

DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT, PUNJAB,
PATIALA

GST UPDATE
(NOVEMBER 2022)

ABSTRACT OF GST UPDATE

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CGST Notification

1. Now Competition Commission of India to examine Anti-Profiteering

CBIC notifies Competition Commission of India to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him vide Notification No. 23/2022 – Central Tax Dated 23rd November, 2022.

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)
New Delhi

Notification No. 23/2022 – Central Tax Dated 23rd November, 2022

S.O. 5450(E).—In exercise of the powers conferred by sub-section (2) of section 171 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Goods and Services Tax Council, hereby empowers the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002 (12 of 2003), to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. 2. This notification shall come into force with effect from 1st day of December, 2022.

[F. No. CBIC-20/2/2022-GST]
VIKRAM VIJAY WANERE, Under Secy.

2. CBIC amends rules related to National Anti-Profiteering Authority

Central Goods and Services Tax (Fourth Amendment) Rules, 2022 – CBIC omitted following GST Rules 122,124,125,134 and 137 vide Notification No. 24/2022 – Central Tax Dated 23rd November, 2022 which are related to National Anti-Profiteering Authority. It amends rule 127 (Duties of the Authority) and inserts and an explanation below rule 137. Rule 122 relates to Constitution of the Authority, Rule 124 relates to Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority. Rule 125 relates to Secretary to the Authority; Rule 134 relates to Decision to be taken by the majority and Rule 137 relates to Tenure of Authority. MINISTRY OF FINANCE (Department of Revenue) (CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS) New Delhi Notification No. 24/2022 – Central Tax Dated 23rd November, 2022 G.S.R. 843(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: — 1. Short title and commencement. — (1) These rules may be called the Central Goods and Services Tax (Fourth Amendment) Rules, 2022. (2) They shall come into force with effect from 1st day of December, 2022.

2. In the Central Goods and Services Tax Rules, 2017, — (a) rule 122 shall be omitted; (b) rules 124 and 125 shall be omitted; (c) in rule 127,- (i) in the marginal heading, for the word “Duties”, the word “Functions”, shall be substituted; (ii) for the words “It shall be the duty of the Authority,-”, the words “The authority shall discharge the following functions, namely:—” shall be substituted; (d) rule 134 shall be omitted; (e) rule 137 shall be omitted; (f) after rule 137, in the Explanation, for clause (a), the following clause shall be substituted, namely:—

‘(a) “Authority” means the Authority notified under sub-section (2) of section 171 of the Act;’.

[F. No. CBIC-20/2/2022-GST]
VIKRAM VIJAY WANERE, Under Secy.

3. Instruction No. 4/2022-GST

INSTRUCTION No. 04/2022-GST

F. No. CBEC-20/08/02/2020-GST / 1377-78
dt 28.11.2022

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 28th November, 2022

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax (All)

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Customs (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Manner of processing and sanction of IGST refunds, withheld in terms of clause (c) of sub-rule (4) of rule 96, transmitted to the jurisdictional GST authorities under sub-rule (5A) of rule 96 of the CGST Rules, 2017- regarding

Attention is invited to Standard Operating Procedures (SOPs) for verification of risky exporters and their suppliers dated 23.01.2020 issued to CGST and Customs formations as well as Directorate General of Analytics and Risk Management (DGARM) and SOP dated 20.05.2020 issued to CGST formations and DGARM vide F. No. CBEC-20/16/07/2020-GST which provided for the procedure to be followed for verification of the risky exporters and their suppliers. The said SOPs provided that DGARM would identify the exporters and their suppliers on the basis of risk parameters, approved by the Competent Authority and would forward the list of such exporters to the Risk Management Centre for Customs (RMCC) for putting alert in the system. In such cases, the Customs field formations were required to conduct the detailed examination of the export goods of such identified exporters. Further, the jurisdictional CGST formations were required to conduct detailed verification of such identified exporters and their suppliers and forward the verification report to DGARM. On receipt of verification report from CGST formations, DGARM was required to take a decision for issuance of NOC or otherwise. In cases where NOC has been issued by DGARM, the same was communicated to the Customs authorities at the port of export for release of withheld IGST refunds of such exporter. Further, DGARM was also required to review whether the exporters can be removed from the list of identified exporters.

INSTRUCTION No. 04/2022-GST

2. However, rule 96 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as 'CGST Rules') has been amended retrospectively w.e.f. 01.07.2017 to provide for withholding of IGST refund in cases where the verification of credentials of the exporter, identified on the basis of data analytic including the availment of ITC by the exporter is considered essential before grant of refund. Clause (c) of sub-rule (4) of rule 96 is reproduced below:

(c) the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

2.1 Accordingly, Principal Director General/ Director General of Directorate General of Analytics and Risk Management (DGARM), CBIC, New Delhi has been authorised by the Board to exercise the functions under clause (c) of sub-rule (4) of rule 96 of the CGST Rules vide Order No. 01/2022-GST dated 21.07.2022 issued vide CBIC-20023/04/2021-GST.

2.2 Further, sub-rule (5A) has been inserted in rule 96 to provide for transmission of IGST refunds, withheld in terms of provisions of clause (c) of sub-rule (4) of rule 96 of the CGST Rules, as system generated refund in Form GST RFD-01 and to provide that the said system generated form shall be deemed to be the application for refund in such cases and such application for refund shall be deemed to have been filed on the date of such transmission on the portal. In addition, sub-rule (5C) has also been inserted in rule 96 to provide that such system generated refund in FORM GST RFD-01 have to be dealt with in accordance with rule 89 i.e. in a manner similar to other GST RFD-01 refund claims.

3. In view of the aforesaid amendments, certain changes have been made in the alert module on ICES for which an Advisory No. 14 dated 29/09/2022 has been issued by DG Systems to all the system managers. In the said advisory, it has been *inter-alia* informed that a new role for putting an all-India suspension, either on IEC or GSTIN of the exporter as the case may be, to withhold IGST refunds has been developed for officers of DGARM. An option to revoke the said alert has also been made available to DGARM officers. Further, instructions have also been issued by DG Systems vide F. No. DGSYS/APP/ICES/GEN/41/2022 dated 29.09.2022 to the Customs field formations regarding the procedure to be followed by them in respect of IGST refunds withheld due to DGARM alerts on risky exporters.

4. DGARM on the basis of data analysis and risk parameters, would identify the exporters where verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund. DGARM would then place an all-India alert on such exporter on Indian Customs EDI system along with the reasons for putting the said alert. Once an alert is placed on an exporter, the IGST refunds of such exporters would be withheld and the data in respect of Shipping Bills filed by such exporter, for which

INSTRUCTION No. 04/2022-GST

IGST Scroll could not be generated due to DGARM alert, along with the reasons thereof would be transmitted to GSTN through ICEGATE for generation of refund claims in FORM GST RFD-01 in terms of provisions of sub-rule (5A) of rule 96. Besides, the past cases where the exporter was identified as risky, which could not be processed due to pending verification or due to receipt of negative report, would also be transmitted to GSTN through ICEGATE for generation of refund claims in FORM GST RFD-01 in terms of provisions of sub-rule (5A) of rule 96.

5. Such refund claims will be made available to the jurisdictional proper officer on back-office system under the category “**Any other (GST paid on export of goods)**” with the remarks “**Refund of IGST paid on export of goods (Refund not processed by ICEGATE)**”. Further, the risk parameters, on basis of which the exporter has been identified as risky by DGARM, would be shared with the jurisdictional tax officers along with the system generated refund claim in **FORM GST RFD-01**. In cases where the verification report in respect of the exporter has already been submitted to DGARM by the jurisdictional CGST authorities, the details of the same would also be shared with the jurisdictional proper officer, along with the said system generated refund claim in **FORM GST RFD-01**. Transmission of such IGST refunds to the jurisdictional proper officers, withheld on account of identification of exporter as risky by DGARM, is being initiated on the portal.

6. On receipt of such refunds, the jurisdictional proper officer shall immediately process such refund claims in a manner similar to other RFD-01 refunds filed under the provisions of rule 89 of the CGST Rules, 2017.

7. However, it may be noted that as these refund claims have been generated by the system on the basis of Shipping Bills/ Bills of Export filed by the exporter, these claims would be auto-acknowledged by the system and no Deficiency Memo in Form GST RFD-03 can be issued against such system generated Form GST RFD-01 refund claims.

8. The proper officer shall ascertain the genuineness of the exporter & verify the correctness of availment and utilisation of ITC by the exporter and exercise due diligence in processing the said refund claims to safeguard interest of revenue. The proper officer may conduct the physical verification of places of business of the exporter, if required, to ensure that the exporter is existing at his declared place of business and is functional/active.

9. The proper officer shall pass a detailed speaking order in respect of the refund claim and shall duly upload the same along with the refund sanction order in **Form GST RFD-06** on the portal in terms of Instruction No. 03/2022-GST dated 14.06.2022. **The officer will also follow the timelines for processing of the refund claim** in terms of provisions of sub-section (7) of section 54 of the CGST Act. It is needless to mention that the procedure of review and post-audit as prescribed in para 2.2 of Instruction No. 03/2022-GST dated 14.06.2022 will also be applicable to such refund claims.

INSTRUCTION No. 04/2022-GST

10. In cases where the detailed investigation of the exporter or his suppliers is required to be conducted to verify the genuineness and correctness of ITC availed by the exporter, the matter may be examined, if required, for resorting to provisions of sub-section (11) of section 54 of the CGST Act, 2017 for withholding of the refund.

11. Further, the proper officer would also be required to provide feedback on the common portal while issuing refund sanction order in **FORM GST RFD-06** as with recommendation as to whether the alert against the said taxpayer need to be continued or whether the same can be removed. The functionality for the same would be available on the system in due course.

12. GSTN shall transmit the data regarding the outcome of processing of refund by the proper officer, along with the feedback received from the proper officer on the requirement of removal or continuation of alert, to DGARM for necessary action for removal or continuation of alert.

13. The Zonal Principal Chief Commissioners/ Chief Commissioners are requested to closely monitor the progress of disposal of such transmitted refund claims to ensure that due verification has been conducted before sanction and the refunds have been processed in a timely manner.

14. In view of the above, the SOPs dated 23.01.2020 and 20.05.2020 prescribing the procedure to be followed for verification of the risky exporters and their suppliers, are hereby superseded.

15. Difficulty, if any, in implementation of these instructions may please be brought to the notice of the Board.

Sanjay Mangal
28/11/2022

(Sanjay Mangal)
Principal Commissioner
sanjay.mangal@nic.in

Copy to:

1. The Joint Secretary, GST Council Secretariat, New Delhi for circulation of the same to all states for information please.

SGST Notification

PUNJAB GOVT. GAZ., NOVEMBER 16, 2022 1583
(KRTK 25, 1944 SAKA)

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R. 76/P.A.5/2017/S.164/Amd.(50)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1.Short title and commencement. - (1)These rules may be called the Punjab Goods and Services Tax (Seventh Amendment) Rules, 2022.

(2) These rules shall be deemed to have come into force from the 1st day of January, 2021.

2. In the Punjab Goods and Services Tax Rules, 2017, in rule 59, after sub-rule (5), the following sub-rule shall be inserted, namely:-

“(6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period; and

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under

section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.”.

AJOY SHARMA,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2703/11-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R. 77/P.A.5/2017/S.164/Amd.(51)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1. (1) These rules may be called the Punjab Goods and Services Tax (Eighth Amendment) Rules, 2022.

(2) These rules shall be deemed to have come into force from the 27th day of April, 2021.

2. In the Punjab Goods and Services Tax Rules, 2017, in rule 26 in sub-rule (1), after the third proviso, the following proviso shall be inserted, namely:-

“Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of May, 2021, also be allowed to furnish the return under section 39 in **FORM GSTR-3B** and the details of outward supplies under section 37 in **FORM GSTR-1** or using invoice furnishing facility, verified through electronic verification code (EVC).”.

AJOY SHARMA,

Financial Commissioner (Taxation)

to Government of Punjab,

Department of Excise and Taxation.

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R. 78/P.A.5/2017/S.164/Amd.(52)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1.Short title and commencement. (1) These rules may be called the Punjab Goods and Services Tax (Ninth Amendment) Rules, 2022.

(2) These rules shall be deemed to have come into force from the 1st day of May, 2021.

2. In the Punjab Goods and Services Tax Rules, 2017, (hereinafter referred to as the said rules), in rule 36, in sub-rule (4), after the first proviso, the following proviso shall be inserted, namely:-

“Provided further that such condition shall apply cumulatively for the period April and May, 2021 and the return in **FORM GSTR-3B** for the tax period May, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.”.

3. In the said rules, in rule 59, in sub-rule (2), the following proviso shall be inserted, namely:-

“Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.”.

AJOY SHARMA,

Financial Commissioner (Taxation)

to Government of Punjab,

Department of Excise and Taxation.

2703/11-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R.79/P.A.5/2017/S.164/Amd.(53)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1. Short title and commencement.- (1) These rules may be called the Punjab Goods and Services Tax (Tenth Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from the 18th day of May, 2021.

