabrication and other processes carried out on the chassis of motor vehicle owned by others is supply of service?	The activity of bodybuilding of motor vehicle on the chassis, supplied by the customer is a supply of services.
2.	If the above stated activity of body building is considered as supply of service in terms of description given at paragraph 3 of Schedule II of the CGST Act, 2017 what will be the rate of GST applicable on such service?	The activity is liable to GST @ 18% [9% CGST + 9% SGST] as per entry at Sl. No. 26 (ic) - 9988 - "Manufacturing services on physical inputs (goods) owned by others - Services by way of job work in relation to bus body building; of Notification No.

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		11/2017 Central Tax (Rate) dated 28/06/2017.
3.	What will be the service code (tariff) for the above-stated activity of body building carried out on another person's chassis of motor vehicle?	The activity of body building carried out on the chassis of motor vehicle owned by others is classifiable under SAC 9988.
4.	If the above-stated activity of body building is not considered as supply of services, what will be the nature of this supply, tariff code and rate of GST for such supply?	Not relevant in view of the answer to Qn.No.1, 2 and 3 above.
5.	What would be the classification and applicable rate of tax for the activity of accident repairing job on the vehicle supplied by the owner for such job if a lump sum price is charged that includes the cost of material and labour?	The activity of accident repairing job on lumpsum price including the cost of material and labour of the vehicle supplied by the owner is appropriately classifiable under SAC 998714 and is liable to GST at the rate of 18% [9% CGST + 9% SGST] as per entry at Sl. No. 25 (ii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

ii) ITC cannot be availed of input tax charged on inward supply of goods and services related to construction of warehouse which is capitalized

(Mindrill Systems and Solutions Private Limited, 2023-VIL-115-AAR)

Facts:

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- The Applicant is engaged primarily in the business of manufacturing of pneumatic rock drills, jack hammers, equipment, spare parts and accessories used in mining/construction industry.
- Further, as a part of business expansion plan, it was decided to construct warehouse / godown at Village Mollarber, West Bengal and constructed one warehouse and let it out to "Zomato Hyperpure Private Limited" and has been paying tax on such supply.
- The sole intention of the construction of the warehouse/godown was to provide the same on rent and earn "Rental income" benefits and the Applicant paid IGST, CGST and WBGST on inward supply of said input/input services used for construction of said warehouse.
- The Applicant submits that the warehouse was constructed in the course or furtherance of its business and not constructed for own use of applicant company and said warehouse was made of prefabricated /engineered building, which is not immovable property, the applicant company is entitled to use /utilise input tax credit (in brevity "ITC") availed on inward supply of said input/input service received and used for construction of warehouse, to pay tax on the outward supply of services provided by way of renting of said warehouse, whether such expenses on account of inward supply are capitalized/ not capitalised in books.
- The Applicant has made the present application before the Authority for Advance Ruling in regard to the following questions:
    - Whether input tax credit (in brevity "ITC") against inward supply of said input/input service used for construction of warehouse can be claimed and utilized to pay tax on the outward supply of services provided by way of renting of said warehouse in case such construction expenses are capitalized in books?
    - Whether ITC against inward supply of said input/input service used for construction of warehouse can be claimed and utilized to pay tax on the outward supply of services provided by way of renting of said warehouse in case such construction expenses are not capitalized in books?

Held:

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- In the present matter, to construct the warehouse, the Applicant has received inward supplies of goods and services both including works contract services and issue involved in the instant case is related to admissibility of credit of input tax charged on aforesaid supplies received.
- The contention of the Applicant that there is no purchase or sales by the Applicant "on his own account" is flawed as the warehouse is being used by the Applicant for providing outward supplies of warehousing service and/or renting or leasing service. We are therefore of the view that the warehouse has been constructed in the applicant's own account and the contention of the applicant in this regard is not acceptable.
- Further, the warehouse constructed by the use of pre-engineered steel structures which can easily and conveniently be dismantled without any damage or deterioration and is capable of being re-erected at another site and for this reason, the warehouse so constructed, cannot be termed as 'immovable property'.
- However, the Applicant himself has submitted that construction of warehouse involves goods like cement, marble, paver block, shutter door, electrical equipment, fire protection system, prefabricated steel building and structural installation thereof along with works contract services like painting, plumbing, electrical installation and the intention of the Applicant is let it out and earn rental income from it, i.e., to provide outward supplies of warehousing service and/or renting or leasing service. This submission establishes the fact that construction of the warehouse itself is intended to be permanent at a given place and the applicant would not shift it from one place to another.
- Hence, the restriction under clause (d) of sub-section (5) of section 17 of the GST Act in respect of input tax credit on goods or services received by the applicant for construction of warehouse is applicable in the instant case i.e., the applicant is not eligible for credit of input tax charged on inward supply of goods and services related to construction of warehouse which is capitalized in the books of account.

