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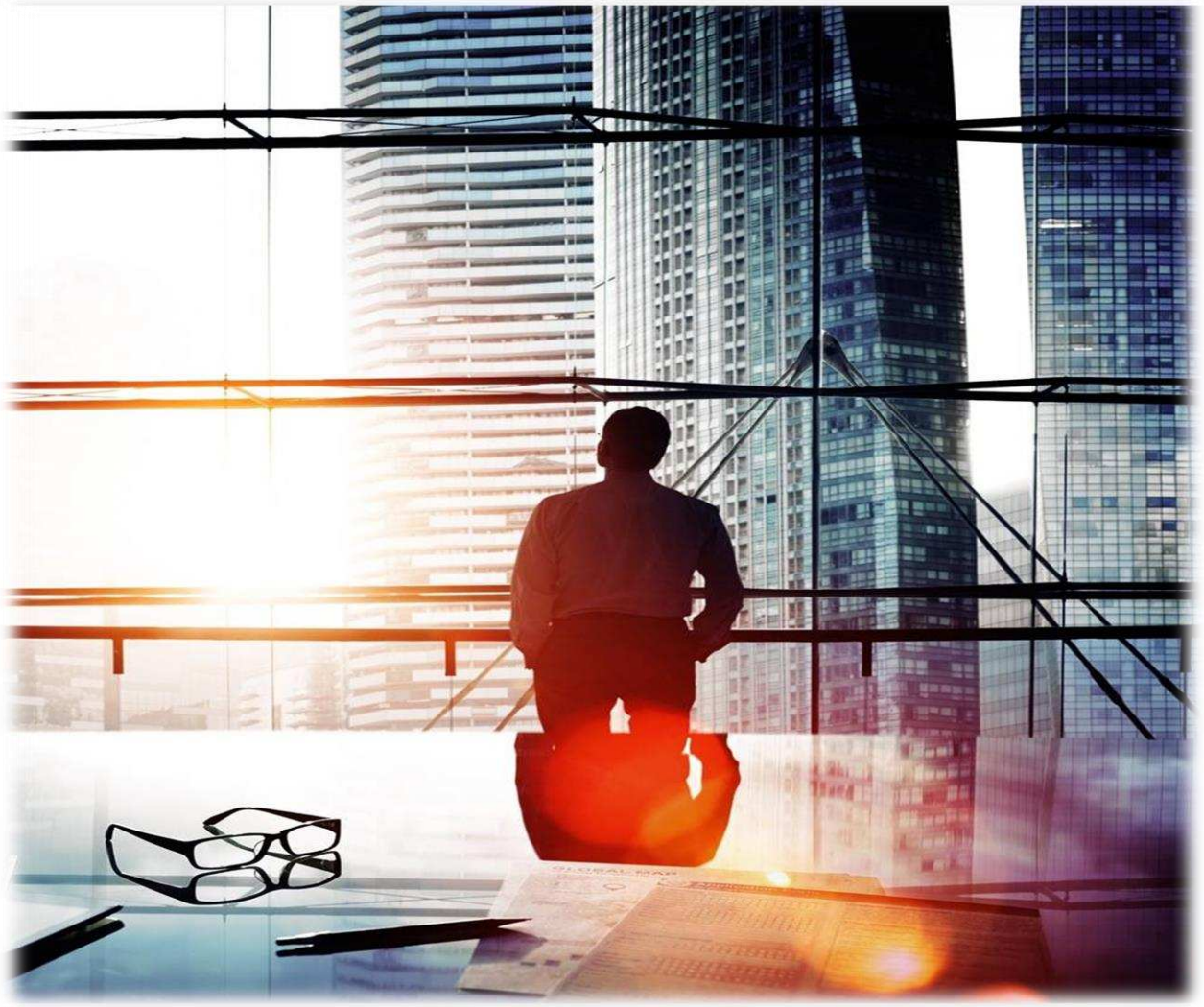
DA TAX ALERT - INDIRECT TAX

An e-Tax alert from **Darda Advisors LLP**

INDIRECT TAX ALERT – December 2020

Issue: 07



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GST Compliance Calendar - December 2020

Return	Person responsible	Period	Due date	Notification
GSTR 1	Normal Taxpayer (Monthly) [> 1.5 Cr. Turnover (TO)]	Nov 2020	11 Dec 2020	Notification 83/2020-CT
GSTR 3B	Normal Taxpayer [> 5 Cr. Turnover (TO)]	Nov 2020	20 Dec 2020	Notification 82/2020-CT
	Normal Taxpayers (< 5 Cr. TO)	Nov 2020	22/24 Dec 2020	Notification 82/2020-CT
GSTR 5	Non-Resident Taxable Person	Nov 2020	20 Dec 2020	-
GSTR 5A	OIDAR Service Provider	Nov 2020	20 Dec 2020	-
GSTR-6	Input Service Distributor	Nov 2020	13 Dec 2020	-
GSTR-7	TDS Deductor	Nov 2020	10 Dec 2020	-
GSTR-8	TCS Deductor	Nov 2020	10 Dec 2020	-
GSTR 9	Normal Taxpayers (> 2 Cr. TO)	FY 2018-19 & 2019-20	31 Dec 2020	Notification 80/2020-CT
GSTR 9A	Composition taxpayers			
GSTR 9C	Normal Taxpayers (> 2 Cr. TO)			

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Refund of excess payment of tax through ITC is allowed

In the said case, during the month of August, 2017, two consignments moved from one unit to another. However, the transfer did not qualify as supply in terms of Section 7 of the CGST Act, such transfer ought to have been effected under the cover of a delivery challan but, inadvertently two invoices issued. Having realized the mistake, the transfers were not declared as "outward supply" in the relevant Form GSTR-01. However, at the time of filing of the GSTR-3B return for the month in question, the company inadvertently took these two invoices into consideration and discharged GST accordingly. Subsequently, the company filed an online refund application in Form GST RFD-01A under Section 54 of the CGST Act seeking refund of such amount. Thereafter issued a SCN for rejection of application for refund in Form GST RFD-08 with reference to Rule 92(3) of the CGST Rules, 2017 and then order after given personal hearing opportunity issued rejecting the prayer holding that there was no provision under GST Act and GST Rules for refund of excess payment of tax, if payment was made through ITC.

The appeal is filed to first appellate authority which held that the ground of rejection of the refund claim in the impugned order was erroneous. However, after an examination as to whether or not any excess payment of tax had actually occurred in the case, rejected the appeal by holding that there is no requirement of refund. Accordingly, the writ is filed before Honorable High Court against the first appellate authority order.