2. In the Punjab Goods and Services Tax Rules, 15842017, (hereinafter referred to as the said rules), in rule 23, in sub-rule (1), after the words “date of the service of the order of cancellation of registration”, the words, signs and figures “or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30,” shall be inserted.

3. In the said rules, in rule 90, -

(a) in sub-rule (3), the following proviso shall be inserted, namely:-

“Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.”; and

(b) after sub-rule (4), the following sub-rules shall be inserted, namely: -

“(5) The applicant may, at any time before issuance of provisional refund

sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08**, in respect of any refund application filed in **FORM GST RFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W**.

(6) On submission of application for withdrawal of refund in **FORM GST RFD-01W**, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORM GST RFD-01**, shall be credited back to the ledger from which such debit was made.”.

4. In the said rules, in rule 92, -

(a) in sub-rule (1), the proviso shall be omitted; and

(b) in sub-rule (2), -

(i) for the word and letter “Part B”, the word and letter “Part A” shall be substituted; and

(ii) the following proviso shall be inserted, namely: -

“Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of **FORM GST RFD-07**.”.

5. In the said rules, in rule 96, -

(a) in sub-rule (6), for the word and letter “Part B”, the word and letter “Part A” shall be substituted; and

(b) in sub-rule (7), for the words, letters and figures, “after passing an order in **FORM GST RFD-06**”, the words, letters and figures, “by passing an order in **FORM GST RFD-06** after passing an order for release of withheld refund in Part B of **FORM GST RFD-07**” shall be substituted.

6. In the said rules, in **FORM GST REG-21**, under the sub-heading “Instructions for submission of application for revocation of cancellation of registration”, in the first bullet point “after the words “date of service of the order of cancellation of registration”, the words and figures “or within such time period as extended by the Additional Commissioner or the Joint

Commissioner or Commissioner, as the case may be, in exercise of the powers provided under proviso to sub-section (1) of section 30," shall be inserted;

7. In the said rules, in rule 138E, for the words "in respect of a registered person, whether as a supplier or a recipient, who, —" the words "in respect of any outward movement of goods of a registered person, who, —" shall be substituted.

8. In the said rules, for **FORM GST RFD-07**, the following **FORM** shall be substituted, namely:-

"FORM GST RFD-07

[See rules 92(2) and 96(6)]

Reference No.

Date: <DD/MM/YYYY>

To

_____ (GSTIN/UIN/Temp. ID)

_____ (Name)

_____ (Address)

..... (ARN)

Part-A

Order for withholding the refund

Refund payable to the taxpayer with respect to ARN specified above are hereby withheld in accordance with the provisions of sub-section (10)/(11) of section 54 of the CGST Act, 2017. The reasons for withholding are given as under:

S.No.	Particulars	
1.	ARN	
2.	Amount Claimed in RFD-01	<Auto-populated>
3.	Amount Claimed in RFD-06	<Auto-populated>
4.	Amount Adjusted in RFD-06	<Auto-populated>
5.	Amount Withheld	
6.	Reasons for withholding (More than one reason can be selected)	<ul style="list-style-type: none"> o Recoverable dues not paid o In view of sub-section 11 of Section 54 o On account of fraud (s) of serious nature o Others, (specify)
7.	Description of the reasons	(Up to 500 characters, separate file can be attached for detailed reasons)
8.	Record of Personal Hearing	(Up to 500 characters, separate file can be attached for detailed reasons)

Part-B

Order for release of withheld refund

This has reference to your refund application <ARN> dated <date> against which the payment of refund amount sanctioned vide order <RFD-06 order no> dated <date> was withheld by this office order <Order Reference No> dated <date>. It has been now found to my satisfaction that the conditions for withholding of refund no longer exist and therefore, the refund amount withheld is hereby allowed to be released as given under:

PUNJAB GOVT. GAZ., NOVEMBER 16, 2022
(KRTK 25, 1944 SAKA)

1593

S.No.	Particulars	
1	ARN	
2	Amount Claimed in RFD-01	<Auto-populated>
3	Amount Inadmissible in RFD-06	<Auto-populated>
4	Amount Adjusted in RFD-06	<Auto-populated>
5	Amount Withheld in RFD-07 A	
6	Amount Released	
7	Amount to be Paid	

Date:
Name:

Signature (DSC): Place:

Designation:

Office Address: ”.

9. In the said rules, after **FORM GST RFD-01 B**, the following **FORM** shall be inserted, namely: -

“FORM GST RFD-01 W

[Refer Rule 90(5)]

Application for Withdrawal of Refund Application

1. ARN:
 2. GSTIN:
 3. Name of Business (Legal):
 4. Trade Name, if any:
 5. Tax Period:
 6. Amount of Refund Claimed:
 7. Grounds for Withdrawing Refund claim:
 - i. Filed the refund application by mistake
 - ii. Filed Refund Application under wrong category
 - iii. Wrong details mentioned in the refund application
 - iv. Others (Please Specify)
 8. Declaration: I/We <Taxpayer Name> hereby solemnly affirm and declare that the information given herein is true and correct to the best of my/ our knowledge and belief and nothing has been concealed therefrom.
- Place: Signature of Authorised Signatory
Date: Name
Designation/ Status".

AJOY SHARMA,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R. 80/P.A.5/2017/S.164/Amd.(54)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1.Short title and commencement. -(1) These rules may be called the Punjab Goods and Services Tax (Eleventh Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from the 1st day of June, 2021.

2. In the Punjab Goods and Services Tax Rules, 2017, (hereinafter referred to as the said rules), in rule 26, in sub-rule (1) , in the fourth proviso, with effect from the 31st day of May, 2021, for the figures, letters and words “31st day of May, 2021”, the figures, letters and words “31st day of August, 2021” shall be substituted.

3. In the said rules, in rule 36, in sub-rule (4), for the second proviso, the following proviso shall be substituted, namely: —

“Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in **FORM GSTR-3B** for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.”.

4. In the said rules, in rule 59, in sub-rule (2), after the first proviso, the following proviso shall be inserted, namely: —

“Provided further that a registered person may furnish such details, for

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the month of May, 2021, using IFF from the 1st day of June, 2021 till the 28th day of June, 2021.”

AJOY SHARMA,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2703/11-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R. 81/P.A.5/2017/S.164/Amd.(55)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1.Short title and commencement. - (1) These rules may be called the Punjab Goods and Services Tax (Twelfth Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from the 1st day of August, 2021.

2. In the Punjab Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), for rule 80, the following rule shall be substituted, namely: -

“80. Annual return.- (1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in **FORM GSTR-9** on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person paying tax under section 10 shall furnish the annual return in **FORM GSTR-9A**.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in **FORM GSTR - 9B**.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under

section 44 in FORM GSTR-9C along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”.

3. In the said rules, in **FORM GSTR-9**, in the instructions, -

(a) in paragraph 4, -

(A) after the word, letters and figures “or FY 2019-20”, the word, letters and figures “or FY 2020-21” shall be inserted; and

(B) in the Table, in second column, for the word and figures “and 2019-20” wherever they occur, the word and figures “, 2019-20 and 2020-21” shall be substituted;

(b) in paragraph 5, in the Table, in second column, -

(A) against serial number 6B, after the letters and figures “FY 2019-20”, the letters, figures and word “and 2020-21” shall be inserted;

(B) against serial numbers 6C and 6D, -

(I) after the word, letters and figures “For FY 2019-20”, the word and figures “and 2020-21” shall be inserted; and

(II) for the word and figures “and 2019-20”, the figures and word “, 2019-20 and 2020-21” shall be substituted;

(C) against serial number 6E, for the letters and figures “FY 2019-20”, the letters, figures and word “FY 2019-20 and 2020-21” shall be substituted; and

(D) against serial number 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, in the entry, for the figures and word “2018-19 and 2019-20”, the figures and word “2018-19, 2019-20 and 2020-21” shall be substituted;

(c) in paragraph 7, -

(A) after the words and figures “April 2020 to September 2020.”, the following shall be inserted, namely: -

“For FY 2020-21, Part V consists of particulars of transactions for the previous financial year but paid in the **FORM GSTR-3B** between April 2021 to September 2021.”;

(B) in the Table, in second column, -

(I) against serial numbers 10 and 11, after the entries, the following entry shall be inserted, namely: -

“For FY 2020-21, details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of **FORM GSTR-1** of April 2021 to September 2021 shall be declared here.”;

(II) against serial number 12, -

(1) after the words, letters and figures “For FY 2019-20, the registered person shall have an option to not fill this table.”, the following entry shall be inserted, namely: -

“For FY 2020-21, aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April 2021 to September 2021 shall be declared here. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details.”; and

(2) for the figures and word “2018-19 and 2019-20”, the figures and word “2018-19, 2019-20 and 2020-21” shall be substituted; and

(III) against serial number 13, -

(1) after the words, letters and figures “reclaimed in FY 2020- 21, the details of such ITC reclaimed shall be furnished in the annual return for FY 2020-21,”, the following entry shall be inserted, namely: -

“For FY 2020-21, details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April 2021 to September 2021 shall be declared here. Table 4(A) of **FORM GSTR-3B** may be used

for filling up these details. However, any ITC which was reversed in the FY 2020-21 as per second proviso to sub-section (2) of section 16 but was reclaimed in FY 2021-22, the details of such ITC reclaimed shall be furnished in the annual return for FY 2021-22.”; and

(2) for the figures and word “2018-19 and 2019-20”, the figures and word “2018-19, 2019-20 and 2020-21” shall be substituted; and

(d) in paragraph 8, in the Table, in second column, for the figures and word “2018-19 and 2019-20” wherever they occur, the letters, figures and word “2018-19, 2019-20 and 2020-21” shall be substituted.”.

4. In the said rules, in **FORM GSTR-9C**, -

(i) in Part A, in the table -

(a) in SI no 9, after the entry relating to serial number K, the following serial number and entry relating thereto shall be inserted, namely: -

“K- 1	Others					”;
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(b) in SI no 11, after entry relating to “0.10%”, the following entry shall be inserted, namely: -

“Others					”;	and
---------	--	--	--	--	----	-----

(c) against Pt. V, -

(I) in the heading, for the words “Auditor’s recommendation on additional Liability due to non-reconciliation”, the words “Additional Liability due to non-reconciliation” shall be substituted; and

(II) after entry relating to “0.10%”, the following entry shall be inserted, namely: -

“Others					”;
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(ii) after the table, for the portion beginning with "Verification:" and ending with "and balance sheet etc.", the following shall be substituted, namely: -

"Verification of registered person:

I hereby solemnly affirm and declare that the information given herein above is true and correct and nothing has been concealed there from. I am uploading this self-certified reconciliation statement in **FORM GSTR-9C**. I am also uploading other statements, as applicable, including financial statement, profit and loss account and balance sheet, etc.";

(iii) in the instructions, -

(a) in paragraph 4, in the Table, in second column, for the figures and word "2018-19 and 2019-20" wherever they occur, the figures and word "2018-19, 2019-20 and 2020-21" shall be substituted;

(b) in paragraph 6, in the Table, in second column, for the figures and word "2018-19 and 2019-20" wherever they occur, the figures and word "2018-19, 2019-20 and 2020-21" shall be substituted; and

(c) for paragraph 7, the following paragraph shall be substituted, namely,
-

"7. Part V consists of the additional liability to be discharged by the taxpayer due to non-reconciliation of turnover or non-reconciliation of input tax credit. Any refund which has been erroneously taken and shall be paid back to the Government shall also be declared in this table. Lastly, any other outstanding demand which is to be settled by the taxpayer shall be declared in this Table."; and

(iv) Part B Certification shall be omitted.

AJOY SHARMA,

Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

PART III
GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R. 82/P.A.5/2017/S.164/Amd.(56)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1.Short title and commencement. - (1) These rules may be called the Punjab Goods and Services Tax (Thirteenth Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from the 29th day of August, 2021.

2. In the Punjab Goods and Services Tax Rules, 2017, (hereinafter referred to as the said rules), in rule 26, in sub-rule (1),-

(a) in the fourth proviso, for the figures, letters and words "31st day of August, 2021", the figures, letters and words "31st day of October, 2021" shall be substituted; and

(b) with effect from the 1st day of November, 2021, all the provisos shall be omitted.

3. In the said rules, with effect from the 1st day of May, 2021, in rule 138E, after the fourth proviso, the following proviso shall be inserted, namely: -

"Provided also that the said restriction shall not apply during the period from the 1st day of May, 2021 till the 18th day of August, 2021, in case where the return in **FORM GSTR-3B** or the statement of outward supplies in **FORM GSTR-1** or the statement in **FORM GST CMP-08**, as the case may be, has not been furnished for the period March, 2021 to May, 2021."

4. In the said rules, in **FORM GST ASMT-14**, -

- (a) after the words, “with effect from ”, the words, “vide Order Reference No. -----, dated ” shall be inserted;
- (b) the words, “for conducting business without registration despite being liable for registration” shall be omitted; and
- (c) at the end after “Designation”, the word “Address” shall be inserted.