Questions	Rulings

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Whether input tax credit against inward supply of input/input service used for construction of warehouse can be claimed and utilized to pay tax on the outward supply of services provided by way of renting of said warehouse in case such construction expenses are capitalized in books?	The Applicant is not eligible for input tax credit in such cases.
Whether input tax credit against inward supply of input/input service used for construction of warehouse can be claimed and utilized to pay tax on the outward supply of services provided by way of renting of said warehouse in case such construction expenses are not capitalized in books?	Input tax credit is admissible if such construction expenses are not capitalized in books.

jj) Any service provided in relation to the Agricultural produce once left the primary market would not be exempted under the GST law

(Sona Ship Management Private Ltd, 2023-VIL-112-AAR)

Facts:

- The Applicant is engaged in stevedoring and cargo handling in the Kolkata Dock Complex and is specialized in handling cargo such as food grain, fertilizers, coal, iron ore, break bulk/project cargo, etc.
- Further, the Applicant has to engage the Calcutta Dock Labour Board for bringing in the imported pulses as the said pulses were imported by using smaller ships directly to Kolkata Dock and availed the manpower services for unloading the said imported goods being black matpe and toor whole pulse is covered under Entry No. 54(e) of the exemption Notification No. 12/2017-Central Tax (Rate) dated 28- 6-2017.
- The Applicant contends that no activities are being carried out by him that alters the essential characteristics of the yellow toor dal & black matpe. Therefore, the goods can be regarded as 'agricultural produce' and services relating to unloading of the aforesaid goods is exempted from payment of tax. However, CDLB, relying on the clarification given in the Circular No 16/16/2017

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– GST dated 15.11.2017 issued by the CBEC (Tax Research Unit), has held that the services exigible to be taxed @ 18%.

- The Applicant presented following question to seek advance ruling:
  - Whether the service of loading and unloading of imported unprocessed 'toor' and 'whole pulses' and 'black matpe' is exempt under Sl. No. 5€) of the Notification No. 12/2017-Central Tax (Rate), Sl. No. 24 of notification No. 11/2017-Central Tax (Rate) both dated 28.06.2017? Whether charging of tax by the agents from your applicant is in violation to the Notification No 12/2017 dated 28.06.2017 serial No 3?
  - Whether the services in relation to loading and unloading of imported unprocessed toor and whole pulses and black matpe are agricultural produce or not and covered under the circular No 16/16/2017-GST dated 15.11.2017 and the Circular is binding or not?

Held:

- In the present case, the Applicant has filed the application out by him that alters the essential characteristics of the yellow toor dal & black matpe. Therefore, the goods can be regarded as 'agricultural produce' and services relating to unloading of the aforesaid goods is exempted from payment of tax. However, CDLB, relied on the clarification given in the Circular No 16/16/2017 - GST dated 15.11.2017 issued by the CBEC (Tax Research Unit), has held that the services are exigible to be taxed @ 18% whereas the revenue has expressed that without physical verification of samples of imported items, the exact taxability or exemption of the related services like loading and unloading is not possible to ascertain.
- Any services supplied for loading and unloading as supplied by the Applicant after the goods left the primary market do not qualify for exemption under serial number.
- Further, any services supplied for loading and unloading as supplied by the applicant after the goods left the primary market do not qualify for exemption under serial number54 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

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- Hence, the services by way of loading and unloading of imported unprocessed 'toor' and 'whole pulses' and 'black matpe' as involved in the instant case does not qualify for exemption under serial number 54(e) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

kk) Separate registration not required for different business verticals in same state w.e.f. 01.02.2019

(Aesthetik Engineers Private Limited, 2023-VIL-111-AAR)

Facts:

- The Applicant is engaged in business of manufacturing and reselling of goods and also in providing of services and intends to carry on business activities from other states too.
- The Applicant presented following question to seek advance ruling:
    - Whether the Applicant is required to take separate registration for each type of business i.e. manufacturing/reselling/providing services carried on from same place of business?
    - Whether the Applicant is entitled to get separate registration for each type of business i.e. manufacturing/reselling/providing services carried on from same place of business?
    - Whether the Applicant is required to take separate registration for each state for carrying on said business in such state?
    - Whether the applicant is compulsorily required to take separate registration for the each state, where execution of contract /job would required to be carried, in case applicant being registered under the WBGST Act, 2017 receives the work/job order from contractees situated within / outside West Bengal and inputs (both goods and services) are procured within West Bengal or state where contract would be executed?