Following submission made by the company:

- The impugned order travelled beyond the grounds cited in the SCN, and therefore, the impugned order is violative of principles of natural justice.
- The tax paid inadvertently by the petitioner has been appropriated and retained by the department without any authority of law
- The company had rectified the error committed in payment of tax in GSTR-3B for the month of August, 2017 in the GSTR-1 of the respective month and that the company had carried forward the excess amount of tax to the next month's return to be offset against the output tax liability of that month are perverse.
- As per Circular No. 7/7/2017-GST dated 01 September 2017 issued by the CBIC, the excess amount of tax paid in a month by mistake may be adjusted in returns in Form GSTR-3B of subsequent months and in cases where such adjustment is not feasible, refund can be claimed.
- The Circulars issued by the Board are binding on the Department and that the company had fulfilled all the conditions precedent in terms of Section 54 of CGST Act and CGST Rules to obtain refund or tax paid in excess

The Honorable High Court observed that:

- The Appellate Authority cannot be faulted for undertaking an enquiry even after observing that the order of the Adjudicating Authority was erroneous because the Appellate Authority has to decide whether the petitioner has made out a case for grant of refund.
- The Appellate Authority had acknowledged that there was an error in payment of tax in GSTR-3B for the month of August 2017 and that there was an excess payment of tax. It is in that context the question of adjustment had come to the fore and therefore, it cannot be said that the inquiry conducted by the Appellate Authority do not have even any remote nexus with the SCN.

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- The Appellate Authority, in the instance case, was required to grant the company an opportunity to explain its stand on GSTR-1 and GSTR-3B as also the Circulars.

And held that:

- We are of the opinion that the impugned order militates against the principles of natural justice. Accordingly, the order is set aside and quashed.
- The company is permitted to file a representation and such representation would be filed within a period of eight weeks from today before the Appellate Authority.
- After the representation is filed, an opportunity shall be granted to the representative/counsel for the petitioner for hearing and thereafter, the Appellate Authority shall pass a fresh order with expedition and without any delay regarding the claim made by the petitioner for refund.

DA Comments: Due to flaws in GSTN portal and complexity in the new GST regime, it is very common for such errors and refund if eligible should be processed without such delay and interference of High Court. The said decision is welcome judgment considering denial of refund when paid through ITC by the adjudicating authority.

M/s. Sun Pharma Laboratories Limited vs UOI and others [W.P.(C) No. 09 of 2020]

Demand of tax and penalty by check post officer is arbitrary and against the provision of GST law

The check post officer detained the goods even though the driver of the vehicle produced all documents such as Tax Invoice and e-Way Bill and informed that the said documents are for transporting the goods to Proddatur, Andhra Pradesh but the vehicle was proceeding to deliver the goods at Katedan, by issuing an order of detention in Form GST-MOV 06 by mentioning the ground 'wrong destination is noticed', and directed the driver of the vehicle to station the vehicle at Police Station. Further, the notice was issued for which detailed reply with explanation was given by the company. However, no order was issued and asked the company to deposit the tax and penalty with an undertaking. The Company paid the amount under protest. Accordingly, the company filed the writ petition to the Honorable High Court.

Following are the submission from the company:

- There was no intention or attempt on their part to evade tax and further no tax benefit accrued to the company and there is no loss of revenue to the exchequer.
- As per circular vide CBEC/20/16/03/2017 dated 14 September 2018, if a consignment of goods is accompanied with an Invoice or an e-Way Bill, proceedings under Section 129 of the CGST Act ought not to be initiated.
- For minor technical defects, the said Circular provides for a penalty of Rs.500-1000/- each under Section 125 of the CGST Act towards nominal penalty could have been imposed. However, the check post officer imposed taxes and penalty coercively for releasing the goods and conveyance in disobedience of the instructions contained in the said Circular which are binding on authority.
- Reliance placed on decision of the Madras High Court in R.K. Motors vs. State Tax Officer, and that of the Gujarat High Court in Synergy Fertichem Private Limited vs. State of Gujarat 2019-TIOL-2950-HC-AHM-GST and the Full Bench judgment of the

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Andhra Pradesh High Court in Ambica Lamp House vs. C.T.O. (I & T-1) Enforcement, State of Andhra Pradesh (2004) 40 APSTJ 56 [AP] (F.B.).

The Honorable High Court observed and held that:

- *Without there being any order/decision passed by the check post officer and communicated to the company, the company cannot be expected to file appeal invoking section 107 of the CGST Act, therefore, writ petition is maintainable.*
- The Bench is in complete agreement with the ratio laid down in the said cases
- *'Noticing the conveyance at a wrong destination' without anything more cannot be said to be a contravention of the CGST Act/Telangana GST Act and it is not a taxable event,* for there could be several reasons for the same including the driver losing his way or stopping for repair or to answer a call of nature.
- Once the conveyance/vehicle driver had the tax invoice and the e-way bill, there is prima facie compliance with the provisions of the CGST Act and Telangana GST Act and the rules made thereunder and as per para 5 of the circular as referred, it did not warrant initiating of proceedings under Sec. 129 of the Telangana GST Act, 2017.
- It is not as if when goods are in transit there is a prohibition of their sale by the purchaser to a third party. In fact, the court can take judicial notice that it is quite a common thing and a well-recognized trade practice.
- It is also important to note that 26 January 2020 i.e., the day when the goods were loaded on the vehicle was a Public Holiday, i.e., Republic Day and thus there is no need to suspect the bona fides of transaction merely because Way Bill was generated later along with a tax invoice in favour of purchaser about two hours after the vehicle's detention and cannot be construed that the company had an intention to unload the goods which is somehow contrary to law.
- Any defect, if any, in the documentation accompanying the goods has to be looked at in terms of the Circular
- Bench rejects the contention of the check post officer that producing the e-Way Bill and tax invoice by the company is only an after-thought to cover up its laches.
- *One must keep in mind that GST law are very recent laws and the common businessman is admittedly having difficulty to understand these enactments and the procedures they have introduced. It is important to note that interpretation of taxing statutes should be done in a way to facilitate business and inter-State trading, and not in a perverse manner which would result in impediment of the same by harassing business persons.*
- Writ Petition is allowed and the action of check post officer in collecting is declared as arbitrary and violative of Articles 14 and 265 of the Constitution of India, and also the provisions of CGST Act, 2017 and TGST Act, 2017, and also the Circular and consequently, the department is directed to refund the said amount with interest at the rate of 6% per annum till date of payment within 6 weeks.

DA Comments: GST is in nascent stage and authorities shall interpret the taxing statutes in such a way to facilitate businesses and not harassing the businessmen

M/S Sree Rama Steels Vs the Deputy State Tax Officer And 3 Others [2020-TIOL-1899-HC-TELANGANA-GST]

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Revision of GSTR 3B is allowed in absence of an enabling mechanism

The Company has committed an error in filing of the details relating to credit - What should have figured in the CGST/SGST column has inadvertently been reflected in the IGST column - It is nobody's case that the error was deliberate and intended to gain any benefit, and in fact, by reason of the error, the customers of the company will be denied credit which they claim to be legitimately entitled to, owing to the fact that the credits stands reflected in the wrong column - It is for this purpose, to ensure that the suppliers do not lose the benefit of the credit, that the present writ petition has been filed.

The Honorable High Court observed that had the requisite forms been notified, the mismatch between the details of credit in the company's and the supplier's returns might well have been noticed and appropriate and timely action taken. *In the absence of an enabling mechanism, the bench is of the view that the company should not be prejudiced from availing credit that they are otherwise legitimately entitled to.* The error committed by the company is an inadvertent human error and the company should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute. The writ petition is allowed and the impugned order set aside and the company is permitted to re-submit the annexures to Form GSTR-3B with the correct distribution of credit within a period of four weeks.

