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ICAI-GST

A Newsletter from The Institute of Chartered Accountants of India on GST

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President's Communication

Dear Professional Colleague

Greetings from the Institute of Chartered Accountants of India (ICAI)!

It is my pleasure to extend warm greetings to all the dedicated professionals, taxpayers, and stakeholders of Goods and Services Tax (GST) ecosystem. I am delighted to pen down a few words for the August edition of the GST Newsletter and communicate with you.

GST, as we all know, has been a transformative tax reform in our country. Since its implementation, it has not only simplified the indirect tax system but has also played a pivotal role in promoting ease of doing business and economic growth. The GST landscape is ever evolving, and it is crucial for all of us to stay abreast of the latest developments, compliance requirements, and best practices.

In this context, this GST Newsletter serves as a valuable resource. It provides a comprehensive overview of GST-related updates, rate changes, compliance tips, and expert insights, all of which are essential for all professionals and businesses alike. I commend the efforts of the GST and Indirect Tax Committee of the Institute of Chartered Accountants of India (ICAI) in keeping our community informed of the recent changes through this Newsletter.

I would like to emphasize the importance of upholding the highest standards of professionalism and ethics when dealing with GST matters. As Chartered Accountants, our role in ensuring compliance and assisting our clients in navigating the complexities of GST is of paramount significance. Let us continue to uphold the integrity of our profession and contribute to the growth and development of our nation.

I encourage all readers to make the most of the resources provided in this Newsletter and stay engaged in continuous learning. Knowledge is the cornerstone of success in the ever-changing world of taxation.

I hope this Newsletter adds value to your professional knowledge and skills.

With best wishes,

CA. Aniket Sunil Talati
President
The Institute of Chartered Accountants of India

Chairman's Communication

Dear Members,

Warm Greetings!

I am delighted to share with you 39th edition of ICAI GST Newsletter which encapsulates the latest updates, insights, and resources related to GST.

The revenue generated from Goods and Services Tax (GST) has shown a consistent remarkable increase in recent months and it continues to serve as a robust indicator of our country's economic growth and fiscal stability. I am thrilled to acknowledge that the revenue from GST collection for the month of August 2023 is 11% higher than the revenue from GST collection in the same month last year. This significant growth is a testament to the resilience and adaptability of our tax system and adhering to the commitment of the professionals and taxpayers.

The Government has come out with an innovative scheme of *"Mera Bill Mera Adhikar"* for incentivising consumers on uploading genuine B2C tax invoices with effect from 1st September 2023. The scheme seeks to create a cultural and behavioural shift in consumers encouraging them to ask for a bill as their right and entitlement. Initially, the scheme has been implemented as a pilot project in the states of Gujarat, Assam, Haryana and UTs of Puducherry and Daman & Diu and Dadra & Nagar Haveli. The scheme will go a long way in bolstering transparency in business-to-consumer transactions as also in fostering financial accountability.

In today's dynamic business environment, staying updated with GST-related changes is not just a legal requirement but a strategic imperative. Staying updated with the latest knowledge and skills is not just an option but a necessity. Hence, the GST and Indirect Taxes Committee has been working relentlessly for upskilling the members in GST. The GST Certificate courses and other CPE programs at various branches and regions are held to keep the members updated and *au courant* with GST law.

Considering the requests of members and need of the in-depth study of the GST the course fees of GST Certificate Course has been reduced to Rs. 9,000/- few months back. Interested members can keep track of the courses in their region/branch through the website of the Committee *https://idtc.icai.org/* in the tab 'Upcoming Events'.

We value your feedback, so please feel free to reach out to us with any suggestions, questions, or topics you would like us to cover in the next edition.

Thank you for being a part of our GST community and my best wishes for all your endeavors.

Yours sincerely,

CA. Sushil Kumar Goyal
Chairman
GST & Indirect Taxes Committee
The Institute of Chartered Accountants of India

MEDICAMENT VS. COSMETIC – INCESSANT CLASSIFICATION DISPUTE!!

PREAMBLE

When it comes to Indirect Taxes, classification of goods and services become a vital part of determining the taxability, applicable tax rates, eligibility for exemption, eligibility of input tax credit for the recipient, determining whether recipient is liable to pay tax under reverse charge or not and so on. Though it may look just a procedural compliance, it can have a huge impact in the event of non-compliance. Wrong classification of goods or services can have ripple effect on the entire credit chain.

One of the business sectors which is prone to classification disputes is the pharmaceutical sector. Whether a product is a medicament or cosmetic is a long-drawn dispute dating back to the erstwhile Central Excise regime.

CLASSIFICATION SCHEME UNDER GST AND CUSTOMS

GST, India's unprecedented tax reform, is an Indirect Tax levy on event 'supply' as defined under Section 7 of the CGST Act. Section 9 of the CGST Act provides that GST shall be levied on intra-state supplies of goods and services at such rates as may be notified by the Government. Exercising its power under the said provision, Government has issued *Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017* (hereinafter referred to as 'goods rate notification'). The said notification classifies goods on the basis of chapter, heading, sub-heading and tariff items. Explanation (iii) to the goods rate notification prescribes that "tariff item", "sub-heading", "heading" and "chapter" shall mean tariff item, sub-heading, heading and chapter respectively as specified in the First Schedule to the Customs Tariff Act, 1975 (CTA).