Held:

- In the present case, the questions raised are in respect of requirement of registration. The Authority for Advance Ruling refrain to pronounce any ruling in respect of questions raised by the applicant vide questions number (iii) and

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(iv) under serial number 14 of the instant application as the same pertains to states other than the state of West Bengal.

- The questions of requirement for separate registration in West Bengal as the applicant is already registered under the GST Act.
- Earlier under the GST Act and rules, there was an option for separate registration within a state for multiple business verticals till 31.01.2019 and thereafter option for separate registration as well as transfer of unutilized input tax credit has been provided to a person having multiple places of business within the state.
- Further, with effect from 01.02.2019, the law has made provision for a registered person, who has obtained separate registration for multiple places of business, to transfer his unutilised input tax credit lying in his electronic credit ledger, either wholly or partly, to any or all of the newly registered place of business. In other words, option for separate registration may be availed by a registered person provided such registered person has multiple places of business.
- Therefore, in cases where a registered person carries on separate type of businesses from same place of business within a State, he cannot opt to obtain separate registration within the said State as per proviso to sub-section (2) of section 25 of the GST Act read with rules made there under.

Questions	Ruling
Whether the Applicant is required to take separate registration for each type of business i.e. manufacturing/reselling/providing services carried on from same place of business?	The answer is in negative.
Whether the Applicant is entitled to get separate registration for each type of business i.e. manufacturing/reselling/providing services carried on from same place of business?	As per Section 25(2) of the GST Act, separate registration in a State may be granted to a

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	person who has multiple places of business in that State.

3. NOTIFICATION

II) Notified persons making supplies of goods through e-commerce operator exempt from taking GST registration

(Notification No. 34/2023- Central Tax dated 31.07.2023)

- Persons making supplies of goods through an electronic commerce operator who is required to collect TCS and having an aggregate turnover in the preceding FY and in the current FY below the prescribed threshold for registration, as the category of persons exempted from obtaining GST registration, subject to the following conditions:
  (i) such persons shall not make any inter-State supply of goods;
  (ii) such persons shall not make supply of goods through electronic commerce operator in more than one State or Union territory;
  (iii) such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961);
  (iv) such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their PAN, address of their place of business and the State / Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
  (v) such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared as per clause (iv);
  (vi) such persons shall not be granted more than one enrolment number in a State or Union territory;
  (vii) no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and

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(viii) where such persons are subsequently granted registration under section 25 of the CGST Act, the enrolment number shall cease to be valid from the effective date of registration.

- This notification shall be effective from 01.10.2023.

mm) Consent-based sharing of information of registered persons available on the common portal with other systems

(Notification No. 33/2023- Central Tax dated 31.07.2023)

- Notified the recommendations made in 50th GST Council meeting for sharing of information available on common portal with other systems.
- "Account Aggregator" has been notified as the systems with which information may be shared by the common portal based on consent under Section 158A of the CGST Act w.e.f. 01.10.2023.
- The Account Aggregator shall mean a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

nn) Exempted the registered person whose aggregate turnover in the FY 2022-23 is up to Rs. 2 crore from filing annual return

(Notification No. 32/2023- Central Tax dated 31.07.2023)

- Notified the recommendations made in 50th GST Council meeting for easing compliance burden on smaller taxpayers by way of granting exemption from filing of annual return (in FORM GSTR-9/9A) for the taxpayers having turnover upto two crore rupees in FY 2022-23, for the said FY.

oo) Risk-based biometric-based Aadhaar authentication of registration applicants is to be conducted in U.T of Puducherry on pilot basis.