DA Comments: Considering the said decision and other judgment, the GST Council should consider to allow revision of current prevailing returns to avoid hardship to the taxpayers and involvement of Honorable High Courts.

M/S Sun Dye Chem Vs AC and Others [2020-TIOL-1858-HC-MAD-GST]

Provisional attachment allowed only when certain proceedings are pending under GST law and not allowed beyond taxable person's properties and any action under any other laws

The taxable person is the sole proprietor of the proprietorship firm which is engaged in the business of export of various products, such as, garments, footwear, leather accessories etc. During search warrant proceedings by Directorate General of GST Intelligence and Directorate General of Revenue Intelligence, the taxable person was coerced to pay additional duty, freezed 12 bank accounts of firm, personal and other legal entities, blocked IEC in regard to possible violations of the GST law on allegation of indulged in availment and utilization of fake input tax credit (ITC) without actual receipt of goods or services and has fraudulently claimed refund of bogus ITC despite being ineligible, without issuance of SCN. Accordingly, the taxable person filed the writ petition to the Honorable High Court.

The Honorable High Court observed and held that:

- *To enable invocation of section 83 of the CGST Act which deals with provisional attachment to protect revenue in certain cases, first and foremost there must be pendency of any proceeding* either under section 62 or under section 63 or under section 64 or under section 67 or under section 73 or under section 74 of the CGST Act. Thereafter, the Commissioner must form an opinion that for the purpose of protecting the interest

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of the government revenue, it is necessary to attach any property provisionally, including bank account belonging to the taxable person. On satisfaction of the above two conditions, the Commissioner must pass an order in writing provisionally attaching any property of the taxable person including bank accounts

- What is to be noted is that *the property including the bank account liable to or which has been provisionally attached must belong to the taxable person* - 'Taxable person' has been defined in section 2(107) of the CGST Act. To be more specific, there is no allegation or any averment made by the respondents that any money belonging to the petitioner or to his firm have been credited into the joint accounts of the petitioner with his wife or with his minor son or into the account of his wife. They being not the taxpayers in this case, provisional attachment of their bank accounts therefore would not be justified
- *It is trite that when a law requires a thing to be done in a particular manner, it has to be done in that particular manner and recourse to any other manner is necessarily forbidden*
- Suspension and cancellation of importer exporter code (IEC) number can be done only under Foreign Trade (Development and Regulation) Act, 1992 by the Director General of Foreign Trade or by his authorized officer for the reasons specified and in the manner provided in section 8 of the said Act.

DA Comments: The relevant agencies are identifying the fake invoice transactions and accordingly taking necessary action. However, the proceedings should be in accordance with the provision of GST law which is too pronounced in the said judgment.

Siddharth Mandavia Vs UOI And Others [2020-TIOL-1861-HC-MUM-GST]

Order set aside as notice/SCN not communicated as per CGST Rules and thus violates principle of natural justice

The adjudicating authority raised the demand of tax vide summary of order; the foundational SCN/orders was never communicated to the company who is an individual registered under GST Act. Thus, the SCNs and orders violates the principle of natural justice on the anvil of Rule 142 of CGST Rules. The department respondent stated that SCN/orders was communicated to the company on their E-mail address and despite receiving the same the company failed to file any response.

The Honorable High Court observed that the aforesaid provision reveals that the *only mode prescribed for communicating the show cause notice/order is by way of uploading the same on website of the revenue.* Further, there is no material to show that SCN/orders were uploaded on website of revenue. It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed as is the case herein.

In view of above discussion, the Honorable High Court held that statutory procedure prescribed for communicating SCN/order under Rule 142(1) of CGST Rule have not been followed by the revenue and thus the impugned demand deserves to be and is struck down.

DA Comments: There are number of legal precedents in erstwhile law that the prescribed procedure to issue SCNs to be followed and else it violates principle of natural justice. The said judgment is welcome judgment and any issuance of SCN/order without following CGST Rules can be challenged.

Akash Garg Vs State of MP [2020-TIOL-2013-HC-MP-GST]

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Penal interest on loans not liable to GST

In the case of Bajaj Finance Limited (GST AAAR Maharashtra), an application was made for rectification of an order passed by the AAAR on the applicability of GST on penal interest. The company was of the view that amount charged in the nature of penal interest was exempt due to the above entry. However, AAAR held that the consideration received by the company was for tolerating the act of its customers and would be covered by the entry 5(e) of Schedule II of the CGST Act.

However, the Central Government vide its Circular No. CBEC-102/21/2019-GST dated 28 June 2019 had issued certain clarifications in respect of the issue as involved in the present appeal. Vide the above circular, it has been clarified that the transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act as such levies are in the nature of "interest" as covered by the Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017.

On perusal of the above contentions made by the company, it was conceded that the Ruling made in the impugned AAAR Order was contrary to the interpretation of the legal provision as envisaged by the Board, and since the said Board Circular was beneficial in nature, the same needed to be applied retrospectively in keeping with the Apex Court Judgment, relied upon by the Applicant.

DA Comments: Under the erstwhile law and GST law, the interest including penal interest is not liable to GST and it has been clarified by CBIC by instructions/circulars. Based on experience in GST till now, AAR/AAAR are giving the rulings which are pro revenue and in certain cases reversing the settled principle under the law.

In the case of Bajaj Finance Limited [2020-TIOL-64-AAAR-GST]

Transition credit benefit cannot be denied on technical glitches

The company has sought to not only challenge the said inaction on transfer of eligible credit under erstwhile law under TRAN-1 to GST regime due to technical glitches on GSTN portal but also to challenge the vires of Rule 117 and Rule 118 of the CGST Rules as null and void and ultra vires Section 140 (1), Section 140 (3) and Section 9 of the CGST Act and Article 14, 19, 246, 248, 265, 268A, 286 and 302 read with entry 41 and 83 of list 1 of Schedule VII of the Constitution of India and as also being beyond the legislative competence of the Parliament under Article 269-A of the Constitution of India.

The Honorable High Court held that when there is no dispute to the fact that the company is otherwise eligible for credit then to deny the benefit of such Input credit merely on technical grounds cannot be justified. Merely on technical ground an admitted input credit is sought to be denied would be wholly unfair and a travesty of justice and accordingly allowed to transfer the credit to GST regime. Further, the bench does not consider it necessary to examine the company's challenge to the vires of Rules 117 and 118 of the CGST Rules.

DA Comments: Though the provision under CGST Act and CGST Rules for transitioned credit has been amended retrospectively, the Honorable High Courts are still considering the writs for technical and other issues and providing due relief.

Heritage Lifestyles and Developers Pvt Ltd vs UOI and Others [2020-TIOL-1875-HC-MUM-GST]

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Inadvertent mistake cannot lead to rejection of benefit – SVLDRS

The company in order to avail the benefits under a scheme Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS) had submitted their particulars in the prescribed SVLDRS-1 form. Inadvertently while submitting the form, the aforesaid penalty imposed on the petitioner was not stated and in turn in the relevant column it was stated that the penalty imposed upon the company was '0' and due to such claim for the benefit under the SVLDRS stood rejected by the order.