AJOY SHARMA,

Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2703/11-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R. 83/P.A.5/2017/S.164/Amd.(57)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1.Short title and commencement. - (1) These rules may be called the Punjab Goods and Services Tax (Fourteenth Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from the 24th day of September, 2021.

2. In the Punjab Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 10A, with effect from the date as may be notified, -

(a) after the words “details of bank account”, the words “which is in name of the registered person and obtained on Permanent Account Number of the registered person” shall be inserted; and

(b) the following proviso shall be inserted, namely:-

“Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.”.

3. In the said rules, after rule 10A, with effect from the date as may be notified, the following rule shall be inserted, namely: -

“10B. Aadhaar authentication for registered person .— The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members

of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the purposes as specified in column (2) of the Table below:

Table

Serial No.	Purpose
(1)	(2)
1.	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under rule 23
2.	For filing of refund application in FORM RFD-01 under rule 89
3.	For refund under rule 96 of the integrated tax paid on goods exported out of India

Provided that if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

- (c) her/his Aadhaar Enrolment ID slip; and
- (d) (i) Bank passbook with photograph; or
(ii) Voter identity card issued by the Election Commission of India;
or
(iii) Passport; or
(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988);

Provided further that such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.”.

4. In the said rules, in rule 23, in sub-rule (1), with effect from the date as may be notified, after the words “on his own motion, may”, the words, figures and letter “, subject to the provisions of rule 10B,” shall be inserted.

5. In the said rules, in rule 45, in sub-rule (3), with effect from the 1st day of

October, 2021, -

- (i) for the words “during a quarter”, the words “during a specified period” shall be substituted;
- (ii) for the words “the said quarter”, the words “the said period” shall be substituted; and
- (iii) after the proviso, the following explanation shall be inserted, namely:

“Explanation. - For the purposes of this sub-rule, the expression “specified period” shall mean,-

- (a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and
- (b) a financial year in any other case.”.

(6). In the said rules, in rule 59, in sub-rule (6), with effect from the 1st day of January, 2022, -

- (i) in clause (a), for the words “for preceding two months”, the words “for the preceding month” shall be substituted; and
- (ii) clause (c) shall be omitted;

(7) In the said rules, in rule 89, -

- (i) in sub-rule (1), with effect from the date as may be notified, after the words “may file”, the words and signs “, subject to the provisions of rule 10B,” shall be inserted; and
- (ii) after sub-rule (1), the following sub-rule shall be inserted, namely:-

“(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed

before the expiry of a period of two years from the date on which this sub-rule comes into force.”.

8. In the said rules, in rule 96, in sub-rule (1), after clause (b), with effect from the date as may be notified, the following clause shall be inserted, namely:-

“(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;”.

9. In the said rules, after rule 96B, with effect from the date as may be notified, the following rule shall be inserted, namely:-

“96C. Bank Account for credit of refund.- For the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, “bank account” shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.”.

AJOY SHARMA,

Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R.84 /P.A.5/2017/S.164/Amd.(58)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely: -

1.Short title and commencement. -(1) These rules may be called the Punjab Goods and Services Tax (Fifteenth Amendment) Rules, 2022.

(2) They shall be deemed to have into force from the 1st day of December, 2021.

2. In the Punjab Goods and Services Tax Rules, 2017(hereinafter referred to as the said rules), in

rule 137, with effect from the 30th day of November 2021, for the words “four years”, the words “five years” shall be substituted.

3. In the said rules, in **FORM GST DRC-03**, —

(a) in the heading, after the words “or statement”, the words, letters and figures “or intimation of tax ascertained through **FORM GST DRC-01A**” shall be inserted;

(b) against item 3, in column (3), for the word and letters “Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others (specify)”, the words, letters, figures and brackets “Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through **FORM GST DRC-01A**, Mismatch (Form

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GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)" shall be substituted;

- (c) against item 5, in column (1), after the word and figures "within 30 days of its issue", the words, letters, figures and brackets " , scrutiny, intimation of tax ascertained through Form GST DRC- 01A, audit, inspection or investigation, others (specify)" shall be inserted; and
- (d) for the table, under serial number 7, the following table shall be substituted, namely:-

Serial No.	Tax Period	Act	Place of supply(POS)	Tax / Cess	Interest	Penalty, if applicable	Fee	Others	Total	Ledger utilized (Cash/ Credit)	Debit entry no.	Date of debit entry
1	2	3	4	5	6	7	8	9	10	11	12	13

AJOY SHARMA,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2703/11-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th November, 2022

No. G.S.R.85/P.A.5/2017/S.164/Amd.(59)/2022.- In exercise of the powers conferred by section 164 of the Punjab Goods and Services Tax Act, 2017(Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following rules further to amend the Punjab Goods and Services Tax Rules, 2017, namely:

1. Short title and commencement.-(1) These rules may be called the Punjab Goods and Services Tax (Sixteenth Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from the 29th day of December,2021.

2. In the Punjab Goods and Services Tax Rules, 2017(hereinafter referred to as the said rules), in rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: -

" (4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub- section (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and

(b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 161060."

3. In the said rules, in rule 80,-

(a) after sub-rule (1), the following sub-rule shall be inserted, namely:-

" (1A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021, the said annual return shall be furnished on or before the twenty-eighth day of February, 2022."

(b)after sub-rule (3), the following sub-rule shall be inserted, namely:-

" (3A) Notwithstanding anything contained in sub-rule (3), for

the financial year 2020-2021, the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022."

4. In the said rules, in rule 95, in sub-rule (3), after clause (c), the following proviso shall be inserted and

shall be deemed to have been inserted with effect from the 1st day of April, 2021, namely:-

Provided that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**."

5. In the said rules, in rule 142, with effect from the 1st day of January, 2022,—

(a) in sub-rule (3), for the words and letters, fourteen days of detention or seizure of the goods and conveyance " , the words, brackets and figures, " seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub- section (3)" shall be substituted; and

(b) in sub-rule (5), for the words, "tax, interest and penalty payable by the person chargeable with tax", the words, "tax, interest and penalty, as the case may be, payable by the person concerned" shall be substituted.

6. In the said rules after rule 144, the following rule shall be inserted with effect from the 1st day of January, 2022, namely:-

" 144A. Recovery of penalty by sale of goods or conveyance detained or seized in transit.- (1) Where the person transporting any goods or the owner of such goods fails to pay the amount of

penalty under sub-section (1) of section 129 within fifteen days from the date of receipt of the copy of the order passed under sub-section (3) of the said section 129, the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

- (2) The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC- 10** clearly indicating the goods or conveyance to be sold and the purpose of sale:

Provided that where the person transporting said goods or the owner of such goods pays the amount of penalty under sub-section (1) of section 129, including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period mentioned in sub-rule (1) but before the issuance of notice under this sub-rule, the proper officer shall cancel the process of auction and release such goods or conveyance.

- (3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

- (4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.
- (5) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction:

Provided that where the detained or seized goods are

perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

- (6) On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in **FORM GST DRC-12**.
- (7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.
- (8) Where an appeal has been filed by the person under the provisions of sub-section (1) read with sub-section (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed:

Provided that this sub-rule shall not be applicable in respect of goods of perishable or hazardous nature. "

7. In the said rules, for rule 154, the following rule shall be substituted with effect from the 1st day of January, 2022, namely:—

" 154. Disposal of proceeds of sale of goods or conveyance and movable or immovable property.—

(1) The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under sub-section (3) of section 129 shall,—

- (a) first, be appropriated against the administrative cost of the recovery process;
- (b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under sub-section (3) of section 129, as the case may be;
- (c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and
- (d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the

person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned.

- (2) Where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund."

8. In the said rules, in rule 159, with effect from the 1st day of January, 2022,—

(a) in sub-rule (2)-

(A) after the words "copy of the order of attachment" the words, letters and figures " in **FORM GST DRC-22**" shall be inserted; and

(B) after the words "Commissioner to that effect.", the words and figures, "and a copy of such order shall also be sent to the person whose property is being attached under section 83" shall be inserted;

(b) in sub-rule (3)-

(A) for the words "and if the taxable person" , the word " and if the person, whose property has been attached, " shall be substituted; and

(B) for the words "by the taxable person" , the words, "by such person" shall be substituted;

(c) in sub-rule (4), for the words "the taxable person" occurring at both the places, the words "such person" shall be substituted. and

(d) in sub-rule (5), for the words brackets and figure ?, within seven days of the attachment under sub-rule (1), file an objection?, the words, letters and figures "file an objection in **FORM GST DRC-22A**" shall be substituted.

9. In the said rules, for "**FORM GST DRC-10**", the following form shall be substituted, with effect from

the 1st day of January, 2022, namely:—

"FORM GST DRC – 10

[See rules 144(2) and 144A]

Notice for Auction under section 79 (1) (b) or section 129(6) of the Act

Demand order no.:

Date:

Period:

Whereas an order has been made by me for sale of the attached or distrained goods specified in the Schedule below for recovery of Rs... and interest thereon and admissible expenditure incurred on the recovery process in accordance with the provisions of section 79.

Or

Whereas the goods or conveyance detained or seized under Section 129 are liable for sale or disposal in accordance with the provisions of sub-section (6) of Section 129 for recovery of penalty of Rs..... payable under sub-section (3) of section 129 and the expenses incurred in safe custody and handling of such goods or conveyance and other administrative expenses

The sale will be by public auction and the goods and/or conveyance shall be put up for sale in the lots specified in the Schedule. The sale will be of the right, title and interests of the defaulter. And the liabilities and claims attached to the said properties, so far as they have been ascertained, are those specified in the Schedule against each lot.

The auction will be held on at.... AM/PM.

The price of each lot shall be paid at the time of sale or as per the directions of the proper officer/ specified officer and in default of payment, the goods and/or conveyance shall be again put up for auction and resold.

Schedule

Serial No.	Description of goods or conveyance	Quantity
1	2	3

Place: _____ Signature _____
Date: _____ Name _____
Designation: " _____.

10. In the said rules, in **FORM GST DRC-11**, with effect from the 1st day of January, 2022,"-

(a) for the words, figures, letter and brackets "See rule 144(5) & 147(12)", the words, figures and brackets "See rule 144(5),144A and 147(12)" shall be substituted; and

(b) for the word "goods", the words "goods or conveyance" shall be substituted.

11. In the said rules, in **FORM GST DRC-12**, with effect from the 1st day of January, 2022;

(a) for the words, figures, brackets and letter "See rule 144(5) & 147(12)", the words, figures and brackets "See rule 144(5),144A and 147(12)" shall be substituted;

(b) for the word "goods" , wherever it occurs, the words "goods or conveyance" shall be substituted; and

(c) after the words, figures, brackets and letters "provisions of section 79(1)(b)/(d)", the words, figures and brackets "or section 129(6)" shall be inserted.

12. In the said rules, for **FORM GST DRC-22**, the following form shall be substituted, with effect from the 1st day of January, 2022, namely:-

“FORM GST DRC -22

[See rule 159(1)]

Reference No.:

Date:

To

_____Name

_____Address

(Bank/ Post Office/Financial Institution/Immovable property registering authority/ Regional Transport Authority/Other Relevant Authority)

Provisional attachment of property under section 83

It is to inform that M/s (name) having principal place of business at ----

----- (address) bearing registration number as -----
(GSTIN/ID), PAN is a registered taxable person under the
<<SGST/CGST>> Act.

or

It is to inform that Sh..... (name) resident
of..... (address) bearing PAN and/or Aadhaar
No is a person specified under sub-section (1A) of
Section 122 .

Proceedings have been launched against the aforesaid person under
section << >> of the said Act to determine the tax or any other
amount due from the said person. As per information available with the
department, it has come to my notice that the said person has a -

<<saving / current / FD/RD / depository >>account in your << bank/
post office/financial institution>> having account no. <<A/c no. >>;
or

property located at << property ID & location>>. or

Vehicle No. <<description>>

or

Others (please specify) <<description>>

In order to protect the interests of revenue and in exercise of the powers
conferred under section 83 of the Act, I (name),
----- (designation), hereby provisionally attach the
aforesaid account / property.

No debit shall be allowed to be made from the said account or any other
account operated by the aforesaid person on the same PAN without the
prior permission of this department.

or

The property mentioned above shall not be allowed to be disposed of
without the prior permission of this department.

Signature
Name
Designation

Copy to (person)"

13. In the said rules, in **FORM GST DRC-23**, with effect from the 1st day
of January, 2022,—

(a) after "/Immovable property registering authority", the following
shall be inserted, namely:—

"/ Regional Transport Authority/Other Relevant Authority"; and

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(KRTK 25, 1944 SAKA)

(b) for the words "proceedings pending against the defaulting person which warrants the", occurring at both the places, the words, "requirement of" shall be substituted.