(Notification No. 31/2023- Central Tax dated 31.07.2023)

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- Notified the recommendations made in 50th GST Council meeting w.r.t risk based biometric aadhaar authentication by way of making amendments in Notification No. 27/2022- Central Tax dated 26.12.2022.
- Risk-based biometric-based Aadhaar authentication of registration applicants is to be conducted in U.T of Puducherry on pilot basis.

pp) Special procedure to be followed by a registered person engaged in manufacturing of the Pan Masala/Gutkha/tobacco etc.

(Notification No. 30/2023- Central Tax dated 31.07.2023)

- Notified the recommendations made in 50th GST Council meeting w.r.t the special special procedure for registration of machines used by manufacturers of the subject commodities and for filing of special monthly returns and same has now been prescribed through subject notification.

qq) Special procedure for filing manual appeal in respect of TRAN-1/ TRAN-2 claims. No pre-deposit to be made.

(Notification No. 29/2023- Central Tax dated 31.07.2023)

- Notified the recommendations made in 50th GST Council meeting w.r.t manual filing in case of TRAN-1/ TRAN-2 claims.
- Manual appeal to be filed in duplicate in the Form appended to this notification at ANNEXURE-1 and shall be presented manually before the Appellate Authority within the time specified in section 107(1) or section 107(2) of the CGST Act, as the case may be, and such time shall be computed from the date of issuance of this notification or the date of the said order, whichever is later.
- Provided, if appeal has already been filed before issuance of this notification i.e., prior to 31.07.2023 then it shall be deemed to be filed in accordance with this notification.
- No pre-deposit shall be required.
- On submission of appeals as per the notification, acknowledgement indicating the appeal number, shall be issued manually in FORM GST APL-02 by the Appellate Authority.
- Further, Appellate Authority shall issue summary order in ANNEXURE-2 attached to this notification along with detailed order.

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rr) **GST related amendments made vide Finance Act, 2023**

(Notification No. 28/2023- Central Tax dated 31.07.2023)

Following provisions of CGST Act has been notified and made effective from specified dates:

Section no. of Finance Act, 2023	Section of CGST Act	Effective date
137	10. Composition levy	01.10.2023
138	16. Eligibility and conditions for taking input tax credit	01.10.2023
139	17. Apportionment of credit and blocked credits	01.10.2023
140	23. Persons not liable for registration	01.10.2023
141	30. Revocation of cancellation of registration.	01.10.2023
142	37. Furnishing details of outward supplies.	01.10.2023
143	39. Furnishing of returns.	01.10.2023
144	44. Annual return.	01.10.2023
145	52. Collection of tax at source.	01.10.2023
146	54. Refund of tax.	01.10.2023
147	56. Interest on delayed refunds.	01.10.2023
148	62. Assessment of non-filers of returns.	01.10.2023
149	109. Constitution of Appellate Tribunal and Benches thereof.	01.08.2023
150	110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.	01.08.2023
151	114. Financial and administrative powers of President.	01.08.2023
152	117. Appeal to High Court	01.08.2023
153	118. Appeal to Supreme Court	01.08.2023
154	119. Sums due to be paid notwithstanding appeal, etc.	01.08.2023
155	122. Penalty for certain offences	01.10.2023
156	132. Punishment for certain offences	01.10.2023
157	138. Compounding of offences	01.10.2023
158	158A. Consent based sharing of information furnished by taxable person	01.10.2023
159	Schedule III. Activities or transactions which shall be treated neither as a supply of goods nor a supply of services	01.10.2023

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Section number of Finance Act, 2023	Section of IGST Act	Effective date
160	2. Definitions	01.10.2023
161	12. Place of supply of services where location of supplier and recipient is in India	01.10.2023
162	13. Place of supply of services where location of supplier or location of recipient is outside India.	01.10.2023

ss) Pan masala, some tobacco products and certain essential oils to be exported only without payment of tax under LUT w.e.f. 01.10.2023

(Notification No. 1/2023- Integrated Tax and Notification No. 23/2023- Central Tax both dated 31.07.2023)