The issue involved in this writ petition is also squarely covered by the judgment dated 04 May 2020 in the case of Assam Cricket Association [2020-TIOL-985-HC-GUW-ST]. Accordingly, in view of such agreement this writ petition also stands disposed of by the Honorable High Court by requiring the petitioner to submit an application before the respondent authorities for correction to be made in the information provided in the Form SVLDRS-1 as regards the penalty imposed and upon such application being made, the respondent authorities would pass a reasoned speaking order thereon

DA Comments: The SVLDR scheme is already closed. However, in cases where rejection of application is done, the issue is coming before various High Courts due to procedural or other issues.

Calcom Cement India Ltd vs UOI and others [2020-TIOL-1992-HC-GUW-CX]

Penalty cannot be imposed retrospectively when provision introduced prospectively

The case is related to anti-Profiteering under section 171 of the CGST Act, 2017 wherein there is allegation of profiteering by not passing on the benefit of reduction in the rate of GST from 28% to 18% w.e.f 15 November 2017 and accordingly DGAP (Director General of Anti Profiteering) in its report has stated that the base prices of 1383 goods had been increased by respondents after the rate of tax was reduced on them and hence there has been contravention of the provisions of section 171 of the CGST Act.

The NAA (National Anti-Profiteering Authority) held that the company is liable to pass on the benefit of GST rate reduction from 28% to 18% as was notified by the Central and State governments vide notification 41/2017-CTR dt. 14 November 2017 w.e.f 15 November 2017 and directed to reduce the prices of all the SKUs commensurately in respect of which profiteering has been computed - respondents are directed to deposit 50% of the profiteered amount in the Central Consumer Welfare Fund and the balance 50% in the Consumer Welfare Fund of the 33 States/UTs since the recipients who are millions of ordinary customers are not identifiable - above amounts to be deposited along with interest @18% - amounts to be deposited within three months failing which they shall be recovered by the Commissioners of the Central Tax/State/UT Tax concerned.

Insofar as imposition of penalty is concerned for violation of the provisions of s.171 of the Act, as the period involved is from 15 November 2017 to 30 September 2018 during which period section 171(3A) of CGST Act was not in existence having been inserted by the Finance Act, 2019 w.e.f 01 January 2020, penalty cannot be imposed retrospectively - SCN in this regard is, therefore, not required to be issued - Order is being passed taking into account notification 65/2020-CT dated 1 September 2020.

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Goods and Service Tax

DA Comments: Under GST, there are number of provisions which have been notified on later date and thus any provisions including penalty cannot be applied retrospectively till its notified to be applicable retrospectively.

M/S Procter & Gamble Home Products (PGHP) Pvt Ltd Vs. Director-General of Anti-Profiteering [2020-TIOL-76-NAA-GST]

Indian entity is liable to GST under reverse charge for transaction with branch office of foreign entity

The branch office of the foreign entity entered into MARC (Maintenance and Repair Contract) with its Indian customer for maintenance of electric rope shovel supplied by the foreign supplier. The branch office of the foreign entity filed the advance ruling on the query that who is liable to pay GST on the said transaction and whether Indian entity can claim such amount from foreign supplier.

The AAR held that such transaction is not import of service in the hands of Indian customer and thus not liable to pay under Reverse Charge Mechanism (RCM) and thus the branch of foreign entity in India is liable under forward charge. Accordingly, the appeal is filed again AAR to AAAR on following grounds:

- The AAR completely ignored the fact that the agreement is with foreign entity and they just relied on the fact regarding the deputation of human and technical resources at the Indian customer's site constitutes 'fixed establishment'
- The invoice is raised by foreign entity based in Russia to Indian customer directly
- The branch office is working on the exclusive instruction of foreign entity and mere acting as collection and disbursement centre for the payment to be received and onward transfer to Russia and the same cannot be concluded as material evidence for treating branch office as the supplier of services
- The MARC is executed by Indian subcontractor who entered into contract with foreign entity in Russia
- The location of supplier is in Russian which satisfy the condition of section 2(11) of IGST to classify as 'import of services'
- The agreement is executed on 15 October 2015 and branch office of foreign entity came into existence 20 June 2018

The AAAR after considering all submissions held that the services is being provided by the appellant's foreign entity and the conditions of import of services in the hands of Indian customers satisfies and thus liable under RCM.

DA Comments: The said issue is not new to the industry and it is well settled that such transactions are liable in the hands of Indian customers under RCM except where the branch office/project office are directly involved in the transactions. The central AAAR should be set up as early as possible to have uniform view across all states.

M/s IZ Kartex [Appeal Case No.2/WBAAAR/APPEAL/2020]

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Extension/Notification of due dates

S. No	Class of registered persons	Return/ Aspect	Period	Due Date
1	**More than 1.5 Crores** Aggregate Turnover	GSTR 1	Month	**Eleventh** day of the month succeeding such month
2	Aggregate turnover **upto 1.5 Crores**		Quarter	**Thirteenth** day of the month succeeding such quarter
3	Registered manufacturers/Principal	FORM GST ITC-04	July 2020 to Sept 2020	30 November 2020
4	Registered persons with turnover exceeding **Rs 100** crore in any FY from 2017-18	E-Invoice	W.e.f 1 January 2021	**1 January 2021**

Due dates for GSTR 3B notified

S.No	Class of registered persons	Period	Due Date
1	**More than 5 Crores** Aggregate Turnover	Any period	**Twentieth** day of the month succeeding such month
2	Aggregate turnover **upto 5 Crores** (Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Pondicherry, Andaman and Nicobar Islands and Lakshadweep - **Category 1** states)	October 2020 to March 2021	**Twenty-second** day of the month succeeding such month

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S.No	Class of registered persons	Period	Due Date
3	Aggregate turnover **upto 5 Crores** (Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi – **Category 2** states)		**Twenty-fourth** day of the month succeeding such month

Notification No. 82/2020 – Central Tax dated 10 November 2020

Procedure for payment of tax for quarterly taxpayers notified

Quarterly return filers shall deposit tax in electronic cash ledger on or before 25th of next month for first and second month of the quarter equivalent to 35 % of the tax liability of preceding quarter each

Notification No. 85/2020 – Central Tax dated 10 November 2020

Manner for furnishing details of outward supplies in GSTR 1 is specified

Outward supplies can be furnished quarterly or using Invoice Furnishing Facility (IFF) in GSTR 1 by quarterly taxpayers. Outward supplies furnished by the supplier in FORM GSTR-1 or using the IFF shall be made available electronically to the concerned registered persons in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal.

Notification No. 82/2020 – Central Tax dated 10 November 2020

Manner of furnishing details of and payment of tax in GSTR 3B is specified

Registered person opting for quarterly returns shall indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised.

Notification No. 82/2020 – Central Tax dated 10 November 2020

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Persons to opt for monthly/ quarterly option of filing returns

S.No	Class of registered person	Deemed Option
1	Registered persons having aggregate turnover of **up to 1.5 crore rupees**, who have furnished FORM **GSTR1 on quarterly basis** in the current financial year	Quarterly return
2	Registered persons having aggregate turnover of **up to 1.5 crore rupees**, who have furnished FORM **GSTR1** on **monthly basis** in the current financial year	Monthly return
	Registered persons having aggregate turnover **more than 1.5 crore rupees and up to 5 crore** rupees in the preceding financial year	Quarterly return

Registered persons may change the default option electronically, on the common portal, during the period from the 5th day of December 2020 to the 31st day of January 2021

Notification No. 84/2020 – Central Tax dated 10 November 2020

Rescinding of notification issued to notify due dates of GSTR 3B

Since new notification issued to notify the due dates of GSTR 3B earlier notification 76/2020-Central tax was rescinded through this notification

Notification No. 86/2020 – Central Tax dated 10 November 2020

Specified products to be mentioned with eight digits HSN code in tax invoice by taxpayers having turnover more than 5 Cr.