Further, Explanation (iv) to the goods rate notification prescribes that the rules for the interpretation of the First Schedule to the CTA, including the sections and chapter notes and the general explanatory notes of the First Schedule shall also apply for interpreting and determining the classification of goods under goods rate notification.

Tariff item under first schedule to CTA is represented by 8-digit numeric code wherein first two digit refers to chapter number, next two digit refers to heading, next two digit refers to the sub-heading and last two digit refers to the tariff item number.

Rules for interpretation to first schedule to CTA lays down principles governing classification of goods.The classification is also guided by section notes, chapter notes, heading and sub-heading notes.

It is clear from perusal of above, that classification of goods under GST legislation is completely linked to classification scheme provided under the Customs legislation.

CLASSIFICATION DISPUTE – MEDICAMENT OR COSMETIC

Medicaments are classified under Chapter 30 to the first schedule of CTA and cosmetics are classified under Chapter 33 to the first schedule of CTA. Majority of the medicaments are subject to 5% or 12% GST rate whereas, majority of cosmetic preparations are liable to 18% GST. If a product is wrongly classified as medicament instead of cosmetic, it may lead to short payment of taxes and thereby resulting in huge differential demand of about 6% – 13% along with consequential interest and penalty. It leads to a situation wherein taxpayer pleads that his product is a medicament attracting lower GST rate and revenue contends that the product is a cosmetic preparation attracting higher rate of tax. Hence, it is imperative to correctly classify a product as a medicament or cosmetic.

DETERMINATIVE FACTORS AND GUIDING PRINCIPLES LAID DOWN BY COURTS

Term 'medicament' as well as 'cosmetic' are neither defined under GST legislation (including rate notification) nor under Customs legislation (including CTA, first Schedule to CTA, section notes, chapter notes, heading and sub-heading notes or general explanatory notes).

Honorable Supreme Court in case of ***M/s. MSCO Private Limited vs. Union of India [1985 (19) ELT 15 (SC)]*** *held that,*

"while construing a word in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance."

Further, Apex court in case of ***Commissioner of Income Tax, Bangalore vs. Venkateswara Hatcheries (P) Limited [(1999) 3 SCC 632]*** held that,

"when the word is not so defined in the Act it may be permissible to refer to dictionary to find out the meaning of that word as it is understood in the common parlance."

As per Oxford Dictionary, 'medicament' means *'a substance used for medical treatment'*. Collins Dictionary defines 'medicament' to mean *'a medicine or remedy in a specified formulation'*.

Oxford Dictionary defines 'cosmetic' to mean *'a substance that you put on your face or hair to make yourself look more attractive'*. One may also refer to the definition of term 'cosmetic' as defined u/s 3(aaa) of The Drugs and Cosmetics Act, 1940 as *'any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended*

for use as a component of cosmetic.'

Medicament would usually mean a product which is used for treating a medical condition whereas cosmetic products are usually used to enhance the look and beauty of a person.

Dispute arises when certain medicaments contain cosmetic qualities and certain cosmetics contain medicinal qualities. There is no straight jacket formula prescribed either in GST legislation or under erstwhile Central Excise or Customs legislation to classify a product as medicament or cosmetics.

However, some general factors which are looked upon by the taxpayers to classify product as 'medicament' or 'cosmetics' are as under:

- General perception of the consumers;
- Prescription by medical practitioner vs. availability across the counter;
- Period of use;
- Therapeutic or prophylactic values;
- Requirement of Drug license;
- Ingredients found in authoritative books;
- Primary use of the product – care or cure;

Further, one may take guidance from various judicial decisions pronounced under erstwhile Central Excise legislation as well as Customs legislation. Let us look at some of the tests adopted by courts from time to time in classifying a product as 'medicament' or 'cosmetic':

i. Common parlance test:

One of the most important test which courts time and again resorted to in classification disputes is common parlance test wherein meaning attached to the products by those using the product is considered. If people at large are using the product for treating a particular disease, the same shall be classifiable under 'medicament'. However, if common man does not perceive a product as medicament, the same shall not be classified as such.

Honorable Supreme Court in case of ***Shree Baidyanath Ayurved Bhavan Limited vs. CCE, Nagpur [1996 (83) E.L.T. 492 (S.C.)],*** held that,

"So certificates and affidavits given by the Vaidyas do not advance the case of Shri Baidyanath Ayurved Bhawan Limited in the absence of any evidence on record to show and prove that the common man who uses this Dant Manjan daily to clean his teeth considers this Dant Manjan as a medicine and not a toilet requisite"

Common parlance test was also upheld by Apex Court in following cases:

- Commissioner of Customs, Central Excise and Service Tax, Hyderabad vs. Ashwani Homeo Pharmacy [Civil Appeal No. 9525 of 2018];
- CCE, Mumbai – IV vs. M/s. Ciens Laboratories, Mumbai [(2013) 14 SCC 133]

ii. Prescription by medical practitioner vs. availability across the counter:

If a medical practitioner's prescription is required for the product, it is generally perceived to be a medicament. However, it does not necessarily mean that if a product does not require medical practitioner's prescription, then the said product cannot be considered as medicament. There are significant number of judgements under erstwhile Central Excise law which supports the above contention.