- Previously, sub-section (3) of Section 16 of the IGST Act allowed the exporters to export goods and services either on payment of IGST or without payment of IGST under LUT and claim refund of the IGST paid or the unutilized ITC, respectively.
- Subsequently, sub-section (3) of Section 16 of the IGST Act was substituted and sub-section (4) to Section 16 of the IGST Act was inserted vide Section 123 of the Finance Act, 2021 and now, notified vide *Notification No. 23/2023-Central Tax dated 31.07.2023*.
- The above amendments provided that the exporters can export all the goods and services without payment of IGST under LUT and can claim refund of unutilised ITC. However, the option of zero-rated supply on payment of IGST shall be available only to a notified class of taxpayers or notified supplies of goods or services.
- Now, the CBIC has issued *Notification No. 1/2023- Integrated Tax dated 31.07.2023* whereby it has notified all goods and services **except** pan masala, some tobacco products and certain essential oils like peppermint oil, spearmint oil etc. which can be exported on payment of IGST and refund of IGST paid can be claimed.
- Meaning thereby that **the exporters can export all goods and services either on payment of IGST or without payment of IGST under LUT** and claim refund of the IGST paid or the unutilized ITC, respectively. **However,**

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pan masala, tobacco products and certain essential oils notified under the above notification can be **exported only without payment of tax under LUT** and the unutilized ITC refund can be claimed. The said notification will be effective from 01.10.2023.

- The Government will have the power to further notify the class of taxpayers or supplies of goods or services wherein the option to export goods/services on payment of IGST (and refund thereof) will not be available.

tt) GTA related changes in Services RCM notification

(Notification No. 8/2023- Central Tax (Rate) dated 26.07.2023)

- Changes have been made Annexure III *Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017* (Services RCM notification) which prescribes declaration to be filed by GTA that they have opted to pay GST under forward charge.
- The said Declaration now reads as, *"I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us from the Financial Year ____under forward charge* ***and have not reverted to reverse charge mechanism****"*.

uu) Exemption granted to all satellite launch services irrespective of the supplier

(Notification No. 7/2023- Central Tax (Rate) dated 26.07.2023)

- Notified the recommendations made in 50th GST Council meeting w.r.t satellite launch services by way of making amendments in Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.
- Earlier, GST exemption on satellite launch services was restricted to suppliers namely ISRO, Antrix Corporation Limited and New Space India Limited. Now, GST exemption has been extended on all satellite launch services irrespective of supplier including private organisations.
- This notification shall come into force on 27.07.2023.

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vv) Various changes in Services rate notification

(Notification No. 6 /2023- Central Tax (Rate) dated 26.07.2023)

GTA service related changes:

- Notified the recommendations made in 50th GST Council meeting w.r.t GTA by way of making amendments in *Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017* (Services rate notification).
- GTAs will not be required to file declaration for paying GST under forward charge every year. If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to RCM.
- Last date of exercising the option by GTAs to pay GST under FCM shall be 31st March of preceding FY instead of 15th March. 1st January of preceding FY shall be the start date for exercise of option.

Construction services related changes:

- In sub-clause (ie) of serial no. 3 of the Services rate notification, explanation has been inserted: *"Explanation. –This item refers to sub-items of the item (iv), (v) and (vi), against serial number 3 of the Table as they existed in the notification prior to their omission vide notification No. 03/2022- Central Tax (Rate) dated the 13th July, 2022"*. The said explanation has been inserted under sub-clause (ie) of serial no. 3 of the Services rate notification in relation to on-going project which refers to the entries omitted vide notification No. 03/2022- Central Tax (Rate) dated the 13th July, 2022.

Goods transportation services related changes:

- Where GTA exercises to pay GST itself, it has to file a declaration in Annexure V of the Services rate notification on or after 1st January of the preceding FY but not later than 31st March of the preceding FY..
- Further inserted proviso: *"Provided also that the option exercised by GTA to itself pay GST on the services supplied by it during a Financial Year shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration in Annexure VI to revert under reverse charge mechanism on or after the 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year".*

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- Accordingly, made changes in Annexure V of the Services rate notification and inserted Annexure VI.

Support services to agriculture, hunting, forestry, fishing, mining and utilities related changes:

- Omitted entry *"services by way of fumigation in a warehouse of agricultural produce"* from serial no. 24(i) of the Services rate notification attracting nil GST. The said entry was also omitted from Services exemption notification previously and was left o be omitted from Services rate notification. Now, the same has been omitted now to correct of anomaly and said services will be taxable at applicable rate.

ww) Removed anomaly in levying compensation cess on such commodities where retail sale price is not legally required to be declared

(Notification No. 3/2023- Compensation Cess (Rate) dated 26.07.2023)

- Earlier, CBIC vide *Notification No. 2/2023-Compensation Cess (Rate) dated 31.03.2023* amended method to calculate rate of compensation cess from 'percentage rate' to 'per unit rate of retail sale price'. However, there are certain goods like pan masala, tobacco etc. wherein it is not legally required to declare retail sale price.
- Accordingly, compensation cess (CC) at ad valorem rates has been made applicable on various products as under:

S. No.	HSN	Description of Goods	Rate of CC
1.	2106 90 20	Pan-masala with declared retail sale price	0.32Rs. per unit
1A.	2106 90 20	Pan Masala, other than goods covered under S. No. 1 above	60%
5.	2401	Unmanufactured tobacco (without lime tube) – bearing a brand name with declared retail sale price	0.36Rs. per unit
6.	2401	Unmanufactured tobacco (with lime tube) – bearing a brand name with declared retail sale price	0.36R per unit

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6A.	2401	Unmanufactured tobacco (with lime tube)– bearing a brand name, other than goods covered under S. No. 6 above	65%
7.	2401 30 00	Tobacco refuse, bearing a brand name with declared retail sale price	0.32Rs. per unit
7A.	2401 30 00	Tobacco refuse, bearing a brand name, other than goods covered under S. No. 7 above	61%
19.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name with declared retail sale price	0.36Rs. per unit
19A.	2403 11 10	'Hookah' or 'gudaku' tobacco, bearing a brand name, other than goods covered under S. No. 19 above	72%
20.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name with declared retail sale price	0.12Rs. per unit
20A.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku', not bearing a brand name, other than goods covered under S. No. 20 above	17%
21.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name with declared retail sale price	0.08Rs. per unit
21A.	2403 11 90	Other water pipe smoking tobacco, not bearing a brand name, other than goods covered under S. No. 21 above	11%
22.	2403 19 10	Smoking mixtures for pipes and cigarettes, with declared retail sale price	0.69Rs. per unit
22A.	2403 19 10	Smoking mixtures for pipes and cigarettes, other than goods covered under S. No. 22 above	290%
23.	2403 19 90	Other smoking tobacco bearing a brand name with declared retail sale price	0.28Rs. per unit
23A.	2403 19 90	Other smoking tobacco bearing a brand name, other than goods covered under S. No. 23 above	49%
24.	2403 19 90	Other smoking tobacco not bearing a brand name with declared retail sale price	0.08Rs. per unit
24A.	2403 19 90	Other smoking tobacco, not bearing a brand name, other than goods covered under S. No. 24 above	11%

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26.	2403 99 10	Chewing tobacco (without lime tube), with declared retail sale price	0.56Rs. per unit
26A.	2403 99 10	Chewing tobacco (without lime tube), other than goods covered under S. No. 26 above	160%
27.	2403 99 10	Chewing tobacco (with lime tube), with declared retail sale price	0.56Rs. per unit
27A.	2403 99 10	Chewing tobacco (with lime tube), other than goods covered under S. No. 27 above	142%
28.	2403 99 10	Filter khaini, with declared retail sale price	0.56Rs. per unit
28A.	2403 99 10	Filter khaini, other than goods covered under S. No. 28 above	160%
29.	2403 99 20	Preparations containing chewing tobacco, with declared retail sale price	0.36Rs. per unit
29A.	2403 99 20	Preparations containing chewing tobacco, other than goods covered under S. No. 29 above	72%
30.	2403 99 30	Jarda scented tobacco, with declared retail sale price	0.56Rs. per unit
30A.	2403 99 30	Jarda scented tobacco, other than goods covered under S. No. 30 above	160%
31.	2403 99 40	Snuff, with declared retail sale price	0.36Rs. per unit
31A.	2403 99 40	Snuff, other than goods covered under S. No. 31 above	72%
32.	2403 99 50	Preparations containing snuff, with declared retail sale price	0.36Rs. per unit
32A.	2403 99 50	Preparations containing snuff, other than goods covered under S. No. 32 above	72%
33.	2403 99 60	Tobacco extracts and essence bearing a brand name with declared retail sale price	0.36Rs. per unit
33A.	2403 99 60	Tobacco extracts and essence, bearing a brand name, other than good covered under S. No. 33 above	72%
34.	2403 99 60	Tobacco extracts and essence not bearing a brand name with declared retail sale price	0.36Rs. per unit
34A.	2403 99 60	Tobacco extracts and essence, not bearing a brand name, other than goods covered under S. No. 34 above	65%