14. In the said rules in **FORM APL-01**, in entry number 15, for the table under clause (a), the following table shall be substituted, with effect from the 1st day of January, 2022, namely:-

Particulars		Central Tax	State Tax	Integrated Tax	Cess	Total amount	
(a) Admitted amount	Tax/Cess					<total>	<total>
	Interest					<total>	
	Penalty					<total>	
	Fees					<total>	
	Other charges					<total>	
(b) Pre-deposit(10% of disputed tax/cess but not exceeding Rs. 25 crore each in respect of CGST,SGST or cess, or not exceeding Rs.50 crore in respect of IGST and Rs.25 crore in respect of Cess)	Tax/Cess					<total>	
	Penalty					<total>".	
(c) Pre-deposit in case of sub section (3) of section 129	Penalty					<total>".	

15. In the said rules, after **FORM GST DRC-22**, the following form shall be inserted with effect from the 1st day of January, 2022, namely:-

“FORM GST DRC – 22A

[See rule 159(5)]

Reference No.:

Date:

ARN No. of Order in FORM GST DRC-22:

To
The Pr. Commissioner/Commissioner
.....(Jurisdiction)

Application for filing objection against provisional attachment of property

Whereas, an order in FORM GST DRC-22 has been issued for provisional attachment of the following property under the provisions of section 83 of the Act vide ARN No.....

Ref ID	
Property provisionally attached	<<property id & location>>
Account provisionally attached	<<saving/current/FDYRD/depository account no>>
Vehicle provisionally attached	<< Vehicle details>>
Any other property	<<details>>

2. In accordance with the provisions of Rule 159(5) of the PGST Rules, 2017, I hereby submit my objection on the basis of following facts and circumstances.

.
<<.....>>

<<...Documents to be uploaded...>>

Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Name-

GSTIN (in case of registered person)-

PAN and/or Aadhaar No. (in case of others)- Place –

Place-

Date –

Signature of Authorized Signatory".

AJOY SHARMA,

Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2703/11-2022/Pb. Govt. Press, S.A.S. Nagar

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION BRANCH-II)

NOTIFICATION

The 21st November, 2022

No. S.O. 86/P.A.18/2022/S.1/2022.—In exercise of the powers conferred by sub-section (2) of section 1 of the Punjab Goods and Services Tax (Amendment) Act, 2022 (Punjab Act No. 18 of 2022) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to appoint the 5th day of July, 2022, as the date on which the provisions of section 13 of the said Act shall be deemed to have come into force.

AJOY SHARMA,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2711/11-2022/Pb. Govt. Press, S.A.S. Nagar

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION BRANCH-II)

NOTIFICATION

The 21st November, 2022

No. S.O. 87/P.A.18/2022/S.1/2022.—In exercise of the powers conferred by sub-section (2) of section 1 of the Punjab Goods and Services Tax (Amendment) Act, 2022 (Punjab Act No. 18 of 2022) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to appoint the 1st day of October, 2022, as the date on which the provisions of sections 2 to 15, except section 13, of the said Act shall be deemed to have come into force.

AJOY SHARMA,
Financial Commissioner (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2711/11-2022/Pb. Govt. Press, S.A.S. Nagar

GIST of GST Notifications

Centre's Notification No.	Subject	
01/2021-Central Tax dated 01.01.2021	Seeks to make amendment (2021) to CGST Rules, 2017	
07/2021-Central Tax dated 27.04.2021	Seeks to make second amendment (2021) to CGST Rules.	
13/2021-Central Tax dated 01.05.2021	Seeks to make third amendment (2021) to CGST Rules	
15/2021-Central Tax dated 18.05.2021	Seeks to make fourth amendment (2021) to CGST Rules, 2017.	
27/2021-Central Tax dated 01.06.2021	Seeks to make amendments (Fifth Amendment, 2021) to the CGST Rules, 2017.	
32/2021-Central Tax dated 29.08.2021	Seeks to make seventh amendment (2021) to CGST Rules, 2017.	
35/2021-Central Tax dated 24.09.2021	Seeks to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017.	
37/2021-Central Tax dated 01.12.2021	Seeks to make amendments (Ninth Amendment, 2021) to the CGST Rules, 2017.	
40/2021-Central Tax dated 29.12.2021	Seeks to make amendments (Tenth Amendment, 2021) to the CGST Rules, 2017.	
09/2022-Central Tax dated 5th July,2022 09/2022-Central Tax dated 5th July,2022	Seeks to notify the provisions of clause (c) of section 110 and section 111 of the Finance Act, 2022	
18/2022-Central Tax dated 28-09-2022	Seeks to notify 01.10.2022 as the date on which provisions of sections 100 to 114, except clause (c) of section 110 and section 111 of Finance Act, 2022 shall come into force.	

Advance Rulings

1. GST and ITC on Canteen Services and recoveries from employees

Case Name : Tube Investment of India Limited

Appeal Number : Advance Ruling No. 12/2022-23

Date of Judgement/Order: 24/11/2022

Courts: AAR Uttarakhand Advance Rulings

a. Whether the nominal amount of recoveries made by the Applicant from the employees who are provided food in the factory canteen would be considered as a 'Supply' by the applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017?

Yes, it is a supply.

b. Whether GST is applicable on the amount recovered from the employees for the food provided in the factory canteen or on the amount paid by the Applicant to the Canteen Service Provider?

GST is applicable on both the amount i.e., amount paid to the canteen service provider and also on the nominal amount recovered from the employees.

c. Whether input tax credit (ITC) is available to the on GST charged by the Canteen Service Providers for providing the catering services of the factory where it is obligatory for the Applicant to provide the same to its employees as mandated under the Factories Act, 1948 even if the answer to question (a) is "No" ?

Benefit of ITC is not admissible on the GST on the amount paid to the canteen service providers and also on the amount recovered from the employees.

d. Whether input tax credit (ITC) can be availed on GST charged by the Canteen service providers, the answer to the question (b) is "Yes –

No, ITC is not admissible on the GST on the amount paid to the canteen service providers.

2. Services to Educational Boards – Sub contractor not eligible to claim exemption

Case Name : In re Magnetic InfoTech Pvt Ltd.

Appeal Number : Advance Ruling No. AAAR.COM/11/2022

Date of Judgment/Order : 22/11/2022

Courts: AAAR AAR Telangana Advance Rulings

The applicant sought ruling about whether the exemption is available to them in case of the services provided on sub contract basis i.e. the applicant provides pre and post examination services to the main contractor who in turn provides the said services to the Educational Boards and Universities (including Open Universities) under Notification No. 12/2017-(R), dt. 28.6. 2017.. However, since in the present case the main contractor to whom the applicant is to provide services as subcontractor is not an educational institution, though the services are allegedly being provided to the Educational Boards and Universities by the main contractor, the exemption contained in the impugned notification is not available to the applicant. When exemption contained in a notification is to be claimed, an applicant is to satisfy the conditions

prescribed therein. The wordings of any notification have to be strictly read to allow or deny any exemption.

The applicant, M/s Magnetic InfoTech Private Ltd., as a sub contractor, is not eligible to claim exemption as available under Notification No. 12/2017-(R), dt. 28.6.2017.

3. Parts & accessories of hearing aids falling under tariff item 90219010 not entitled for GST exemption

Case Name: In re Sivantos India Pvt. Ltd.

Appeal Number: Advance Ruling Order No. KAR/AAAR /07/2022

Date of Judgment/Order: 21/11/2022

Courts: AAAR AAR Karnataka Advance Rulings

AAAR held that Since the parts and accessories of hearing aids falling under tariff item 9021 90 10 are not specifically mentioned in any of the entries of the exemption notification No 02/2017 Central Tax (Rate) and are also not specifically mentioned in either Schedule I, II, IV, V and VI of the rate Notification No 01/2017 Central Tax (Rate), they will get covered under entry Sl. No 453 of Schedule III of Notification No 01/2017 Central Tax (Rate) as this is a residuary entry which covers goods under any chapter which are not specified under any of the other rate Schedules. The very purpose of a residuary entry in Schedule III is to cover goods which are not specified in any of the other Schedules. If we had to accept the Appellant's argument that the four-digit heading level entry in the rate notification must always cover all sub-headings and tariff items under that heading, then there would be no purpose of the residuary entry Sl.No 453 in Schedule III. As already explained earlier, the manner of reading the GST rate notification is based on the chapter/heading/sub-heading/tariff item mentioned in the entry together with the description of goods specified in the said entry. One cannot assume that the indication of a chapter or heading in an entry will automatically cover all goods under a sub-heading and tariff items under that chapter or heading and ignore the description of goods specified in the said entry. We have already held that the description of goods in entry Sl.No 221 of Schedule II / 255A of Schedule I does not include within its scope parts and accessories of hearing aids. Therefore, we uphold the ruling given by the lower Authority that the parts and accessories of hearing aids falling under tariff item 9021 90 10 are not entitled for exemption under entry Sl.No 142 of Notification No 02/2017 Central Tax (Rate) but are chargeable to tax at the rate of 18% in terms of entry Sl.No 453 of Schedule III of Notification No 01/2017 Central Tax (Rate).

We uphold the order No. KAR ADRG 27/2022 dated 12/08/2022 passed by the Advance Ruling Authority and the appeal filed by the Appellant M/s. Sivantos India Pvt Ltd, No. 78, 4th Floor, Salarpuria Sattva Magnificia – Phoenix, Near Tin Factory, Old Madras Road, Doorvani Nagar, Bengaluru Urban, 560016, stands dismissed on all accounts.

4. GST Appellate Tribunal has power to pass an order or to remand the case

Case Name: In re Myntra Designs Pvt Ltd (GST AAAR Karnataka)

Appeal Number: Advance Ruling No. KAR/AAAR /06/2022

Date of Judgment/Order : 21/11/2022

Courts: AAAR AAR Karnataka Advance Rulings

The Appellant has also made out a case that the powers of this Authority includes remand even if the said power has not been explicitly stated in Section 101(1) of the CGST Act. The Appellant has drawn a parallel with Section 254 of the Income Tax Act which states that the Appellate Tribunal after giving both the parties to the appeal, an opportunity of being heard, pass such order as it thinks fit; that the Supreme Court has interpreted this phrase to mean that the Appellate Tribunal has the power to pass an order or to remand the case. Section 101(1) of the CGST Act states “The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.” Here the phrase “pass such order as it thinks fit” is followed by a comma and not a full stop as in the case of Section 254 of the Income Tax Act. Therefore, while reading Section 101(1), the phrase “pass such orders as it thinks fit” has to be read in continuity with the rest of the sentence following the comma. Such a reading makes it clear that there is no provision for an order of remand for fresh decision and the obvious intention of the Legislature seems to be that the Appellate Authority should itself decide the question. Moreover, the provision that applications rejected in terms of Section 98(2) are not appealable before the Appellate Authority substantiates the understanding that when any ruling pronounced by the lower Authority is appealed before us, we have to decide the issue and not remand it to the lower Authority. However, in this case the situation is peculiar. The question of taxability having been rejected by the lower Authority albeit incorrectly, without any ruling, the matter is not appealable as per the law. But considering the fact that the lower Authority’s actions of not answering the question of taxability on the grounds of jurisdiction has been held as incorrect by us, we are constrained, in the interests of justice to send the matter back to the lower Authority to pronounce a ruling on the question of taxability after considering the place of supply provisions. In our opinion this would meet the ends of justice for the Appellant.

AAAR set aside the order of the lower Authority and remand the case to the Advance Ruling Authority for a fresh consideration after taking into account the observations made by us in this order. The appeal filed by the appellant M/s Myntra Designs Pvt Ltd, Sy No 8 to 14 and 55, Alyssa Begonia Clover Embassy Tech Village, Outer Ring Road, Devarbisanahalli Varthur Hobli, Bengaluru Urban, 560103 is disposed off on the above terms.

5. Medical Insurance premium for employees, pensioners & their family members are taxable under GST

Case Name: In re Hyderabad Metropolitan Water Supply And Sewerage Board (GST AAAR Telangana)

Appeal Number: Order-in-Appeal No. AAAR/12/2022

Date of Judgment/Order : 02/11/2022

Courts: AAAR AAR Telangana Advance Rulings

The Telangana State Appellate Authority for Advance Ruling (“TAAAR”) in the case of M/s. Hyderabad Metropolitan Water Supply and Sewerage Board (Order in Appeal No. AAAR/12/2022) upheld the ruling passed by Advance Ruling Authority (“the AAR”) of not providing the benefit of exemption under entry no. 3 of the Notification 12/2017-Central Tax (Rate) dated June 28, 2017 (“Exemption Notification”) wherein the payment was made for medical insurance premium for employees, pensioners, and their family members.

Facts: M/s. Hyderabad Metropolitan Water Supply and Sewerage Board (“the Appellant”) is a Board constituted under the provisions of Hyderabad Metropolitan Water supply and Sewerage Act, 1989 with the function and responsibility interalia including supplying of portable water and operations and management of water supply system.

The Appellant is set up by an act of State Legislation to carry out the function entrusted to a Municipality under Article 243W of the Constitution, hence, is a government authority as defined under the Exemption Notification.

The Appellant availed medical insurance services for their employees, pensioners, and their family members. Further, it also availed insurance services for vehicles owned by it.