Honorable Supreme Court in case of Commissioner of ***Central Excise, Calcutta vs. Sharma Chemical Works [2003 (3) SCR 1027]*** held that,

"Mere fact that a product is sold across the counters and not under a doctor's prescription does not by itself lead to the conclusion that it is not a medicament."

Honorable Supreme Court in case of ***Commissioner of Central Excise, Mumbai IV vs. M/s. Ciens Laboratories [(2013) 14 SCC 133]*** held that,

"Though a product is sold without a prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over/across the counter are cosmetics. There are several products that are sold over the counter and are yet medicaments."

iii. Therapeutic or prophylactic values:

Dictionary meaning of the term 'therapeutic' means 'helping to cure an illness'. Hence, 'therapeutic value' of the product means a 'product's ability to cure a particular illness'.

Dictionary meaning of the term 'prophylactic' means a medicament intended to prevent diseases.

Time and again Courts have consistently held that products possessing either therapeutic properties or prophylactic properties merits classification as medicaments and not as cosmetics.

Honorable Apex Court in case of ***B. P. L. Pharmaceuticals Limited vs. Collector of Central Excise, Vadodara [1995 (3) SCR 1235]*** held that:

"Once the therapeutic quantity of the ingredient used is accepted, thereafter it is not possible to hold that the constituent is subsidiary. The important factor is that this constituent (Selenium Sulfide) is the main ingredient and is the only active ingredient."

Further, in case of ***M/s. Muller and Phipps (India) Limited vs. The Collector of Central Excise, Bombay-I [2004 (167) E.L.T. 374 (S.C.)],*** Honorable Supreme Court held that:

"Prickly heat power was a medicament for treatment of red rashes, itching and burning and not merely a powder for care of skin or for the purpose of beauty."

Further, in case of ***Commissioner of Central Excise vs. M/s. Wockhardt Life Sciences Limited [(2012) 5 SCC 585],*** Honorable Supreme Court held that:

"As we have already noticed, medicaments are products which can be used either for therapeutic or prophylactic

usage. Since the product in question is basically and primarily used for the prophylactic uses, in our view the Tribunal was justified in coming to a conclusion that the adjudicating authority and the first appellate authority were not right in classifying the products under chapter sub-heading 3402.90 and, therefore, had classified those products under chapter sub-heading 3003.

However, the miniscule quantity of the prophylactic ingredient is not a relevant factor. In the instant case, it is not in dispute that this is used by the surgeons for the purpose of cleaning or degerming their hands and scrubbing the surface of the skin of the patient before that portion is operated upon. The purpose is to prevent infection or disease. Therefore, the product in question can be safely classified as a "medicament" which would fall under chapter sub-heading 3003 which is a specific entry and not under chapter sub-heading 3402.90 which is a residual entry."

Further, in case of ***M/s. ICPA Health Products (P) Limited vs. Commissioner of Central Excise, Vadodara [(2004) 4 SCC 481],*** Honorable Supreme Court held that:

"It is clear that the Appellants' products are used as a cleanser for cleaning of wounds and abrasions and minor cuts and to disinfect the skin prior to surgery. They therefore also have prophylactic uses. As the products have therapeutic properties and prophylactic uses, they are Medicament falling under Chapter 30."

Further, in case of ***M/s. Reckitt Benckiser (India) Ltd. vs. Commissioner Commercial Taxes & Ors. [2023 (4) ELT616(SC)],*** Honorable Supreme Court held that:

"Active ingredients of Dettol are Chloroxylenol IP, Terpineol BP, Alcohol Absolute IP(denatured) and it is an antiseptic having germicidal properties and it kills germs, bacteria and it prevents infection. Therefore, it is applied on wounds, cuts, grazes, bites and stings. It is also used in hospitals for surgical use and medical use - the Dettol is used as an antiseptic liquid and is used in hospitals for surgical use, medical use and midwifery, due to therapeutic & prophylactic properties. Therefore, the same can be said to be an item of medicament to be treated as a drug and medicine. Here also the dominant use is a relevant consideration."

Karnataka Appellate Authority for Advance Ruling upheld the order of Advance Ruling Authority in case of ***M/s. Wipro Enterprises Private Limited [Order No. KAR/AAAR/07/2021 dated 30.06.2021]*** wherein it was ruled that Alcohol-based hand sanitizers would fall within ambit of 'disinfectant' and not as medicament as therapeutic and prophylactic properties are absent in the said product.

iv. Presence of pharmaceutical ingredients is essential- its proportion is irrelevant:

The extent or the quantity of medicament used in a particular product will also not be a relevant factor. Normally, the extent of use of medicinal ingredients is very low because a large use may be harmful for the human body. The medical ingredients are mixed with what is in the trade parlance called fillers, or vehicles in order to make the medicament useful.

To illustrate, let us take an example of Vicks Vaporub where 98% is said to be paraffin wax, while the medicinal part i.e. Menthol is only 2%. Vicks Vaporub has been held to be medicament by this Court in ***CCE v. Richardson Hindustan Ltd. [1989 (42) ELT A100 (SC)].*** Therefore, the fact that use of medicinal element in a product was minimal does not detract from it being classified as a medicament.