List of products for which eight digits HSN code in the tax invoice has to be mentioned by the registered taxpayers having TO more than 5 Cr. can be accessed at below link

Notification No. 90/2020 – Central Tax dated 1 December 2020

Waiver of penalty for non-compliance of Dynamic QR Code on B2C invoice

Earlier, registered person whose aggregate turnover in a financial year exceeds five hundred crore rupees while issuing invoice to unregistered person shall have Dynamic QR Code from 1 October 2020 which was last amended to 1 December 2020.Now the penalty is waived if the said provision is not complied from 1 December 2020 to 31 March 2021 subject to the condition that if will be duly complied from 1 April 2021.

Notification 89/2020- Central Tax dated 29 November 2020

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Quarterly Return Monthly Payment Scheme- Issues clarified

CBIC has clarified various issues in relation to QRMP scheme which has been listed below

S.No.	Aspect	Procedure
1	Eligibility for the Scheme	Registered person having an aggregate turnover of up to 5 crore rupees in the preceding financial year is eligible for the scheme
2	Exercising option	• A registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter • He must have furnished the last return, as due on the date of exercising such option • Option opted once will continue for future tax periods unless revised • Some GSTINs for the same PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme
3	Furnishing of returns (GSTR 1)	• GSTR 1 has to file quarterly • For each of the first and second months of a quarter, registered person can use Invoice Furnishing Facility (IFF) to furnish the details of outward supplies to a registered person, between the 1st till the 13th of the succeeding month. • The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month • This facility is provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient
4	Monthly payment of tax	• Registered persons under QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in FORM GST PMT-06, by the 25th of the month succeeding such month • Taxpayers should select "Monthly payment for quarterly taxpayer" as reason for generating the challan • No late fee is applicable for delay in payment of tax in first two months of the quarter • Either of two methods can be used for payment of monthly tax o Fixed Sum Method- 35% of previous quarter to be paid in each of first two months of quarter o Self-Assessment Method – The tax can be paid by self-assessment by considering the tax liability on inward and outward supplies and ITC

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S.No.	Aspect	Procedure
4	Quarterly filing of GSTR 3B	To furnish Form GSTR-3B, for each quarter, on or before 22nd or 24th of the month succeeding such quarter.
5	Applicability of interest	• No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount by due date even tax liability paid for two months of quarter is less than the actual • Interest would be charged due date of furnishing FORM GST PMT-06 till the date of making such payment in case the tax is not deposited by due date • For persons opting for self-assessment method, Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter. • Interest has to paid through GSTR 3B

Circular No. 143/13/2020- GST dated 10 November 2020

Instruction issued for SOPs for physical verification of premises with deemed approval under GST registration

To ascertain that taxpayers who are being deemed approved from 21 August 2020 to 16 November 2020 have genuine business or intends to carry out so, department has started physical verifications of their premises.

Rule 25 of the CGST Rules provide for physical verification of business premises in cases after grant of registration and deemed registrations are also included in such cases. On completion of verification, if the proper officer has reasons to believe that the registration is liable for cancellation, he can initiate the proceedings under rule 22 of the CGST Rules.

Pending physical verification, notice in FORM REG-17 may be issued in specific cases based on following risk parameters seeking explanation from the registered person regarding the differences and anomalies noticed:

i. Where FORM GSTR-1 is filed and FORM GSTR-3B is not filed either for August or September, 2020 tax period;
ii. The difference in tax amount, as reported in FORM GSTR-1 and FORM GSTR-3B is more than Rs. 1 lakh (R1>R3B)

On receipt of the reply to the notice, the proper officer would complete the proceedings under rule 22 of the CGST Rules.

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Goods and Service Tax

Following are the details to be verified by the concerned proper officer for physical verification of principal place of business and additional place of business:

S. No	Aspect	Instruction
1	Verification of details	a. In case the applicant intends to carry out manufacturing activity, whether capital goods, if required for the said manufacturing activity, have been installed b. Electricity connection, bills paid in the relevant period. c. Size of the premises – whether it is commensurate with the activity to be carried out by the applicant. d. Whether premises is self-owned or is rented and documents relating ownership/ registered lease of the said property. In case of doubt, enquiry may also be made from the landlord/ owner of the property in case of rented / leased premises. e. No of employees already employed and record of their employment f. Aadhaar and PAN of the applicant and its proprietor, partners, Karta, Directors as the case may be and the authorized signatories. g. Bank's letter for up to date KYC
2	Preliminary financial verification	a. ITRs of the company / LLP from the date of incorporation or for last three financial years, whichever is less. ITRs of proprietor, partners, Karta, etc. may be taken in other cases b. The status of activity from the date of registration of all the bank account(s) linked to registration; the same may be taken through a letter / undertaking from the applicant. Phone number declared / linked to each of the bank accounts may also be obtained. c. Quantum of capital employed/proposed to be employed. d. d. Out of the amount mentioned at (c) above: (i) Own Funds: (ii) Loan Funds: (indicate the names, complete address, PAN and amount borrowed from each such lender separately): e. In case of own funds, also check the audited balance sheet for previous financial year, where available, in addition to the Income Tax Returns mentioned in (a) above. f. In case of loan funds check the proposal submitted to the Bank/FI for approval of the loan and the maximum permissible bank finance as per such proposal, where the amount is proposed to be borrowed from a Bank and/or FI.