The AAR vide TSAAR 28/2022 dated June 3, 2022 passed the ruling that payment of medical insurance premium by the Appellant for their employees, pensioners and their family members were not in relation to services entrusted under article 243W of the Constitution of India and hence, the Appellant was not eligible for availing exemption under entry no. 3 of the Exemption Notification.

However, insurance services availed by the Appellant for vehicles which have direct relation with services entrusted in the Article 243W of the Constitution were eligible for exemption under the said entry of the Exemption Notification.

Issue: Whether medical insurance premium taken to provide health Insurance to the employees, pensioners and their family members and Vehicle Insurance Policy taken to provide insurance to the vehicles owned by the Appellant, eligible for exemption as mentioned in Entry No. 3 of the Exemption Notification?

Held: The AAAR held as under:

- The medical insurance services availed by the Applicant for their employees, pensioners and their family members was not eligible for exemption under entry no. 3 of the exemption notification because as per the entry no. 3 of the Exemption Notification, the exemption is only available for pure services which are availed “in relation to any

function entrusted to a Panchayat under article 243G of the constitution or in relation to any function entrusted to a Municipality under article 243W of the constitution.”

- The AAAR referred the Hon’ble Supreme Court judgement of Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Ors. wherein court has held that the exemption notification should be interpreted strictly.
- Therefore, the word ‘in relation to’ mentioned entry 3 of the Exemption Notification shall only include functions which are in direct relation to the entry like water supply and sewerage, however, the insurance provided by the Appellant to its employees and their family members are not in relation to any function entrusted to the municipality.
- Thus, the medical insurance services availed by Appellant for employees, pensioners and their family members were not in direct and proximate relation of water supply and sewerage (functions entrusted in article 243W). Hence, Appellant was not eligible for availing exemption on such impugned supplies.
- For services of vehicle insurance premium, the Appellant is eligible for availing exemption under entry 3 of Exemption Notification as vehicles which were used for transportation of water and sewerage management were essential for performing the functions as entrusted in the Article 243W of the Constitution. However, other vehicles which are not used for performing functions entrusted under the Article 243W of the Constitution the services shall be taxable.
- Further, the said exemption entry has been amended vide Notification 16/2021 Central Tax (Rate) w.e.f. November 18, 2021 which post amendment is restricted to Central Government or State Government or Union Territory or local authority only. Therefore, services availed by the Appellant were not eligible for exemption under entry 3 of Exemption Notification post amendment.

6. GST on affiliation provided by Kota University to its constituent colleges

Case Name: In re University of Kota

Appeal Number: Advance Ruling No. RAJ/AAR/2022-23/16

Date of Judgment/Order : 11/11/2022

Courts: AAR Rajasthan Advance Rulings

Q.1: Whether the services provided by the University of Kota relating to affiliation granted to colleges for imparting education is a supply of service liable to levy of GST under the CGST Act, 2017 ? It yes, whether amount collected by way of affiliation fee, are exempted vide S.No 66 of Notification No. 12/2017-CT (Rate) dated 28.06.2017.

Ans.1: The affiliation provided by the Kota University to its constituent colleges for imparting education is a supply and taxable under GST. The amount collected by way of affiliation fees is not exempted vide SI.No. 66 Notification No. 12/2017-CT (Rate) dated 28.06.2017 as amended.

7. Raula Gundi is Chewing Tobacco (without lime tube) & falls under HSN 24039910

Case Name: In re Das & Sons (GST AAR Odisha)

Appeal Number : Advance Ruling Order No. 03/ODISHA-AAR/2022-23

Date of Judgment/Order: 22/11/2022

Courts : AAR Odisha Advance Rulings

Q. 1 What is the HSN Code of 'Raula Gundi' (Final product of the Applicant)?

Ans: The final product of the Applicant under the brand name 'Raula Gundi' is nothing but "Chewing Tobacco (without lime tube)" as discussed in the foregoing para 4.5 and the HSN Code is '2403 9910'.

Q.2 What is the applicable rate of tax and Cess of the product?

Ans:- The applicable rate of GST on the product is 28% (14% CGST + 14% SGST). The said product also appears at Sl.No.26 of Notification No.01/2017-Compensation Cess (Rate) dated 28.06.2017 issued under the CGST Act, 2017 under which Compensation Cess of 160% is leviable on it.

8. ITC of ST paid on manpower supply services used for providing canteen facility not eligible

Case Name: Federal Mogul Goetze India Ltd.

Appeal Number: Advance Ruling No. KAR ADRG 42/2022

Date of Judgment/Order : 29/11/2022

Courts: AAR Karnataka Advance Rulings

Whether the subsidized deduction made by the applicant from the employees who are availing food in the factory would be considered as a "supply" by the Applicant under the provisions of Section 7 of the CGST / KGST Act 2017.

a. In case answer to above is yes, Whether GST is applicable on the nominal amount being recovered by the Applicant?

The subsidized deduction made by the applicant, from the employees who are availing food in the factory, would be considered towards "supply" of canteen service by the Applicant under the provisions of Section 7 of the CGST/ KGST Act 2017. GST is liable to be paid by the applicant on the value of the said supply to be determined under Rule 30 or 31 of the CGST Rules 2017.

b. Whether Input Tax Credit ("ITC") of the GST charged by the Service Provider would be eligible for availment to the Applicant?

The applicant is not eligible to avail Input Tax Credit ("ITC") of the ST paid on the manpower supply services used for providing canteen facility.

9. AAR cannot give ruling in relation to completed supply provided by applicant

Case Name: In re KBL SPML JV (GST AAR Karnataka)

Appeal Number: Advance Ruling No. KAR ADRG 44/2022

Date of Judgment/Order : 29/11/2022

Courts: AAR Karnataka Advance Rulings

In the instant case the questions, on which the applicant seeks advance ruling, are not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the said applicant, but in relation to a completed supply, provided by them. Therefore the instant application is beyond the jurisdiction of this Authority and hence is liable for rejection.

10. Classification of Satin & Taffeta Rolls with sizes between 19mm to 40mm

Case Name : In re Mean Light Co (GST AAR Karnataka)
Appeal Number: Advance Ruling No. KAR ADRG 43/2022
Date of Judgment/Order : 29/11/2022
Courts: AAR Karnataka Advance Rulings

In the instant case, the impugned products, as per the applicant, are woven fabrics having width less than 30 cm; Taffeta rolls made up of polyester yarn with acrylic coating to protect from raveling or fraying and also to have better printing quality; Satin rolls made up of polyester yarn, with optical or non-optical coating for brightening and to remove impurities, having plain selvages on both sides of the fabric; cut with hot blades to arrest fabric fraying. Thus the impugned products qualify to get covered under 'Narrow Woven Fabrics'.

16. Now we proceed to examine whether the impugned products get covered under tariff heading 5806 or 5807. The tariff heading 5806 covers the woven fabrics that are not covered under heading 5807 consisting of warp without weft assembled by means of an adhesive (Bolducs). It is an admitted fact that the impugned products are woven products consisting of warp and weft and are not assembled by means of an adhesive. Thus the impugned products are not covered under tariff heading 5806.

17. Further tariff heading 5807 covers Labels, badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered. Further tariff heading 5807 is divided broadly into two categories wherein tariff heading 5807.10 covers woven and tariff heading 5807.90 covers others. In this regard we invite reference to Explanatory Notes to tariff heading 5807 wherein it is specified that this heading covers (i) Labels of any textile material (including knitted) and (ii) Badges and similar articles of any textile material (including knitted), subject to the following conditions:

- a) They must not be embroidery. The inscriptions or motifs on the articles classified here are generally produced by weaving (usually broche work) or by printing.
- b) They must be in the piece, in strips (as is usually the case) or in separate limits obtained by cutting to size or shape but must not be otherwise made up.

Chapter Note 6 to chapter 58 specifies that the expression "embroidery" means, inter alia, embroidery with metal or glass thread on a visible ground of textile fabric, and sewn appliqué work of sequins, beads or ornamental motifs of textile or other materials.

18. In the instant case, the impugned products are not embroidery and fulfill the aforesaid

conditions. Now we proceed to examine the sub-headings under heading 5807, which are as under:

5807 10	— Woven
5807 10 10	— Woven
5807 10 20	— Of man-made fiber
5807 10 90	— Other
5807 90	— Other
5807 90 10	— Felt or non-woven
5807 90 90	— Other

The impugned products are narrow woven fabrics, made up of manmade fibers i.e. Polyester yarn and thus are squarely covered under tariff heading 5807 10 20. Therefore the impugned products merit classification under tariff heading 5807 10 20.

JUDGEMENTS

1. GST registration cancellation without issuing notice under rule 25 & based on mere physical verification not sustainable

Case Name: Bimal Kothari Vs Assistant Commissioner (DSGST) & Ors.

Appeal Number: W.P.(C) 9207/2019 & CM No. 37947/2019

Date of Judgment/Order: 01/11/2022

Courts: Delhi High Court

1. Although notice in the matter was issued on 26.08.2019, we find that the counter-affidavit filed by respondent no.1 is not on record.

1.1. However, Mr Shourya Dasgupta, who appears on behalf of respondent no.1, has placed before us a hard copy of the counter-affidavit.

2. For the purposes of good order and record, the Registry will scan and upload the copy of the counter-affidavit made available to us so that the same remains embedded in the case file.

3. This writ petition is directed against the order dated 17.12.2018 passed by respondent no.1. Via the said order, the petitioner's GST registration has been cancelled.

4. The record shows that a show cause notice was served on the petitioner, which required him to appear before the concerned authority. The show cause notice is dated 04.12.2018.

4.1. A perusal of the show cause notice shows that the petitioner was required to appear before the concerned officer on 12.12.2018 at 11:03 A.M.

5. It is the petitioner's case that cancellation of registration has been brought about on account of the fact that the petitioner was not found to be in existence at the address available with respondent no.1. This aspect of the matter is not disputed by Mr Dasgupta.

6. The writ petitioner, though, avers that in and about June 2018, an application had been filed with the concerned authority indicating the fact that the petitioner had relocated its principal place of business.

7. Furthermore, Mr Boudhayan Bhattacharya, who appears on behalf of the petitioner, has drawn our attention to the reply dated 07.12.2018. This reply was sent, according to the petitioner, in response to the show cause notice dated 04.12.2018.

7.1. A perusal of the reply does indicate that the petitioner took the stand that there was a relocation of its place of business. Both addresses, i.e., the address available with respondent no.1 and the new address are alluded to in the reply dated 07.12.2018.

8. On the other hand, Mr Dasgupta submits that insofar as the application for amendment is concerned, since a reference number was not generated it could not have been considered.

8.1 Likewise, insofar as the reply dated 07.12.2018 is concerned, Mr Dasgupta submits that since it was not uploaded on the designated portal, it could not have been considered by the concerned authority.

9. We have queried Mr Dasgupta as to whether the provisions of Rule 25 of the Central Goods and Services Tax Rules, 2017 [in short, "2017 Rules"] were adhered to, since the counter-affidavit adverts to physical verification report dated 04.12.2018, apparently prepared by the Value Added Tax(VAT) inspector. It cannot be disputed that Rule 25 provides for a statutory regime in cases where the proper officer is satisfied that physical verification of the assessee's business premises is required to be carried out. Mr Dasgupta fairly concedes that the counter-affidavit is silent on this aspect. 10. Rule 25 of 2017 Rules reads as follows :

"25. Physical verification of business premises in certain cases.- Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification."

10.1. As would be evident, the said rule provides that where a proper officer is satisfied that physical verification of the place of business of a person is required due to failure of Aadhaar authentication, before the grant of registration or due to any other reason after the grant of registration, such physical verification of the place of business, if deemed necessary, is to be carried out in the presence of the said person.

10.2. Furthermore, after physical verification is carried out, a report generated in that behalf along with other documents, including photographs, is required to be uploaded in FORM GST REG-30 on the common portal within 15 days following the date of such verification.

11. As is evident, in the instant case, the concerned officer deemed it necessary to carry out physical verification of the petitioner's place of business before proceeding to pass the impugned order, which resulted in, as noticed above, in the cancellation of the petitioner's registration.

11.1. Concededly, no notice was issued to the petitioner requiring, as mandated by Rule 25, his presence at the time of verification.

11.2. Furthermore, it appears that the verification report, though generated, has not been uploaded, as required, in FORM GST REG-30 on the common portal. As noted above, the period stipulated for the same is 15 days commencing from the date when physical verification is carried out.

12. This issue stands covered by the following judgments rendered by this court: (i) Judgment dated 26.04.2022, passed in W.P.(C)No.8451/2021, titled Micro Focus Software Solutions India Pvt. Ltd. v. Union of India & Anr. (ii) Judgment dated 26.08.2022, passed in W.P.(C)No.10408/2022, titled Curil Tradex Pvt. Ltd. v. The Commissioner, Delhi Goods And Service Tax & Anr.

13. Given this position, in our view, the impugned order cancelling the petitioner's GST registration cannot be sustained.