Honorable Supreme Court in case of ***Commissioner of Central Excise, Mumbai IV vs. M/s. Ciens Laboratories [(2013) 14 SCC 133]*** held that:

"Firstly, when a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably decisive. What is of importance is the curative attributes of such ingredients that render the product a medicament and not a cosmetic. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities, is to be branded as a medicament."

Further, in case of ***Commissioner of Central Excise, Chennai –IV vs. Hindustan Lever Limited [Civil Appeal No. 1941 of 2006],*** Honorable Supreme Court held that usage of the product was found to be therapeutic. Even though the product contains less percentage of pharmaceutical ingredients, the said product can be classified as medicament.

It is the presence of the ingredients of the pharmaceutical constituents which makes the difference and not the percentage of the ingredients as held by Honorable Supreme Court in ***Meghdoot Gramodyog Sewa Sansthan v. CCE, Lucknow [(2004) 174 ELT 14 (SC)].***

v. Primary use of the product – Care or cure:

Functionality test is another important test which courts resort to determine the correct classification of the product. Dominant intention of the consumers for using the product will be relevant for classification of the product into 'medicament' or cosmetic'. If the product is primarily used for cure, then the said product is to be classified as 'medicament'. On the other hand, if the product is primarily used for 'care', then the said product is to be classified as 'cosmetic'.

Honorable Supreme Court in case of ***Commissioner of Central Excise, Mumbai IV vs. M/s. Ciens Laboratories [(2013) 14 SCC 133]*** observed that:

"'Care or cure', is the clue for the resolution of the issue arising in these cases. If the product by name 'Moisturex' is held to be a medicament for cure, the decision goes in favour of the assessee and if the product is held to be one for care of the skin, the decision benefits the Central Excise."

Further, in case of ***Alpine Industries vs. Collector of Central Excise, New Delhi [2003 (152) E.L.T. 16***

(S.C.)], Honorable Supreme Court held that 'Lip Salve' is meant for care of lips and not cure of the skin and hence cannot be classified as medicament.

Similarly, in case of ***Sunny Industries Private Limited vs. Collector of Central Excise, Calcutta [2003 (153) E.L.T. 259 (S.C.)],*** Honorable Supreme Court held that ad-vitamin oil is used for care of the skin and hence is to be classified as 'cosmetic'.West Bengal Appellate Authority for Advance Ruling in case of ***Akansha Hair & Skin Care Herbal Unit – West Bengal [02/WBAAAR/ APPEAL/2018 dated - 08/01/2018]*** held that for determine as to whether a product is a 'medicament' or not, its efficacy in treating or remedying an 'injury', an 'ailment' or an 'illness' has to be seen. Merely because these products are supposed to remove blackheads, acne, freckles, scarring, etc., do not make them medicines as acne, etc. are not diseases, illnesses or even injuries by themselves though they may be caused by one or more of these. All these products are only addressing external manifestations for cleansing, beautifying, promoting attractiveness, or altering appearance.

vi. Requirement of Drug License:

The Drugs and Cosmetics Act, 1940 is a law enacted by Parliament to regulate import, manufacture, distribution and sale of drugs and cosmetics in India. While determining whether a product is medicament or cosmetic, one of the factors relied upon by the Courts is whether the product requires drug license.

If a product requires obtaining a drug license, it can act as corroborative evidence to prove that the product is used for treatment or cure of diseases and hence can be classified as medicament.

Even judiciary has recognized 'drug license' as one of the important determinative factor in ascertaining whether a product is a medicament or cosmetic.

Honorable Supreme Court in case of ***Commissioner of Central Excise, Chennai–IV vs. Hindustan Lever Limited [Civil Appeal No. 1941 of 2006]*** held that:

"If the product is registered as medicament by the Drug Controller, that would be a strong factor to consider it as having curative or prophylactic value and it is not for the care of the skin per se."

In ***M/s. Muller and Phipps (India) Limited vs. The Collector of Central Excise, Bombay-I [2004 (167) ELT 374 (SC)],*** Apex Court was greatly influenced by the fact as provided by a department like Drug Controller and Central Sales Tax authorities had accepted the product in question as medicinal preparation.

Honorable Hyderabad CESTAT in case of ***Nuzen Herbal Pvt. Ltd. vs. Commissioner of Customs, Central Excise and Service Tax Hyderabad-II((2018) 68 GST 160 (Hyderabad-CESTAT))*** held that:

"We find that the undisputed facts as mentioned herein above in para No. 10 are clear indicative of the fact that the product NGHHO manufactured by the appellant as an ayurvedic medicament under the license granted by competent authority i.e. Drugs Controller, Department of Ayush, Government of Andhra Pradesh as per provisions of Section 3(a) read with section 3(h) of the Drugs & Cosmetics Act 1940. In our view, if a competent authority, by the powers vested in him as per Drugs & Cosmetics Act, 1940 and the rules made there under, has issued the license to the appellant for manufacturing of product NGHHO as being Ayurvedic Proprietary medicine, it has to be accepted by the departmental officers as an Ayurvedic Proprietary medicine."

vii. Other miscellaneous factors:

Some of the other factors which can be helpful in ascertaining whether the product is a medicament or a cosmetic are as under:

a. Ayurvedic, siddha or unnani drugs manufactured in accordance with the formulae prescribed under the authoritative books listed at the first schedule to the Drugs and Cosmetics Act;

b. Medicaments manufactured in accordance with the formulae laid down under Homeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homeopathic Pharmacopoeia;

c. Literature of the product can be of great help in determining whether the product contains therapeutic or prophylactic properties which helps in cure and prevention of diseases;

d. If dosage is prescribed on the product, it may indicate that the product contains certain pharmaceutical ingredients which if taken in excess of prescribed dosage, may be harmful for human body;

e. Appearance or packing of the product or marketing of the product i.e. whether the product is being marketed as medicament or cosmetic, etc.

f. Period of usage of product – Honorable Tribunal in case of ***Shree Baidyanath Ayurved Bhavan Limited vs. CCE, Nagpur*** rejected the claim of the appellant holding that ordinarily a medicine is prescribed by a medical practitioner, and it is used for a limited time and not every day unless it is so prescribed to deal with a specific disease like diabetes.

CONCLUSION:

While the classification tussle between medicament and cosmetic may continue under GST for a foreseeable future, principles / tests laid down from time to time by the judiciary would assist taxpayers in classifying their products as medicament or cosmetic. The principles and factors discussed herein above are only indicative and throws light on the thought process adopted by judiciary in arriving at the correct classification.

Contributed by CA. Sidharth Sheth & CA. Jinesh Shah

JUDICIAL PRONOUNCEMENTS

1. **Opportunity of personal hearing to be provided as a part of principle of natural justice–*[Jupiter Exports – Writ Petition No. 6673/2021 dated 24-07-2023 – Delhi High Court]***

Facts of the matter:

The petitioner has challenged the order of recovery of tax, interest and penalty passed pursuant to section 74 (9) of the CGST Act, 2017, principally on the ground that the same has been passed in gross violation of the principles of natural justice as the petitioner was not afforded an opportunity of personal hearing before passing of the impugned order by the respondent.

Contention of the petitioner:

Notice under Section 74(3) of the CGST Act was issued to the petitioner by the respondent on 23.02.2021 stating to file reply within 15 days of receipt of the said notice. The petitioner thereafter appeared before the respondent on 10.03.2021 and sought time to file reply to the notice. On 10.03.2021, an email purportedly to be the record of the proceedings was sent by the respondent to the petitioner which stated that *"date of personal hearing has been adjourned against notice issued vide reference no. ZDO70221026078S. Please appear on NA, at NA, at NA"*

The petitioner on 24.03.2021 was asked to file its reply on the GST portal. The petitioner filed the said reply on the GST portal on the said date stating that any clarifications if required vis-a-vis aforementioned consultative Show Cause Notice dated 02.02.2021 will be appreciated. The petitioner also seeks personal hearing in the matter.The impugned order was passed the very next day and in relation to the request for personal hearing it was stated as under:

"Several representatives of the TP appeared in office of the undersigned for dropping of the proceedings. The same is being considered as Personal hearing as sought by the Noticee in last line of the reply dated 24.03.2021. Even the telephonic conversation with Mr. Virender Singh, Prop. of the firm are equivalent to PH. Asking for more PH hearing at this stage is construed as dilatory tactics on part of the taxpayer for the reasons best known to the Proprietor."

Thus, the order passed by the adjudicating authority on the basis of telephonic conversation has been admittedly without granting any personal hearing. Further, adjudicating authority has not followed the circular dated 10th March 2017 which was addressed to all Principal Chief Commissioners. The said circular specifically instructs that at least three opportunities of personal hearing should be given with sufficient interval of time so that noticee may avail the opportunity of being heard.

Observations by the Court:

The expression personal hearing or the opportunity of being heard is not a mere empty formality. The same also has to be a meaningful hearing. Moreover, when the law requires that the provisions of Section 75(4) and 75(5) of the CGST Act specifically require that an opportunity of hearing "shall" be granted where the request is received in writing, the same cannot be denied or be substituted by a telephonic conversation. Hon'ble Court had relied on the pronouncement of the Hon'ble Bombay High Court in the matter of ***BA Continuum India P. Ltd. – WP No. 3264/2020 dated 03-2021*** where in it was upheld that telephonic conversations cannot be a substitute for a hearing in person or cannot be construed to be a hearing.

We are unable to appreciate the procedure adopted by the concerned officer in the present case. The purpose of personal hearing is to enable the noticee to address its arguments after the reply is filed, whereas, in the present case, the telephonic conversation which the officer had with the proprietor of the petitioner, even before the final reply was filed, has been construed as personal hearings, such behavior is clearly not acceptable.

Ruling:

Demand Order has to be set aside and remand the matter to enable the respondent to pass a fresh order after affording opportunity of being heard and impose cost of INR 5,000 on the respondent and directed to recover the same from the concerned officer.