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35.	2403 99 70	Cut tobacco, with declared retail sale price	0.14Rs. per unit
35A.	2403 99 70	Cut tobacco, other than goods covered under S. No. 35 above	20%
36.	2403 99 90	Pan masala containing tobacco 'Gutkha', with declared retail sale price	0.61Rs. per unit
36A.	2403 99 90	Pan masala containing tobacco 'Gutkha', other than goods covered under S. No. 36 above	204%
36B.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name, with declared retail sale price	0.43Rs. per unit
36C.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name, other than good covered under S. No. 36B above	96%
52B	8703	Motor vehicles known as Utility Vehicles, by whatever name called including Sports Utility Vehicles (SUV), Multi Utility Vehicles (MUV), Multi-purpose vehicles (MPV) or Cross-Over Utility Vehicles (XUV), with engine capacity exceeding 1500 cc ; Length exceeding 4000 mm and Ground Clearance of 170 mm and above. *Explanation*: For the purpose of this entry, the Ground Clearance means ground clearance in unladen condition.	22%
Explanation- For the purposes of this notification, the words "declared retail sale price", with respect to the goods specified in column (3) of the Schedule above, shall mean the retail sale price of such goods which are required to be declared in compliance with the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force			

- This notification shall come into force on 27.07.2023.

xx) GSTN has been brought under PMLA which enables sharing of data with financial probe agencies

(Notification having F. no. P.12011/2/2009-ES Cell-DOR dated 07.07.2023)

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- The Centre has brought Goods and Services Network (GSTN) in the list of entities for sharing of information with financial probe agencies under the Prevention of Money Laundering Act (PMLA) which will enable sharing of information between GSTN and investigating agencies.

4. ADVISORY

yy) GSTN Advisory: e-Invoice Exemption Declaration Functionality Now Available

(Advisory dated 24.07.2023)

- E-Invoice Exemption Declaration functionality is now live on the e-Invoice portal.
- This functionality is specifically designed for taxpayers who are by default enabled for e-invoicing but are exempted from implementing it under the CGST (Central Goods and Services Tax) Rules.
- Salient features of this functionality are:
  - The e-Invoice Exemption Declaration functionality is voluntary and can be accessed at the e-Invoice portal (www.einvoice.gst.gov.in).
  - This functionality is applicable to taxpayers who are exempted from e-Invoicing as per the provisions of the CGST Rules.
  - It is important to note that any declaration made using this functionality will not change the e-Invoice enablement status of the taxpayer.
  - The responsibility to take decision vis-à-vis exemption with reference to various Notifications issued by the Government and report on the portal is of the person.

zz) Geocoding Functionality Now Live for All States and Union Territories

(Advisory dated 07.07.2023)

- A new functionality for geocoding the principal place of business address is now live for all States and Union territories. This feature converts an address or description of a location into geographic coordinates, which has been

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introduced to ensure the accuracy of address details in GSTN records and streamline the address location and verification process.

- In simpler terms, this tool helps you pinpoint the exact location of an address.
- The clients should undertake the above activity of geocoding the principal place of business address on GST portal.

aaa) Advisory: Online Compliance Pertaining to Liability / Difference Appearing in R1 – R3B (DRC-01B)

(Advisory dated 29.06.2023)

- GSTN has developed a functionality to enable the taxpayer to explain the difference in GSTR-1 & 3B return online as directed by the GST Council. This feature is now live on the GST portal.
- The functionality compares the liability declared in GSTR-1/IFF with the liability paid in GSTR-3B/3BQ for each return period. If the declared liability exceeds the paid liability by a predefined limit or the percentage difference exceeds the configurable threshold, taxpayer will receive an intimation in the form of DRC-01B.
- Upon receiving an intimation, the taxpayer must file a response using Form DRC-01B Part B. The taxpayer has the option to either provide details of the payment made to settle the difference using Form DRC-03, or provide an explanation for the difference, or even choose a combination of both options.
- To further help taxpayers with the functionality, a detailed manual containing the navigation details is available on the GST portal is available at: https://tutorial.gst.gov.in/downloads/news/return_compliance_in_form_drc_01b.pdf

5. INSTRUCTION

bbb) Assam: Prevention of fake registration and bogus ITC claims

(Circular No. 2/2023 dated 18.07.2023)