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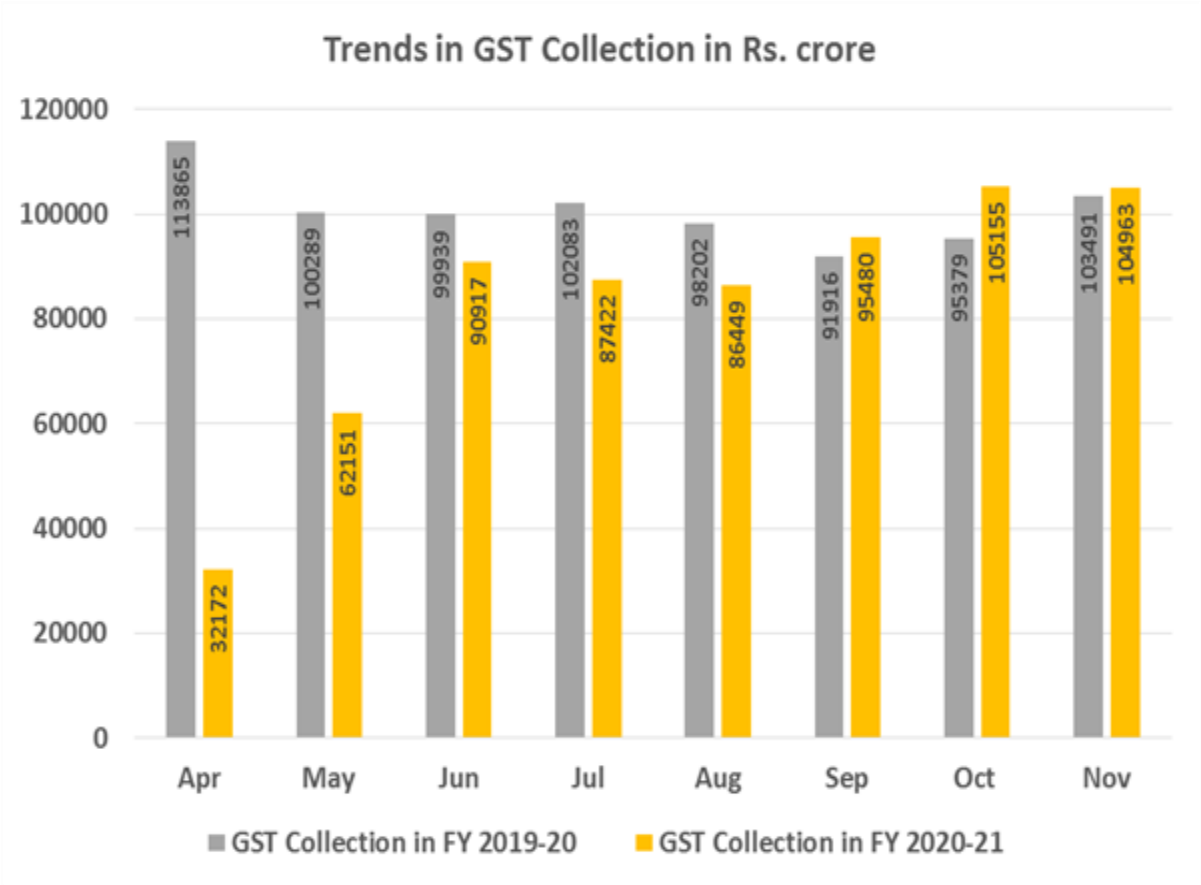
Instruction No. 4/3/2020-GST dated 27 November 2020

GST Revenue Collection in November 2020-Rs.1.05 lakh Cr.



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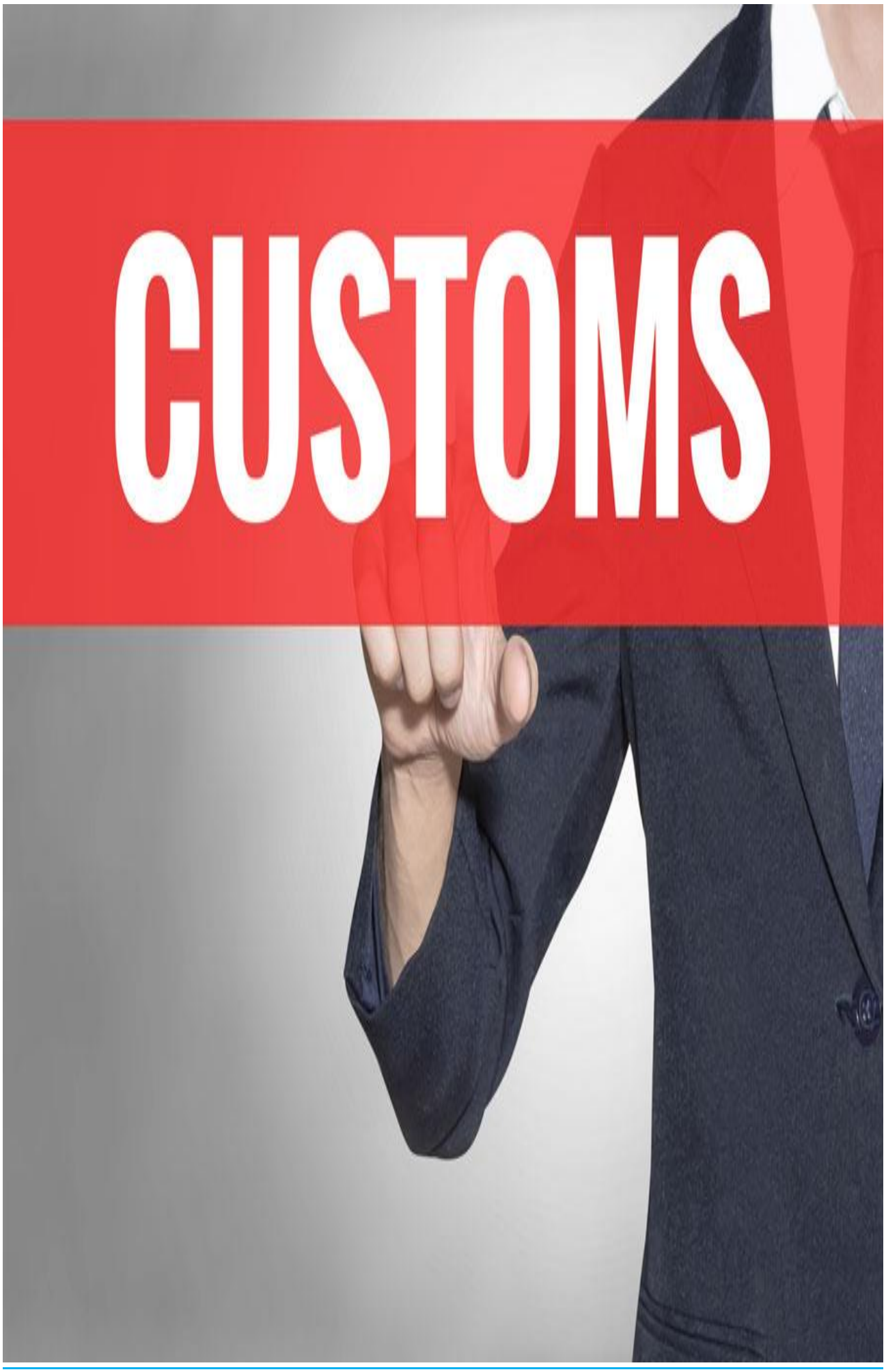

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Customs and Others

One to one correlation is not required for refund under erstwhile Service tax law

The company is engaged in providing output services and avails Cenvat credit of Service Tax paid on various input services used/utilized in, or in relation to providing the said output services. In respect of impugned order, the Commissioner has confirmed the adjudged demands on the ground that the disputed services namely, Health Insurance, Cargo Handling and Photography Services are not confirming to the definition of 'input service', provided in Rule 2(l) of CENVAT Credit Rules, 2004 [CENVAT Rules].

On a conjoint reading of statutory provisions and the notifications issued by Central Government from time to time, it transpires that input services may not necessarily be used directly in provision of output service and use of such services 'in or in relation to' also meet the requirement of Rule 5 ibid for the purpose of refund benefit. While interpreting the expression 'in relation to' used in the statute, the Supreme Court in case of Doypack Systems Pvt. Ltd. 2002-TIOL-389-SC-MISC has held that the said phrase is equivalent to or synonymous with 'pertaining to' and 'concerned with' and therefore, the said phrase has a very broad connotation and cannot be given a narrow meaning.