2. **Refund claim of inadvertent payment of tax cannot be denied - *[Tagros Chemicals India P. Ltd. – Special Civil Application No. 647 of 2022 dated 13-07-2023]***

Facts of the matter:

The petitioner is holding GST Registration and had received purchase order from registered exporter to supply the goods at the concessional rate of IGST at the rate of 0.1% in terms of ***Notification No. 41/2017 – Integrated Tax (Rate) dated 23.10.2017*** as they intended to export the goods. On the basis of purchase order, the petitioner had supplied the goods to the buyer on payment of full duty (under an error) of IGST at the rate of 18% instead of concessional rate of 0.1%. The effect of the said tax invoice was shown in GSTR-1 and GSTR-3B for the relevant month. It is also stated that the buyer has exported the goods under shipping bill which bears the details of the petitioner's GSTIN and tax invoice. Thereafter, the petitioner found out in the month of March, 2020 that under a mistake, they had paid the full rate of 18% duty instead of 0.1%. Therefore, the petitioner issued credit note for the excess amount of tax to the buyer. The details of credit note were duly mentioned in GSTR-1 for the month of March, 2020.However, the petitioner could not reduce the turnover and GST liability as there were no outward supplies during the said month and subsequent month. Therefore, petitioner filed refund claim for the amount paid in excess as IGST.

Observations by the Court:

Hon'ble Court has relied judicial pronouncements in the matter of ***Bonanzo Engineering & Chemicals P. Ltd. – 2012 (4) SCC 771*** where in it was upheld that merely

because , the assessee paid duties on the goods, by mistake, which are exempted from such payment does not mean that the goods would become goods liable for the duty under the Act.

Moreover, in the matter of ***Share Medical Care – 2007 (4) SCC 573,*** it was upheld that an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage.

Ruling:

Thus, in view of the aforesaid view taken by the Hon'ble Apex Court, the petition deserves to be allowed and the same is allowed and the order passed by the respondents is hereby quashed and set aside. The respondents are directed to refund the amount with interest applicable as per law within reasonable time from the date of receipt of copy of the judgment.

3. Refund claim for the same period cannot be denied due to inadvertent arithmetical error- *[Shree Renuka Sugars Ltd. – Special Civil Application No. 22339 of 2022, dated 13-07-2023 – Gujarat High Court]*

Facts of the matter:

The petitioner is engaged in manufacturing, trading and supplying sugar and allied products. The petitioner has been selling and supplying such goods within the country and also exporting substantial quantities of goods to foreign countries. Exports made by the petitioner are in the nature of zero-rated supplies and exports are made without payment of tax i.e., under letter of undertaking (LUT). Petitioner had filed refund application to claim the refund of accumulated balances of ITC in their electronic credit ledger pursuant to Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 amounting to INR 1 Crores though technically and legally the petitioner was entitled to claim refund of INR 1.10 Crores. Department had granted refund of INR 1 Crore. Petitioner had realized the error and hence filed refund application for the same period under the category of "any other" for the balance amount of INR 10 Lakhs. Department had rejected the application of refund on the ground that the category under which such supplementary claims were lodged was not applicable in the case of the petitioner.

Observations by Court:

It is clear that the "refund amount" means the maximum refund that is admissible. In the present case, the respondents have not disputed that the maximum refund that is admissible is INR 1 Crore and not the amount of INR 1.10 Crores. However, the stand of the department is that the petitioner is responsible for the error committed by the employee of the petitioner in claiming the refund of lower amount than the maximum admissible amount.

The petitioner has shown "any other" as the category because refund applications for these 11 months had already been made under clause 7(c) i.e., accumulated ITC category for export of goods without payment of tax and the same had been sanctioned and paid by CGST officers. It is also relevant to note that as the petitioner already filed refund application under clause 7(c) i.e. accumulated ITC category at first point of time, for the same month and same period, another/supplementary application for the refund of the differential amount of refund (not claimed by the petitioner on account of arithmetical error on the part of the petitioner) cannot be filed on the portal and therefore there was no option for the petitioner to submit the application under the category "any other". Thus, the view is that this is nothing but technical error and for such technical error, the claim of the petitioner cannot be rejected without examining the same by the respondent authority on its own merits and in accordance with law.

Ruling:

It is settled law that the benefit which otherwise a person is entitled to once the substantive conditions are satisfied cannot be denied due to a technical error or lacunae in the electronic system. The petitioner has no option but to upload the supplementary application under "any other" category for the refund of the left-out amount, which was due to an arithmetical error. The said claim of the petitioner for refund of the left-out amount of INR 10 Lakhs cannot be rejected outright merely on technicality and that too when the substantive conditions are satisfied without scrutiny by the respondent in accordance with law.

4. GST on loan facility provided by banks to its card holders- *[Ramesh Kumar Patodia Vs. City Bank N.A. & Others – APO 10/2023 with WPO 547/2019 dated 25-07-2023 – Calcutta High Court]*

Facts of the matter:

The appellant had a credit card provided by bank (the respondent bank) and on the basis of holding of credit card, bank had offered a loan for 12 months to be repayable in 12 equated monthly installments. The loan amount was disbursed by the bank by an account payee cheque. The entire amount of loan has been repaid to the bank by him together with interest and IGST. The appellant filed writ challenging GST levied by bank on each amount of installments on loan granted by bank against the holding of credit card.