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- **Registration:** Guidelines have been issued for strengthening the process of verification of applications for registration at the end of tax officers in a uniform manner:
- Scrutiny of documents: The documents prescribed in Form GST REG-01 are to be carefully scrutinised, examined and cross checked/ verified from the publicly available sources. Further, rent/ lease deed duly registered with competent authority has been mandated vide Circular 01/2023 dated 07.07.2023.
- History of PAN usage: The proper officer may also check as to whether the registration(s) has been obtained on the same PAN earlier, either within the same State or other State(s). In such cases, the status of PAN and compliance record of GSTINs may also be checked. Further special attention is to be given to inter alia following cases:
  - where any registration obtained on the PAN of the applicant has been cancelled previously;
  - where any registration obtained on the PAN of the applicant is suspended at the time of verification of a new application of registration;
  - whether any application for registration on the PAN of the applicant has been rejected previously:
  - whether the place of business of the applicant appears to be risky based on local risk parameters;
  - whether the proof of address of place(s) of business prima facie appear to be suspicious/ doubtful on the basis of scrutiny of the application and the documents.
- Aadhaar verification: all the details mentioned in Aadhaar and displayed on GSTN portal are to be verified. Any deviation/ambiguity must be addressed with utmost seriousness and if warranted, the application may be cancelled after following the due procedure.
- Issuance of Query: Form GST REG-03 is to be issued timely in case of any deficiency, clarification, discrepancy etc.
- Examination of applicant’s response: Applicant’s response in Form GST REG-04 is to be examined carefully and if satisfied, the proper officer may approve the grant of registration in Form GST REG-05 and if not satisfied reject such application recording the reasons for the said rejection.

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- Mandatory field visit: Pre-registration field verification shall be conducted mandatorily prior to approval of new registration under GST to check the authenticity of the applicant.
- Adherence to time-limit: While processing the applications for registration, it will be ensured by the proper officer that the application is processed within the prescribed time limit and no application for grant of registration is approved on deemed basis for want of timely action on the part of tax officers.
- Outside state applicant: In case an application for GST registration is received from an applicant, who is a permanent resident outside the state, it shall be scrutinized scrupulously. Taxpayers from outside the state, who have already obtained registration in Assam, more particularly having the status of a proprietorship concern/ partnership firm /HUF, shall be kept under strict surveillance.
- Collection of Aadhaar data: The jurisdictional officers to collect the list of citizens who have changed their mobile numbers from the concerned AADHAAR Seva Kendra. Out of this list, at least 40% of the cases to be investigated using different risk parameters. In case of detection of fake registration using forged documents, the matter shall be reported to Police to initiate criminal investigation.
- **Scrutiny of ITC claim:** The jurisdictional officers shall ensure that the following actions in the matter of ITC is taken:
    - Entities that have claimed and passed on ITC exceeding Rs 10 lakh in the last two financial years shall undergo thorough verification.
    - Works Contractors claiming high amounts of tax credit must be examined, particularly if they source inputs/raw materials from outside the state. Special focus should be to find out if there is any nexus of bill trading.
    - Scrutinize at least 20 ITC cases each month, with monthly performance reports sent for review.
    - Examine whether the IGST credit availed by a tax-payer of Assam is from other north-eastern states and from other than the established business entities.
- **Enforcement activities for sin and other high-valued goods:** In order to reduce evasion of tax due to suppression /misdeclaration of supplies made, it is felt necessary to ensure that regular searches and inspections are carried

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out by proper officers regularly. This is especially critical in cases of goods having a high incidence of tax and/or cess.

ccc) No SLPs to be filed by Board in the matter relating to transitional credit due to IT glitches

(Instruction dated 10.07.2023)

- CBIC would not be filing SLPs on the issue of availing the Transitional Credit due to IT glitches in the pending SLP proposals. Board shall be forwarding the communication for individual SLP proposals to respective Commissionerates.
- If any order is passed by the Hon'ble High Court which is not in terms of extant scheme of things or where any question of law concerning Section 140 of the CGST Act read with the corresponding Rule/Notification or direction is directly involved, the same may be scrupulously examined by the field formations, and remedial action including filing of a Review Petition or a Writ Appeal, as the case may be, undertaken after consultation with the Government Standing Counsel. If Review Petition/ Writ Petition is not possible against such adverse order, a self-contained SLP proposal, in terms of extant instructions, may be forwarded to Board.
- This instruction is issued in supersession of the earlier Instruction dated 13.11.2018 issued vide F. No. 276/262/2015-CX.8A Pt.-III.

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