13.1. It is ordered accordingly. Resultantly, the petitioner's GST registration shall stand restored.

14. Besides this, the respondents/revenue will also accord to the petitioner a leeway of eight weeks to upload the returns for the period during which its registration stood cancelled.

15. The writ petition is disposed of in the aforesaid terms. 16. Consequently, the pending application shall stand closed.

2. Order cancelling GST registration quashed as zero-supply lead to non-filing GST return

Case Name: Atlabhai Rajabali Dosani Vs Superintendent

Appeal Number: R/Special Civil Application No. 11265 of 2022

Date of Judgment/Order: 30/11/2022

Courts: Gujarat High Court

Gujarat High Court held that due to zero supply it was believed that GST return is not required to be filed. Further, the consultant also didn't advise the petitioner correctly. Accordingly, order of cancellation of GST registration on account of non-filing of GST return was quashed.

Facts- The petitioner is a contractor engaged in providing construction services registered under the provisions of section 12 of the Act. It is his case that since he was out of business, the return after September, 2018 could not be filed. The person engaged by the petitioner also was under the impression that since outward supply is zero, there was no need for filing the return.

He was served with the show cause notice on 22.06.2020 under Rule 22 read with section 29(2) (c) of the Act to show cause as to why the registration be not cancelled, as he did not furnish the return for continuously six months' period. The show cause notice was received on the portal. However, erstwhile consultant of the petitioner did not inform the petitioner of the same and he left the assignment around the same time for exploring better and other opportunities. The petitioner's registration number was cancelled on 18.03.2021 with effect from the very date.

The petitioner preferred the appeal before respondent No.2 on 19.11.2021 u/s. 107 of the Act, where he had tendered written submissions and personal hearing also was made available to him through the video conference on 22.12.2021. The appeal was disposed of on 31.01.2022 with observation that it was obligatory on the part of the appellant to file all returns relating to the period in question upto the date of cancellation of registration. The petitioner has already filed the return starting from September, 2018 to March, 2021 along with the requisite late fees. By self-assessment, he has also paid the challans of Rs.2,94,520/- in March, 2022. He also made a representation on 19.04.2022 for restoration of the registration number on the ground that all the returns have been already filed. However, as no heed was paid, he is before this Court.

Conclusion- We need to make a specific mention that the order for cancellation of registration dated 22.06.2020 is quite cryptic. It hardly gives any detail, which is otherwise necessary.

Noticing the fact that the two grounds in the instant case have been put forth before this Court, firstly, the zero supply leading the petitioner to believe that he was not required to file the returns and secondly that his consultant had not advised him correctly both of which led to non-filing of the return, which now has been already filed. He has made payment of taxes with an undertaking of paying further taxes and to fulfill other legal obligations, subject to assessment being completed by the authority concerned.

In view of the aforesaid, the order of cancellation of registration is quashed and set aside dated 18.03.2021 along with the order dated 31.01.2021. The respondent is directed to forthwith restore the registration of the petitioner. He shall also file his GSTR-1 within 15 days of the restoration. The authority, thereafter, in six weeks' period, shall complete the assessment part. The petitioner shall cooperate in the process. Petition is disposed of in the above terms.

3. Adopt E-Filing In All Tax Cases & Make GST Appellate Tribunal Paperless: SC to Govt

Case Name: C.C.E. And S.T. Vs Bilfinder Neo Structo Contruction Ltd

Appeal Number: Civil Appeal No.674/2021

Date of Judgment/Order: 14/11/2022

Courts: Supreme Court of India

Union government must now take all expeditious steps to ensure that filing by the Union government of all appeals and proceedings before the High Courts as well as the revenue tribunals, including the CESTAT and the ITAT should take place in the e-filing mode.

Union government shall take necessary steps to ensure that while the modalities for the GST tribunal are being put in place, they shall include the requirement that all filings should be in the electronic mode exclusively and that the tribunal should be paperless in its operations.

4. GST registration cancellation without issuing notice under rule 25 & based on mere physical verification not sustainable

Case Name : Bimal Kothari Vs Assistant Commissioner (DSGST) & Ors.

Appeal Number: W.P.(C) 9207/2019 & CM No. 37947/2019

Date of Judgment/Order: 01/11/2022

Courts: Delhi High Court

1. Although notice in the matter was issued on 26.08.2019, we find that the counter-affidavit filed by respondent no.1 is not on record.

1.1. However, Mr Shourya Dasgupta, who appears on behalf of respondent no.1, has placed before us a hard copy of the counter-affidavit.

2. For the purposes of good order and record, the Registry will scan and upload the copy of the counter-affidavit made available to us so that the same remains embedded in the case file.

3. This writ petition is directed against the order dated 17.12.2018 passed by respondent no.1. Via the said order, the petitioner's GST registration has been cancelled.

4. The record shows that a show cause notice was served on the petitioner, which required him to appear before the concerned authority. The show cause notice is dated 04.12.2018.

4.1. A perusal of the show cause notice shows that the petitioner was required to appear before the concerned officer on 12.12.2018 at 11:03 A.M.

5. It is the petitioner's case that cancellation of registration has been brought about on account of the fact that the petitioner was not found to be in existence at the address available with respondent no.1. This aspect of the matter is not disputed by Mr Dasgupta.

6. The writ petitioner, though, avers that in and about June 2018, an application had been filed with the concerned authority indicating the fact that the petitioner had relocated its principal place of business.

7. Furthermore, Mr Boudhayan Bhattacharya, who appears on behalf of the petitioner, has drawn our attention to the reply dated 07.12.2018. This reply was sent, according to the petitioner, in response to the show cause notice dated 04.12.2018.

7.1. A perusal of the reply does indicate that the petitioner took the stand that there was a relocation of its place of business. Both addresses, i.e., the address available with respondent no.1 and the new address are alluded to in the reply dated 07.12.2018.

8. On the other hand, Mr Dasgupta submits that insofar as the application for amendment is concerned, since a reference number was not generated it could not have been considered. 8.1 Likewise, insofar as the reply dated 07.12.2018 is concerned, Mr Dasgupta submits that since it was not uploaded on the designated portal, it could not have been considered by the concerned authority.

9. We have queried Mr Dasgupta as to whether the provisions of Rule 25 of the Central Goods and Services Tax Rules, 2017 [in short, "2017 Rules"] were adhered to, since the counter-affidavit adverts to physical verification report dated 04.12.2018, apparently prepared by the

Value Added Tax(VAT) inspector. It cannot be disputed that Rule 25 provides for a statutory regime in cases where the proper officer is satisfied that physical verification of the assessee's business premises is required to be carried out. Mr Dasgupta fairly concedes that the counter-affidavit is silent on this aspect.

10. Rule 25 of 2017 Rules reads as follows :

“25. Physical verification of business premises in certain cases.- Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.”

10.1. As would be evident, the said rule provides that where a proper officer is satisfied that physical verification of the place of business of a person is required due to failure of Aadhaar authentication, before the grant of registration or due to any other reason after the grant of registration, such physical verification of the place of business, if deemed necessary, is to be carried out in the presence of the said person.

10.2. Furthermore, after physical verification is carried out, a report generated in that behalf along with other documents, including photographs, is required to be uploaded in FORM GST REG-30 on the common portal within 15 days following the date of such verification.

11. As is evident, in the instant case, the concerned officer deemed it necessary to carry out physical verification of the petitioner's place of business before proceeding to pass the impugned order, which resulted in, as noticed above, in the cancellation of the petitioner's registration.

11.1. Concededly, no notice was issued to the petitioner requiring, as mandated by Rule 25, his presence at the time of verification.

11.2. Furthermore, it appears that the verification report, though generated, has not been uploaded, as required, in FORM GST REG-30 on the common portal. As noted above, the period stipulated for the same is 15 days commencing from the date when physical verification is carried out.

12. This issue stands covered by the following judgments rendered by this court:

(i) Judgment dated 26.04.2022, passed in W.P.(C)No.8451/2021, titled Micro Focus Software Solutions India Pvt. Ltd. v. Union of India & Anr.

(ii) Judgment dated 26.08.2022, passed in W.P.(C)No.10408/2022, titled Curil Tradex Pvt. Ltd. v. The Commissioner, Delhi Goods And Service Tax & Anr.

13. Given this position, in our view, the impugned order cancelling the petitioner's GST registration cannot be sustained.

13.1. It is ordered accordingly. Resultantly, the petitioner's GST registration shall stand restored.

14. Besides this, the respondents/revenue will also accord to the petitioner a leeway of eight weeks to upload the returns for the period during which its registration stood cancelled.

15. The writ petition is disposed of in the aforesaid terms.
16. Consequently, the pending application shall stand closed.

5. Order passed ex-parte in nature is bad in law

Case Name: CICO Patel JV Vs Union of India
Appeal Number: Civil Writ Jurisdiction Case No. 15410 of 2022
Date of Judgment/Order: 16/11/2022
Courts: Patna High Court

Patna High Court held that the order, ex parte in nature, passed in violation of the principles of natural justice, is liable to be quashed and set aside.

Facts- This petition has been filed for quashing of order dated 09.01.2021 passed by the Respondent No. 3 namely the Joint Commissioner of State Taxes, North Circle, Patna GSTIN No. 10AABAC7054L1ZZ as also notice of demand dated 09.01.2021. Order passed is ex parte in nature.

Conclusion- We are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, ex facie, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed ex parte in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, ex parte in nature, passed in violation of the principles of natural justice, entails civil consequences; (c) We also find the authorities not to have adjudicated the matter on the attending facts and circumstances. All issues of fact and law ought to have been dealt with, even if the proceedings were ex parte in nature.

6. Bombay HC orders restoration of GST registration cancelled u/s 29(1) of CGST Act

Case Name: Euro Pratik Sales Corporation Vs Union of India
Appeal Number: Writ Petition No. 3380 of 2022
Date of Judgment/Order: 17/11/2022
Courts: Bombay High Court

The Hon'ble Bombay High Court ("the High Court") in the case of M/s. Euro Pratik Sales Corporation [W.P No.3380 OF 2022 dated November 17,2022] allowed Petitioner to submit a physical application for restoration of Goods and Services Tax ("GST") registration where application of cancellation was filed by petitioner.

Facts: M/s Euro Pratik Sales Corporation ("the Petitioner") was registered under GST Law. The Petitioner closed his business and applied for cancellation of GST registration, which was later granted to him.

At the time of the cancellation of the GST registration, the Petitioner had deemed excise credit of a sum of Rs. 39 Lakhs. Though the Petitioner was entitled to claim transitional credit in GST, however, could not transit the credit because the Petitioner's registration was cancelled.

According to Section 30 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"), cancellation of registration can only be revoked in case where registration was cancelled by the proper officer on his own motion. In the present case, the Petitioner suo moto filed an application for cancellation of registration. It was observed that GST law did not have any provision for revocation in such case. Petitioner prayed the High Court to allow the Petitioner to file GST TRAN-1 manually or online.

Issue: Whether cancellation of GST registration can be revoked in case where Petitioner has suo moto requested for cancellation of GST registration?

Held: The High Court held as under:

- The Petitioner could not be permitted to forgo a sum of Rs. 39 Lakhs which according to Petitioner, it was entitled as credit under GST law, particularly when Section 29(3) of the CGST Act states that cancellation of the registration does not affect the liability of the taxpayer to pay any tax, dues for any period including prior to the date of cancellation whether or not such dues are determined before or after the date of cancellation of registration.
- Therefore, it was imperative for the Petitioner to be permitted to transit the credit to new GST regime.

Hence, the High Court allowed Petitioner to submit physical application for restoration of GST registration.

Relevant Provision: Section 29(3) of the CGST Act The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

7. **GST authorities cannot issue SCN under Section 73 for verification of transitional credit**

Case Name: Usha Martin Limited Vs Additional Commissioner, Central GST and Excise

Appeal Number: W.P.(T) No. 3055 of 2022

Date of Judgment/Order: 10/11/2022

Courts: Jharkhand High Court

GST authorities lacks jurisdiction to examine correctness of credit transitioned from erstwhile tax regime

The Hon'ble High Court, Jharkhand ("the High Court") in the case of M/s. Usha Martin Ltd. v. Additional Commissioner & Ors. (W.P.(T) No. 3055 of 2022) dated November 10, 2022, quashed the proceedings initiated by Joint Commissioner ("the Respondent") by issuing Show Cause Notice dated September 13, 2021 ("SCN") under Section 73 of the Central Goods and Services Tax, 2017 ("the CGST Act") and held that Goods and Services Tax Authorities ("the GST Authorities") does not have jurisdiction to determine whether CENVAT credit was admissible under the respective Act.