Contention of the appellant:

The advancement of loan by the bank had nothing to do with credit card or the service which the bank was rendering in relation to it. The bank and the appellant entered into an independent agreement under which the bank had advanced loan to the appellant by cheque to be repaid along with 13% interest in 12 equated monthly instalments. Hence, the interest charged on the loan was not interest which is usually charged by the bank on account of loan advanced by use of the credit card. Therefore, the interest charged by the bank and paid by the appellant could not be subject to IGST pursuant to Sl. No. 28 of *Notification No. 9/2017 – IGST (Rate) dated 28.06.2017.*

Contention of the Bank:

The bank had entered into a contract with the appellant where it was provided that there would be levy of IGST on the interest charged. This condition regarding levy of the said tax was accepted by the appellant. He had

accepted the equated monthly instalments, the number of instalments and the amount in each instalment, monthly interest and the said tax thereon. The appellant was granted loan because he was a credit card holder. Granting of this loan was part of the credit card services being rendered by the bank to the appellant.

Observation by the Court:

Credit card service has not been defined in the IGST Act, 2017. A good way to proceed would be to apply the definition of "credit card services" in the Finance Act, 2006 amending Section 65(33A) of the Finance Act, 1994.

It is quite plain that to constitute credit card service, the service should be between the issuer of the card and the holder of the card and that the service should have some relationship or nexus with the holding, operation or use of such card including transactions made with it. Otherwise, a bank may be an issuer of a card to a card holder. The same card holder may be an ordinary savings account holder with the bank. The service rendered by the bank in relation to such ordinary account holding does not have any relationship with the service rendered by the bank to the same customer as a card holder in transactions concerning the card. If the loan was advanced to the appellant through use of the card, then one could have understood that the service was related to the card. In this case, the bank declared the appellant card holder to be eligible to receive loan. His loan amount was advanced by a cheque or draft issued by the bank. The loan transaction had to be taken as an altogether separate transaction. It had no relationship with the relationship between the appellant and the bank arising out of issue, holding or operation of the credit card.

Ruling:

Loan transaction had no relationship with the credit card services rendered by the bank. Therefore, the court ruled that the IGST charged on the loan was not justified, and the loan should be considered separate from credit card services. It was directed to immediately refund the IGST paid by the respondent bank on account of the above loan transaction of the appellant to the respondent bank which in turn will refund the amount on furnishing proper accounts to the appellant.

Contributed by CA. Ashit Shah

GST UPDATES

1. Special procedure to be followed by an electronic commerce operators required to collect tax at source under section 52 in respect of supplies of goods made through it by Composition taxpayers

With effect from 01.10.2023, following procedure shall be followed by an electronic commerce operator who is required to collect tax at source under section 52 in respect of supply of goods made through it by a composition taxpayer-

i) It shall not allow any inter-State supply of goods made through it by the said persons;

ii) It shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said persons and pay to the Government as per provisions of 52(3);

iii) It shall furnish the details of supplies of goods made through it by the said persons in Form GSTR-8 electronically on the common portal.

Notification No.- 36/2023-CT dt. 04.08.2023

2. Special procedure to be followed by an electronic commerce operators required to collect tax at source under section 52 in respect of supplies of goods made through it by specific unregistered persons

With effect from 01.10.2023, following procedure shall be followed by an electronic commerce operator who is required to collect tax at source under section 52 in respect of supply of goods made through it by a person who is exempted from taking registration under section 23(2) vide *Notification No. 34/2023- Central Tax, dated the 31st July, 2023* i.e., persons making supplies of goods through an electronic commerce operator who is required to collect tax at source under section 52 and having an aggregate turnover in the preceeding financial year and in the current financial year below the threshold limit prescribed under section 22(1) of the CGST Act subject to certain other conditions:

(i) It shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person in accordance with the *Notification No.- 34/2023- CT dt. 31.07.2023;*

(ii) It shall not allow any inter-State supply of goods made through it by the said person;

(iii) It shall not collect tax at source under section 52(1) in respect of supply of goods made through it by the said person; and

(iv) It shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Where multiple electronic commerce operators are involved in a single supply of goods through electronic commerce operator platform, "the electronic commerce operator" shall mean the electronic commerce operator who finally releases the payment to the said person for the said supply made by the said person through him.

Notification No.- 37/2023-CT dt. 04.08.2023

3. Amendments made in CGST Rules, 2017

The following amendments have been made in the CGST Rules, 2017 vide *Notification No. 38/2023 – CT dt. 04.08.2023,* which shall become effective from the date of issue of this notification unless mentioned otherwise:

a) Amendment in rule 9 (Verification of the application and approval)

The requirement of the presence of registered

person at the time of physical verification of place of business for the purpose of verification of the registration application and granting of registration, has been done away with.

b) Substitution of rule 25 (Physical verification of business premises in certain cases)

Rule 25 has been substituted with a new rule to align the same with rule 9. Thus, the requirement of presence of registered person at the time of physical verification of premises has been removed from rule 25.