In view of the settled position of law, CESTAT held that there is no requirement of establishing one to one correlation between the input services and the output service. Based on adoption of prescribed formula, the refund application alone should be processed and settled by the department and the aspect of direct nexus or correlation between the input service and output service should not be looked into for such purpose. Since, the specific issue regarding adoption of the formula prescribed under Rule 5 ibid has not been discussed by the authorities, the matter should be remanded to the original authority for a fresh finding on the issue, whether the requirement of the said rule has actually been complied with by the company.

DA Comments: It is settled position under erstwhile law that no one to one correlation is required for claiming credit and refund. The same principle is applicable under GST law.

Microsoft India (R And D) Pvt Ltd Vs CCCEST [2020-TIOL-1577-CESTAT-HYD]

Industrial Policy prevail irrespective of delay in issuance of exemption notification

The issue is in relation to doctrine of Promissory estoppel. It is the legal principle that a promise is enforceable by law, even if made without formal consideration when a promisor has made a promise to a promisee who then relies on that promise to his subsequent detriment.

The Jharkhand Industrial Policy 2012 announced an incentive in the form of a rebate or deduction on electricity duty for a period of five years from the commencement of production. In the current case, the company filed the writ against the prospective notification issued by the State Government, The Honorable High Court upheld the claim of the company that it was entitled to a rebate/deduction from electricity duty in terms of the representation held out in the Jharkhand Industrial Policy 2012 (notified by the appellant on 16 June 2012), and the statutory notification under Section 9 of the Bihar Electricity

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Customs and Others

Duty Act 1948 shall be deemed to be in effect from 1 April 2011, when the Jharkhand Industrial Policy 2012 was enforced with retrospective effect and that the denial of the exemption by the State government for was contrary to the doctrine of promissory estoppel. The State Government filed the SLP at Supreme Court against the decision of the Honorable High Court.

The Honorable Supreme Court observed and held that:

- If the object of formulating the industrial policy is to encourage investment, employment and growth, *the administrative lethargy of the State apparatus is clearly a factor which will discourage entrepreneurship*.
- That period of one month stretched on interminably with the result that the purpose and object of granting the exemption would virtually stand defeated.
- This Court has given an expansive interpretation to the *doctrine of promissory estoppel* in order to remedy the injustice being done to a party who has relied on a promise.
- While the basis of the doctrine of promissory estoppel in private law is a promise made between two parties, the basis of the *doctrine of legitimate expectation* in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities. This is not to suggest that the doctrine of promissory estoppel has no application in circumstances when a State entity has entered into a private contract with another private party. As such, we can see that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 finds concrete expression.
- Due to the failure to issue a notification within the stipulated time and by the grant of the exemption only prospectively, the expectation and trust in the State stood violated. *Since the State has offered no justification for the delay in issuance of the notification, or provided reasons for it being in public interest, we hold that such a course of action by the State is arbitrary and is violative of Article 14.*
- In conclusion, we are in agreement with the conclusion of the High Court that the respondent was entitled to an exemption from electricity duty, although for the reasons indicated in this judgment.

DA Comments: There are various decisions which held that promise made by State exchequer cannot be held back and under the said judgment, the same is positively held and any administrative delay and challenges cannot override on the promises made by the state exchequer.

The State of Jharkhand and Ors. .... Appellants Vs Brahmputra Metallics Ltd., Ranchi and Anr [SC - Civil Appeal Nos. 3860-3862 of 2020]

Delayed adjudication is in contravention of procedural fairness and against the principles of natural justice

The adjudicating authority in the SCNs alleging excess availment of CENVAT credit and issued in 2006 for which replies were submitted by the company. Post that nothing was heard by the company and since no consequential decision was taken, the company was under the bona fide belief that the central excise authorities had accepted its reply/submissions and had given a quietus to the matter.

After about 13 years, the company was served with a letter informing that a personal hearing was fixed and being aggrieved by this attempt to revive the SCNs after a lapse of

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almost 13 years, the company filed the writ petition that such delayed adjudication would render the SCNs and consequential proceedings null and void. Further, after filing of the Writ petition, order-in-original was passed on confirming the demand of duty.

The Honorable High Court observed that a SCN issued a decade back should not be allowed to be adjudicated upon by the revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings - Larger public interest requires that revenue should adjudicate the show-cause notice expeditiously and within a reasonable period - What would be the reasonable period would depend upon the facts and circumstances of each case but certainly a period of 13 years cannot be termed as a reasonable period - Regarding keeping the SCN in the dormant list or the call book, this Court has held that such a plea cannot be allowed or condoned by the writ court to justify inordinate delay at the hands of the revenue.

In the present case, it is evident that the delay in adjudication of the SCN could not be attributed to the company. The delay occurred at the hands of the authority - as kept the show-cause notices in the call book but without informing the company - Upon thorough consideration of the matter, Bench is of the view that such delayed adjudication after more than a decade, defeats

As has been rightly held by this Court in Raymond Limited (2019-TIOL-1864-HC-MUM-CX) , such delayed adjudication wholly attributable to the revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice. An action which is unfair and in violation of the principles of natural justice cannot be sustained – Sudden resurrection of the SCN after 13 years, therefore, cannot be justified.

DA Comments: The similar judgments in plethora of cases have held that delayed adjudication is in violation of principle of natural justice. The said principle can be applied in GST cases too where delayed adjudication on refund, check post and other issues is common.

Parle International Ltd Vs UOI And Others [2020-TIOL-2032-HC-MUM-CX]

Taxpayer cannot be penalised for the fault of counsel/advisor

The tribunal dismissed the appeal filed by the company, a CHA, against imposition of penalty of Rs.50,000/- only on the ground of delay in filing the same, which was as much as 764 days and accordingly the appeal has been filed before the High Court. The Company submitted that the enquiry held by the competent authority gave the findings in favour of the company that there was no mis-declaration on the part of the company but however, the Commissioner did not agree with those findings and imposed the said penalty of Rs.50,000/- which department does not seriously dispute this factual position about the finding of the enquiry officer in favour of the company, however, supports the impugned CESTAT order as the delay is huge.

The Honorable High Court held that for the fault of the advisor/counsel, the company should not suffer and the fact-finding bodies like Tribunal should make endeavour to decide the appeals on merits, as far as possible rather than taking a pedantic approach of dismissing the appeals on the ground of delay, unless there is a gross delay and no sufficient reason is made out and accordingly the impugned order of the Tribunal is set

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aside and the matter is remitted back to the learned Tribunal for deciding the appeal on merits and in accordance with law, after giving an opportunity of hearing to both the parties

DA Comments: The case has given additional leverage for delayed cases in filing the appeal.