Facts: M/s. Usha Martin Ltd. ("the Petitioner") is engaged in the business of manufacturing iron and steel products and was registered in the Central Excise Act, 1944 ("the Excise Act") and Finance Act, 1994 ("the Finance Act") in erstwhile tax regime. Post July 01, 2017, the Petitioner registered under GST. The Petitioner carries forwarded CENVAT credit under GST regime by filing GST TRAN-1. The Respondent issued the SCN alleging that Petitioner could not claim CENVAT credit in lieu of invoices raised by an entity in erstwhile tax regime as the same was contravention of the Excise Act and Finance Act read with Cenvat Credit Rules, 2004 ("CCR") on March 30, 2022. Thereafter, the Respondent vide Order-In-Original March 30, 2022 ("the Order") disallowed the CENVAT credit carried forwarded by the Petitioner on the ground stated above.

Petitioner filed the writ petition questioning the jurisdiction of the GST Authorities to examine the correctness of the CENVAT credit.

Issue: Whether GST Authorities can assess the admissibility of CENVAT credit availed under the pre-GST regime?

Held: The High Court held that:

- Section 73 of the CGST Act, makes it clear that proceeding under this section can only be initiated for non-payment of any tax or short payment of such tax for erroneous refund of such tax or for wrongly availing the input tax credit which are admissible under the CGST Act.
- Section 73 of the CGST Act does not provide power to adjudicating authority to issue notice pertaining to CENVAT credit. Therefore, invoking Section 73 in the present case was not proper in the eyes of law.
- Therefore, initiation of proceedings by the Respondent under Section 73 (1) of the CGST Act for contravention of the Excise Act and the Finance Act was beyond authorities jurisdiction. Hence, the High Court quashed the Order passed by the Respondent as being without jurisdiction.

Relevant Provision: Section 73 of the CGST Act:

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon

under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid

or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

8. Writ petition during Notice stage would frustrate tax administration

Case Name: Sri Muna Pani Vs State of Odisha

Appeal Number: W.P.(C) No. 20996 of 2022 Date of Judgment/Order : 18/11/2022

Related Assessment Year : Courts : All High Courts Orissa High Court

The Hon'ble Orissa High Court, ("the High Court") in Sri Muna Pani v. State of Odisha (W.P.(C) No. 20996 of 2022) held that entertaining Writ Petition at the stage of notice would interrupt adjudication process and frustrate tax administration. Assessee has ample opportunity to agitate issues before assessing officer. Moreover, the Goods and Services Tax ("GST") law provides sufficient safeguards to the assessee in case assessee is not satisfied with adjudication he has opportunity to file an appeal to higher authority under GST law. Facts: Sri Muna Pani ("the Petitioner") is engaged in the in execution of works contract. The CT&GST Officer of Angul Circle ("the Respondent") issued a Show Cause Notice ("SCN") under Section 73 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") on August 06, 2022 for determination of tax liability pertaining to the period July 2017 to May 2018 on the basis of discrepancy observed between the figures furnished by the Petitioner in the returns furnished in form GSTR-3B under Rule 61 of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") and the data made available in the web portal. The Petitioner filed the writ petition stating that the issued demand cum SCN is illegal, unconstitutional and violates the fundamental rights of the petitioner, thereby such SCN should be quashed. Issue: Whether the Petitioner can file Writ Petition prior to the adjudication for quashing the notice issued by the proper officer?

Held: The High Court in the held that: The Petitioner has all the opportunity to contest the allegation in the SCN during the adjudication stage and rebut adverse finding/observations involved in the matter. The Petitioner may raise legal issues as well as factual issues before the Assessing Officer ("AO") during the course of proceedings. The High Court held that entertaining such issues in the writ petition at the stage of notice would be premature and entertaining writ petition at early stage would be contrary to the settled principles of law as the Petitioner has ample opportunity to discuss issues before AO, The GST Law has provided sufficient safeguards to the

Petitioner, in case the Petitioner is not satisfied with adjudication then he may opt to file an appeal under the GST law to higher authority and hence, the High Court dismissed the writ petition.

9. Rejection of GST refund towards E-rickshaw – HC remand matter back to AO

Case Name: R3 Enterprises And Anr Vs Deputy Commissioner of State Tax

Appeal Number: WPO/2789/2022

Date of Judgment/Order: 22/11/2022

Courts: Calcutta High Court

This application has been filed in connection with the main writ petition drawing attention of the court about a Circular dated 3rd August, 2022 being No. 179/11/2022-GST issued by the Government of India, Ministry of Finance and relying on such Circular petitioners submit that the impugned adjudication order and order of the Appellate Authority relating to Electric Vehicles, is contrary to the aforesaid Circular and petitioners are entitled to refund of the excess GST collected. Though till date the State Government has not issued any such Circular. Mr. Ghosh, learned Advocate representing the State GST authority submits that they State Government is going to issue the Circular in the similar line very soon and submits that the matter may be remanded back to the Adjudicating Authority concerned to consider the claim of refund by the petitioners in the light of the aforesaid Circular dated 3rd August, 2022.

Considering the submission of the parties and facts as appears from record this writ petition being WPO 2789 of 2022 is disposed of by setting aside the impugned adjudication order and the appeal order and the matter is remanded back to the Adjudicating Authority concerned to pass a fresh order after taking into consideration the benefit given to the Assessee/petitioners in the aforesaid Circular dated 3rd August, 2022, within a period of eight weeks from the date of communication of this order.

10. Madras HC directs Department to Process ITC Claim Rejected Solely on the Basis of Inadvertent Error

Case Name: Abi Egg Traders Vs Assistant Commissioner

Appeal Number: W.P.No.3773 of 2020

Date of Judgment/Order: 03/11/2022

Courts: Madras High Court

The Hon'ble Madras High Court in the case of Abi Egg Traders v. Assistant Commissioner, Salem II Division, O/o The Assistant Commissioner of Goods and Services Tax Central Excise [W.P.No.3773 of 2020] ruled in favor of the assessee by directing the department to process the

Input Tax Credit (“ITC”) claim that were previously rejected solely on the ground of inadvertent error.

Facts: Abi Egg Traders (“the Petitioner”) is a sole proprietor engaged in the business of export of eggs. Since eggs are a “nil” rated commodity, there is no tax burden associated with their export. Hence, the Petitioner was entitled to the Input Tax Credit that had accumulated on the exports. The period in question is August 1, 2017 to March 31, 2018, for which return in form GSTR-3B was filed in May 2018. The Petitioner made a mistake while exporting as it opted for column ‘with payment of tax’ instead of ‘without payment of tax’.

Issue: Whether department can reject ITC claim solely on the basis of inadvertent error?

Held: The court observed and directed the following:

- Department nowhere mentioned dispute the Petitioner’s right to refund and in fact conceded that the mistake was made bonafide and reaffirmed that the petitioner was entitled to the ITC return because the export was exempt from tax.
- Therefore, in such circumstances, rejecting the refund solely on the inadvertent error was set aside.
- The Court granted 8 weeks from the date of Order to the officer to issue refund within stipulated time period.

11. Differential Tax Amount Post-GST Not Reimbursed to Contractors

Case Name: Bhanjadeo Constructions Vs State of Odisha & Others

Appeal Number: W.P.(C) No.38497 of 2021

Date of Judgment/Order: 09/11/2022

Courts: Orissa High Court

The Hon’ble Orissa High Court, in the case of M/s. Bhanjadeo Constructions v. State of Odisha & Others, [W.P.(C) No.38497 of 2021] granted major relief to contractors by staying the coercive steps against the contractors and ordered the State GST department to abide by its circular, Finance Department vide Office memorandum No. FIN-CTI-TAX-0045-2017/38535/F dated December 10, 2018 to address the problems with works contracts brought on by the change from the Value-Added Tax (“VAT”) to the Goods and Services Tax (“GST”) tax system.

Facts: M/s. Bhanjadeo Constructions (“the Petitioner”) challenged the decision of Respondent to withhold payment of the differential tax amount resulting from the change in tax regime, i.e. from VAT into the GST which took place on July 1, 2017.

Issue: Whether Petitioner is liable to pay tax which they never anticipated while entering into the Contract?

Held: The High Court noted that the Odisha Government has come out with revised guidelines vide Office Memorandum No. FIN-CTI-TAX-0045-2017/38535/F dated December 10, 2018 (“Revised Guidelines”) related to work contract suppressing the guidelines issued vide Finance Department letter dated December 7, 2017. The revised guidelines states that:

- The Schedule of Rates-2014 (“Revised SoR-2014”) has been revised by the State Government vide Work Department OM No. 13827/WD in order to comply with the provisions of GST relating to work contracts. Therefore, while preparing estimates for a work after July 1, 2017, the GST exclusive work value is to be arrived at as per the revised SoR-2014 and then GST will be added at the appropriate rate.
- In GST regime, the work contractor is required to raise Tax Invoices clearly showing the taxable work value and GST (CGST+SGST) separately.
- In case of work, where the tender was invited before the July 01, 2017 on the basis of SoR-2014, but payment made for the balance work or full work after the implementation of GST, a procedure laid down in the revised guidelines is to be followed.

In view of the revised guidelines issued by the State Government, the Court asked the Petitioner to make a comprehensive representation before the appropriate authority and directed the authorities that if such representation is filed then the authority shall consider and dispose the same in the light of the revised guidelines.

In case, the Petitioner is still aggrieved by the decision of the authority, Petitioner shall have the opportunity to challenge the same before the Court.

12. Final GST Audit Report to be issued after considering Assessee’s Reply

Case Name: Simon India Ltd. Vs CT and GST Officer

Appeal Number: W.P.(C) No. 26443 of 2022

Date of Judgment/Order: 09/11/2022

Courts: Orissa High Court

The Hon’ble Orissa High Court (“the High Court”), in the case of M/s. Simon India Ltd. v. CT and GST Officer, Cuttack-II Circle, Cuttack and Anr. [W.P.(C) No. 26443 of 2022] ruled that, the final Goods and Services Tax (“GST”) Audit Report shall be issued only after considering the reply filed by the assessee, and thereby allowed the Petitioner, M/s. Simon India Ltd. to file the reply under section 65(4) of the Orissa Goods and Services Tax Act, 2017 (“the OGST Act”) after the department filed the draft and final GST audit report on the same day.

Facts: M/s. Simon India Ltd. (“the Petitioner”) challenged the draft Audit Report dated June 30, 2022 issued by the Head of Audit Team-1, CT & GST Circle, CU-II, Cuttack and Final Audit Report dated June 30, 2022 submitted under Section 65 (6) of the OGST Act, on the ground that the Petitioner was not granted any opportunity to file its reply in accordance with Rule 101 (4) of OGST Rules, 2017.

The audit exercise commenced on October 8, 2021 but the three months’ period commenced on March 22, 2022 when the Petitioner was stated to have submitted the documents called for by the authorities.

The authorities released the final audit report and the draft audit report on the same day, June 30, 2022, probably aware that the 3-month deadline had already passed.

Issue: Whether draft audit report and final audit report can be issued without seeking reply of the Petitioner?

Held: The High Court observed that:

- According to the OGST Act, the registered person must get notification in Form GST ADT-01 at least fifteen working days before the audit is to be conducted. The registered person's audit must be finished in accordance with Section 65(4) three months after the audit's start date.
- In accordance with Explanation to Section 65(4) of the OGST Act, the 3 month period within which the audit had to be completed commenced from March 22, 2022. Therefore, the entire audit process had to be concluded with the submission of the final audit report on or before June 22, 2022.
- However, if the Petitioner is afforded an opportunity at this stage to file the reply to the above draft audit report, followed by the authorities issuing the final audit report, the original deadline of three months would be crossed on December 21, 2022. If the exercise is not completed by that date, the entire exercise would be rendered futile.

Therefore, the High Court Ordered as under:

- The Petitioner would file its reply to the draft audit report accompanied by all the documents that the Petitioner wishes to rely on not later than November 28, 2022.
- After considering the reply of the Petitioner, the final audit report would be issued by the Department under Section 65 (6) of the OGST Act not later than December 21, 2022.

Relevant Provisions:

Section 65(4)

The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

EXPLANATION. —

For the purposes of this sub-section, the expression "COMMENCEMENT OF AUDIT" shall mean the date on which the records and other documents, called for by the tax

authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

Section 65(6)

On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

13. Non-Filing of GST Returns due to Demise of Auditor: Karnataka HC Directs to Restore Registration

Case Name: Sri. Kolapudi Enoch Washington Proprietor of INXL Digital Vs. Additional Commissioner (GST And Central Tax)

Appeal Number : Writ Petition No. 21 269/2022

Date of Judgment/Order : 09/11/2022

Courts: Karnataka High Court

Cancelled GST Registration as a result of Non Filing of GST Returns due to sudden demise of Auditor to be Restored

The Hon'ble Karnataka High Court in the case of Sri Kolapudi Enoch Washington v. The Additional Commissioner (GST and Central Tax), [Writ Petition No. 21269/2022 (T-RES)] directed the Goods and Services Tax ("GST") Department to restore the cancelled GST registration as the Petitioner could not file the GST returns due to sudden demise of the auditor.

Facts: M/s Kolapudi Enoch Washington ("the Petitioner"), contended that because of the untimely and sudden death of his auditor, GST return could not be filed on time and because of said delay the Respondents issued the Petitioner a show cause notice ("SCN") dated February 24, 2022. The Petitioner did not receive the SCN because spam filtering setting in the Petitioner's email account. As a result, the Petitioner was unaware of the SCN and did not respond, which led to cancelling of GST registration by the Respondent x. the Petitioner filed appeal before Additional Commissioner ("the Appellate Authority") under Section 107 of Central Goods and Services Act, 2017 ("the CGST Act"). However, the appeal was dismissed on the ground of the delay which cannot be condoned as the Appellate Authority lacks jurisdiction for the same. Therefore, the thee Petitioner filed present writ petition seeking condonation of delay under Article 226 of the Constitution and setting aside the Orders passed against the Petitioner.

Issue: Whether GST Registration can be cancelled due to non-filing of returns as a result of sudden demise of auditor be restored?

Held: The High Court held as under:

- Though, Appellate Authority do not have the jurisdiction to condone the delay but the same can be condoned by the High Court under Article 226 of the Constitution.
- Explanation offered by the Petitioner for not being able to file the GST return is just.
- Therefore, the High Court Ordered as under:
 - Order dated October 6, 2022 passed by Additional Commissioner is set aside.
 - The Department is directed to restore the GST registration in favour of The Petitioner without any delay.
 - The Petitioner is permitted to file GST returns which shall be allowed by the Respondents, subject to the Petitioner paying all outstanding dues to the Respondents.

Relevant Provisions:

Article 226 of the Indian Constitution

Power of High Courts to issue certain writs:

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.

Section 107 of the CGST Act

Appeals to Appellate Authority

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid— (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order: Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order: Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed: Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

14. Cancellation of GST Registration cannot be revoked due to disputes over undivided property

Case Name: Parveez Ahmad Baba Vs Union Territory of JK and others

Appeal Number: LPA no. 197/2022

Date of Judgment/Order: 03/11/2022

Courts: Jammu & Kashmir HC

The Hon'ble Jammu and Kashmir & Ladakh High Court ("J&K & L HC") in the case of Parveez Ahmad Baba v. Union Territory of JK, [LPA No. 197/2022] held that, the Goods and Services Tax ("GST") Registration once issued to the assessee and later cancelled upon request can't be revoked merely on the basis of disputes with brother of the applicant, over undivided property.

Facts: Mr. Parveez Ahmed Baba ("the Appellant") running Samci Restaurant, whose licences was cancelled by the Assistant Commissioner for Food Safety, Department of Drug and Food Control

Organization, J&K at the request of the Appellant's brother due to family dispute. Following the same, the GST Registration of the Appellant was also cancelled by the State Taxes Officer, Circle F-Kashmir.

The Appellant filed writ petition being WP (C) No. 1997/2021 before the J&K & L HC. The writ petition was disposed of by the single bench by holding that "so long as the premises to be licensed under the Act remains under dispute between the petitioner and respondent no 5, the designated authority under the Act is well within its power not to grant or renew the license under the Act in favour of one and to the exclusion of other."

Aggrieved by the Order in the writ petition, The Appellant filed the Letters Patent Appeal ("LPA") before the division bench of the J&K & L HC.

The Appellant's brother, also the respondent in this case took a stand stating that an application was submitted by the appellant on July 04, 2019, seeking cancellation of licence on the ground that his brother had deceitfully obtained licence under Food Safety and Standards Act, under the pretext of which a show cause notice was also issued.

Issue: Whether cancellation of the GST registration can be revoked due to disputes over undivided property?

Held: The Union Territory of Jammu & Kashmir was represented by Advocate General D C Raina, who asserted that there was no chance that a third party had committed fraud by requesting the registration's revocation. The online nature of the cancellation process, which required submission of specific sensitive information that would have been shared only with the appellant, was cited as the cause.

The Appellant's argued that he had filed an application with the Deputy Commissioner (Appeals), Sales Tax Department, Kashmir Division, Srinagar, asking for the order of cancellation issued by the STO Circle F- Kashmir on April 16, 2021, to be revoked. It was claimed that the application for the restaurant's registration to be cancelled had been falsely shown to have been filed by him, when in reality it appeared to be an act of mischief by some of his employees. The said application has not been decided yet.

The court refrained from delving into the merits of the ongoing property dispute between the appellant's brother and himself after taking note of it.

The High Court ruled that "registration of the business unit, the same stands cancelled" and restricted the operation/running of the Restaurant until the licence has been granted in favour of the deserving party, observing that the proper course in law was to leave the concerned authority free to decide which of the two fulfils the criteria for holding a licence.

15. Any person aggrieved by decision can file an appeal under Section 107 of CGST Act, 2017

Case Name : Mehndihasan Rahemtulla Hariyani Vs Deputy Commission of Revenue

Appeal Number: WPA 927 of 2022

Date of Judgment/Order: 03/11/2022

Courts: Calcutta High Court

The Deputy Commissioner of Revenue, Alipurduar Zone under Bureau of Investigation initiated a proceeding under Section 129 of the West Bengal Goods and Service Tax Act, 2017 against one Ashwani Sharma, who was the alleged driver/person-in-charge of the relevant vehicle.

The said authority after hearing the said driver/person-in-charge imposed the tax and the penalty under Section 129 (3) of the West Bengal Goods and Service Tax Act, 2017 to the tune of Rs.1,45,320/-(One Lakh Forty Five Thousand Three Hundred Twenty) each upon him.

The petitioner's proprietorship concern namely, M/s Akash Trading Co. filed an appeal under Section 107 of the West Bengal Goods and Service Tax Act, 2017 against the said order passed by the Deputy Commissioner of Revenue, Bureau of Investigation, Alipurduar Zone. The appellate authority was of the view that the adjudication order was passed against Ashwani Sharma, who was driver of the relevant vehicle. The petitioner's concern being the consignee in respect of the goods had no right to challenge the said order passed by the adjudicating authority. The appellate authority, being the Joint Commissioner, Commercial Taxes, Siliguri Circle, Siliguri, accordingly declined to entertain the appeal.

The petitioner in this writ petition has challenged the said order of the appellate authority dated October 27, 2021.

I am of the view that the appellate authority was not justified in not allowing the petitioner to proceed with the appeal.

Section 107 of the West Bengal Goods and Services Tax Act, 2017 makes it clear that "any person aggrieved" by any decision or order passed under the Act may appeal to the appellate authority within the time limit prescribed in the Statute.

Though the adjudication proceeding was initiated and passed against the driver/in-charge of the vehicle in question, the petitioner's concern being the consignee of the goods, had a reason to be aggrieved by the said order of the adjudicating authority.

Therefore, the impugned dated December 30, 2021, cannot be sustained. Accordingly, the same is set aside. The appellate authority will hear the appeal as has been filed by the petitioner's concern in accordance with law and dispose of the same within a period of one month from the date of communication of this order.

Accordingly, WPA 927 of 2022 is disposed of.

16. Scope & ambit of intermediary service is same under service tax & GST regime

Case Name: Genpact India Pvt. Ltd. Vs Union of India and others

Appeal Number: CWP-6048-2021 (O&M)

Date of Judgment/Order: 11/11/2022

Courts: Punjab and Haryana HC

Punjab & Haryana High Court held that there is no change in the legal position i.e. the scope and ambit of intermediary services under the service tax regime vis-a-vis the GST regime hence Master Services Sub-contracting agreement which continues to operate since 2013 cannot be treated differently at different period.

Facts- Challenge in the instant petition is to the order dated 15.02.2021 passed by the Additional Commissioner CGST (Appeals) Gurugram wherein it has been held that the services provided by the petitioner are in the nature of "Intermediary Services" as per Section 2 (13) of the IGST Act

and do not qualify as “export of services” in terms of Section 2(6) of the Act and thereby rejecting the refund claim of un-utilized Input Tax Credit (ITC) used in making zero rated supplies of services without payment of Integrated Goods and Service Tax.

Conclusion- A bare perusal of the recitals and relevant clauses of the MSA reproduced hereinabove do not in any manner indicate that petitioner is acting as an “intermediary” so as to fall within the scope and ambit of the definition of “intermediary” under Section 2 (13) of the IGST Act. Such clauses cannot also be interpreted to conclude that the petitioner has facilitated the services. The said clauses are in relation to the modalities of how the actual work would be carried out and do not in any manner establish that the petitioner was required to arrange/facilitate a 3rd party to render the main service which has actually been rendered by the petitioner. Accordingly, in the light of such position wherein there is no change in the legal position i.e. with regard to the scope and ambit of “intermediary” services under the service tax regime vis-a-vis the GST regime and there being no change of facts as it is the MSA of 2013 (Annexure P-1) which continues to operate, the department cannot take a different view for different periods.

17. Dismissal of Time-barred Appeal against GST Registration cancellation – HC allows to file new appeal

Case Name: Prakash Purohit Vs Commissioner, Central Goods And Service Tax

Appeal Number: D.B. Civil Writ Petition No. 16269/2022

Date of Judgment/Order: 10/11/2022

Courts: Rajasthan High Court

It is not disputed that appeal against cancellation of the GST registration can be filed within three months which can be extended by a further period of 30 days. The petitioner filed the e-appeal on 27.09.2022 but could not submit the hard-copy. The petitioner has challenged the order dated 28.09.2022 whereby his appeal has been dismissed on the ground of same being time-barred.

Learned counsel relied on various HC judgments and urged that the petitioner has been left remediless for hyper-technical reason of the appeal against cancellation of GST registration not being filed in time. He contended that owing to cancellation of GST registration, the petitioner is being deprived of the opportunity of doing business which has resulted into loss of all avenues of earning livelihood and is violative of right to life and liberty as guaranteed by Article 21 of the Constitution of India. He thus, urges that one more opportunity deserves to be given to the petitioner to file the appeal in the proper format and the competent authority may be directed to decide such appeal as per law.

HC agreed with above submission of Counsel and set-aside order dated 28.09.2022.

The petitioner is given liberty by HC to file appeal against the cancellation of GST registration to the competent authority within ten days from today. Upon such appeal being filed, the same shall be considered and decided on all aspects in accordance with law excluding the bar of limitation in preferring the appeal by the petitioner.

18. HC Set Aside dubious GST Registration Cancellation order

Case Name: S A Traders Vs GST Officer
Appeal Number: W.P.No. 36673 of 2022
Date of Judgment/Order: 16/11/2022
Courts: Andhra Pradesh HC

We have gone through the impugned show cause notice and order for cancellation of registration and found force in the submission of learned counsel for the petitioner, for, both show cause notice as well as the order of cancellation of registration are dubious enough and failing to divulge the misdeed or fraud allegedly committed by the petitioner. While the show cause notice says that “in case” the petitioner has committed any fraud, wilful misstatement or suppression of facts, the order of cancellation of registration says that he has not submitted “clear records.” Both of them are not clear enough to understand the mind of the issuing authority. Therefore, we have no demur to hold that both impugned show cause notice as well as the order for cancellation of registration are not sustainable in the eye of law. In similar circumstances, Hon’ble High Court of Telangana has set aside the impugned order of cancellation of the GST registration of the petitioner therein.

Accordingly, this writ petition is allowed and the impugned order for cancellation of registration dated 20.10.2022 and show cause notice dated 01.10.2022 are hereby set aside giving liberty to the 1st respondent to issue fresh show cause notice in accordance with the governing law and rules to the petitioner indicating therein the clear reasons for the violations if any and give sufficient time to the petitioner herein to submit objections/reasons and consider the same and pass an appropriate order.

19. Non-grant of transitional credit – HC directs appellant to take benefit of SC decision in Filco Trade

Case Name: Rockland Media And Communication Pvt. Ltd. Vs Union of India
Appeal Number: WP(C)/4828/2021
Date of Judgment/Order: 23/11/2022
Courts: Guwahati High Court

The petitioner is challenging the non-grant of transitional credit under Section 140 of the Central Goods and Services Tax Act, 2017 and the Assam Goods and Services Tax Act, 2017.

The petitioner’s counsel submits that the writ petition can be disposed of in terms of the order dated 22.07.2022 passed by the Apex Court in Union of India & Anr v. Filco Trade Centre Pvt. Ltd & Anr. and the Circular No. 180/12/2022-GST dated 09.09.2022, issued by the Govt. of

India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing.

Writ petition is disposed of to enable the petitioner to take the benefit of the order dated 22.07.2022 passed by the Apex Court in Union of India & Anr v. Filco Trade Centre Pvt. Ltd & Anr. and the Circular No. 180/12/2022-GST dated 09.09.2022.

20. HC Stays Garnishee Order under GST as 50% of demand already been recovered

Case Name: Graphic aids Vs Sales Tax Officer

Appeal Number: M.A.T No.1523 of 2022

Date of Judgment/Order: 22/11/2022

Courts: Calcutta High Court

As stated by the learned Advocate for the appellant that sum of Rs.16,51,924/- has been recovered after the writ petition was dismissed, we feel the interest of revenue has been sufficiently safeguarded as more than 50% of the total dues has already been recovered. Therefore, the garnishee order for the balance amount shall be kept in abeyance and abide by the orders to be passed by the revisional authority in terms of the above direction.