M/S Seaswan Shipping and Logistics vs CESTAT and CC [2020-TIOL-1857-HC-MAD-CUS]

Policy and Guidelines for setting up of ICDs, CFSs & AFSs

On account of plethora of changes in the policy, technology landscape and the logistics ecosystem over the time, there is a need for revising the policies and procedure for setting up of new Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Air Freight Stations (AFSs) to meet the requirement of the changing paradigm and the aspirations of the trade. An Inter-Ministerial Committee (IMC) act as a single window for clearance of proposals to set up Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Air Freight Stations (AFSs). Following are key aspects of new Policy and Guidelines for setting up ICD/AFS/CFS:

Sr.no.	Aspect	Key pointers
1	Criteria for new ICDs/CFSs/AFSs - Geographical Criteria for approvals	• It is decided to group the country in three types of areas for the purposes of opening of new ICDs/CFSs as under following: **Green Zone**: States low on ICD/CFS infrastructure. **Blue Zone**: States where the proposals can be accepted only for specific trade generating locations with no existing facilities or with over utilized facilities **Red Zone**: The identified states have adequate ICD/CFS infrastructure. These may be closed for any new CFSs development indefinitely. However, in exceptional cases IMC may approve the setting up of ICDs in trade generating locations with high export & import potential and need of new facilities (all the states and union territories not listed in Green and Blue Zones). • Distance of ICD from ports • Distance between ICDs • Development in States with low Logistics Infrastructure • National Logistics Action Plan/Policy • Inland National Waterways • Railways Freight Corridors • Exceptions can be provided based on IMC discretion

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Sr.no.	Aspect	Key pointers
2	Criteria for new ICDs/CFSs/AFSs - Others	• Volume - The facility must be economically viable to manage and attractive to the users, to the railways for full train load movements; to other transport operators; seaports; shipping lines; freight forwarders etc. • Land - The minimum area requirement is seven hectare for ICD having minimum area of four hectares as Customs Notified Area and minimum one hectare nominated for DPD DPE nominated space. For states in Green Zone, ICD with three hectares for customs notified area and one hectare for DPD & DPE may be considered. The minimum area requirement shall be two hectare for a CFS. For AFS 1000 Sq. meters of covered area each for imports and exports respectively shall be made available. • Ownership of Land - The applicant must have the legal rights over the land which is proposed for ICD/CFS construction. If the land is not owned and the land is leased, the lease agreement with lessor must be for period of 30 years. • Legal entity – The applicant must be a legal entity in India under applicable law. • Prior experience – The applicant must have prior experience of operating as CCSP or should have other trans-border logistics experience such as logistics service provider including customs brokers, transporters, freight forwarders, shipping lines and port terminal operators.
3	Application and approval procedures	The detailed guidelines provided for: • Setting up of new ICD/CFS/AFS • Applications for other purposes • Post Approval Obligations • Term, renewal and de-notification of the facility • Scope and applicability • Forms for application The same can be referred in the link given below.

Circular No. 50/2020-Customs vide No. 394/29/2020-Cus (AS) dated 5 November 2020

Speaking Order and principle of natural justice to be followed for cancellation of license/approval – DEL related

The Company has filed the writ petition challenging the order passed by the Joint Director General of Foreign Trade (JDGFT), placing the company in the Denied Entity List (DEL) under section 9 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act)

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read with rule 9 and 10 of the Foreign Trade (Regulation) Rules, 1993 (FTR Rules),and further challenges the SCN issued in relation to investigation is being carried out against the company "for gross overvaluation to fraudulently avail export benefits" on the ground that SCN is vague as it does not spell out the exact nature of violation for which the petitioner is sought to be proceeded against and order on the ground that not supplied to them and issued without an opportunity of hearing.

The Honorable High Court observed and held that:

- The order does not refer to any material/evidence of wrongdoing by the petitioner being done to the respondent. Further, barring uploading the factum of placing the petitioner on DEL vide so-called order, there is actually no such order recording any reason for the same. *Therefore, there is a clear violation of the Guidelines on more than one count. In terms of the Guidelines reproduced hereinabove, the same cannot be a sufficient reason as the respondent/Authority is to apply its independent mind to the allegations against the company.*
- Section 9(4) of FTDR Act expressly mandates that suspension or cancellation of any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits can only be "for good and sufficient reasons". *The requirement of giving reasons cannot therefore, be dispensed with and is mandatory.*
- *It is now firmly established that even an administrative decision having civil consequences must record reasons as a mandatory compliance with principles of Natural Justice.* This is especially so where the order itself is appealable, like in the present case. Even otherwise, the necessity of giving reasons cannot be undermined.
- *The Impugned Order does not show any application of mind* to these submissions as the order contains no reasons and is liable to be set aside on this short ground itself.
- With regard to denial of natural justice, the stand of the respondents is clearly an after-thought and is liable to be rejected.

DA Comments: It is a welcome judgment specially in the cases where the severe order like DEL are issued without even following the prescribed procedures and guidelines.

M/S. Nautilus Metal Crafts Pvt. Ltd vs JDGFT, New Delhi [W.P.(C) 5167/2020 & CM 18593/2020]

SVLDRS – Due date extended for UT J&K and Ladakh

The Central Government has decided to extend the period for availing the Sabka Vishwas (Legacy Dispute Resolution) (SVLDR) Scheme (SVLDRS), 2019 for the union territory of J&K and Ladakh:

- The last date for filing of the declaration referred to in sub-rule(1) of rule 3 of the said rules shall be on or before the 31 December, 2020;
- The last date of issuance of statement under sub-section (1) and (4) of section 127 of the said Act shall be on or before the 31 January, 2021;
- The last date of issuance of estimate of amount payable under sub-section (2) of section 127 of the said Act shall be on or before the 15 January, 2021;
- The last date for payment of dues by declarant under sub-section (5) of section 127 of the said Act shall be on or before the 28 February, 2021.

Order No. 1/2020-SVLDRS, 2019 dated 13 November, 2020 and

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Customs and Others

Circular No 1075/01/2020-CX vide F.No.267/78/2019/CX-8-Pt. III dated 14 November 2020

New IT Environment for AA/EPCG/DFIA

Migration of AA/EPCG/DFIA Online modules to the new IT environment from 1 December 2020 and non-availability of licence amendment services from 20 November 2020 to 30 November 2020.

Trade Notice No. 35/2020-21 dated 12 November 2020

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GST

- November GST collections at ₹1.05 lakh cr
- Economic rationale overrides differences within GST Council
- GST Council panel for 2-pronged strategy to curb fake invoices
- Centre, states look to tighten GST registration process
- Top 25,000 GST payers of October yet to file returns in November, tax officers to send reminders
- Man arrested for Rs 100 crore fake GST invoice fraud
- Chhattisgarh joins 27 states and 3 UTs to opt for GST loan, Jharkhand is lone dissenter
- Fake invoices for GST credit: Govt may invoke COFEPOSA against offenders
- New rules to sign up for GST

Customs and others

- Govt raises customs duty on certain components used in manufacturing open cell for LED/LCD TV panels
- Chennai Customs seizes 240 gms of gold from two Dubai passengers, one arrested
- Gold smuggling case: Court grants Customs 7 days additional custody of M Sivasankar
- Commerce Ministry seeks stakeholder suggestions for next foreign trade policy
- DGFT's new rules for AC imports: Right move with little impact, say experts
- Rice to silk, Bihar lists 30 indigenous products for Centre's export push
- Asia-Pacific nations sign world's biggest free-trade agreement
- India out of RCEP China economy trade angle
- Russia eyes $30-billion annual trade with India by 2025

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- Due Diligence
- Incentives (Central and State) Assistance
- Valuation Services
- Virtual Tax Head Services
- Corporate and International Tax

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