Further, the rule empowers the proper officer to get the physical verification of business premises done in all the circumstances as provided in proviso to rule 9 where physical verification is required to be done before grant of registration. The proper officer shall upload the verification report along with the other documents, including photographs, in FORM GST REG-30 on the common portal at least five working days prior to the completion of the time period specified in the said proviso. Where the physical verification of premises is done after the grant of registration, FORM GST REG-30 shall be uploaded within a period of fifteen working days following the date of such verification.

c) Amendment in rule 10A (Furnishing of Bank Account Details)

The time period for furnishing of bank account details after the certificate of registration in FORM GST REG-06 has been made available on the common portal and a GSTIN has been assigned to the applicant, has been amended as below:

Old provision	Amended provision
45 days from the date of grant of registration **OR** The date on which the return required under section 39 is due to be furnished **Whichever is earlier**	30 days from the date of grant of registration **OR** The date of furnishing the details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility (IFF) **Whichever is earlier**

d) Amendment in rule 21A (Suspension of registration)

Sub-rule (2A) of rule 21 has been amended to provide that registration of a person shall be suspended if he contravenes the provisions of rule 10A i.e., he fails to furnish the bank account details within the time period prescribed in rule 10A. However, if provisions of rule 10A are complied with, the suspension of registration shall be deemed to be revoked provided the registration has not already been cancelled by the proper officer under rule 22.

e) Amendment in rule 23 (Revocation of cancellation of registration)

With effect from 01.10.2023, the time period of filing an application for revocation of cancellation of registration shall be increased from 30 days to 90 days from the date of the service of the order of cancellation of registration. Further, on sufficient cause being shown and for reasons to be recorded in writing, such period can be extended by the Commissioner, or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days.

f) Amendment in explanation to rule 42 and 43

(i) Explanation 1 after sub-rule (5) of rule 43 has been amended to omit clause (c) therefrom. Accordingly, the aggregate value of exempt supplies shall not exclude 'the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India' for the purpose of reversal of ITC.

(ii) A new explanation 3 has been inserted in rule 43 to prescribe that for the purpose of rule 42 and this rule, the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers shall be included in the value of exempt supplies for the purpose of reversal of ITC. This insertion shall become effective from 01.10.2023.

g) Amendment in rule 46 (Tax invoice)

The requirement of putting name and address of the recipient along with the PIN code on the tax invoice, when a taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to an unregistered recipient, irrespective of the value of such supply, has been removed. Hence, in such cases, now only putting name of the state of the recipient shall be sufficient and shall be considered as the address on record of the recipient.

h) Insertion of rule 88D (Manner of dealing with difference in ITC available in auto-generated statement containing the details of ITC and that availed in return)

A new rule 88D has been inserted to provide that where the amount of ITC availed by a registered person in FORM GSTR-3B exceeds the ITC available to such person in accordance with FORM GSTR-2B, by such amount and such percentage, as may be prescribed, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01C on the common portal as well as on his e-mail address, and will be directed to –

(i) pay an amount equal to the excess ITC availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or

(ii) explain the reasons for the aforesaid difference in ITC on the common portal

within a period of 7 days.

Upon receipt of such intimation, the registered person will have an option to pay, fully or partially, the excess ITC along with interest under section 50 through FORM DRC-03 and furnish the details in Part B of FORM GST DRC-01C, or furnish a reply, incorporating reasons for not paying the excess ITC in Part B of FORM GST DRC-01C.

If the amount specified in the intimation is not paid within the specified period and no explanation or reason is provided or where the explanation or reason provided is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.

i) Amendment in rule 59 (Form and manner of furnishing details of outward supplies)

Rule 59(6) has been amended to provide that a registered person, to whom an intimation has been issued under rule 88D in respect of a tax period(s), shall not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF for a subsequent tax period, unless he has either paid the excess ITC as specified in the said intimation or has furnished a reply explaining the reasons in respect of the excess ITC that still remains to be paid, as required under rule 88D(2).

Further, a registered person shall also not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF, if he has not furnished the bank account details as per the provisions of rule 10A.

j) Amendment in rule 64 (Form and manner of submission of return by persons providing online information and data base access or retrieval services)

With effect from 01.10.2023, every registered person providing online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the IGST Act, 2017 or to a registered person shall file return in FORM GSTR-5A. Consequential amendments have been made in FORM GSTR-5A to give effect to this amendment.

k) Amendment in rule 67 (Form and manner of submission of statement of supplies through an e-commerce operator)

Rule 67(2) has been amended to provide that the details of tax collected at source under section 52(1) furnished by the operator under sub-rule (1) shall be made available electronically to each of the registered suppliers.

The above amendment shall become applicable with effect from 01.10.2023.

l) Amendment in rule 89 (Application for refund of tax, interest, penalty, fees or any other amount)

(i) Third proviso to sub-rule (1) has been amended to provide that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, can be claimed, only after the last return required to be furnished by him has been so furnished.

(ii) Clause (k) of sub-rule (2) has been amended to provide that the statement showing the details of the amount of claim on account of excess payment of tax submitted along with refund application as documentary evidence, shall also contain details of interest, if any, or any other amount paid.

m) Amendment in rule 94 (Order sanctioning interest on delayed refunds)

With effect from 01.10.2023, rule 94 shall be amended to provide that the following periods shall not be included in the period of delay for the purpose of calculating interest on delayed refunds:

(a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, that the applicant takes to

(i) furnish a reply in FORM GST RFD-09, or

(ii) submit additional documents or reply

and

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.

n) Amendment in rule 96 (Refund of integrated tax paid on goods or services exported out of India)

As per rule 96(2), the details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

First proviso to sub-rule (2) lays down that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs. Second proviso to sub-rule (2) lays down that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.

Both the said provisos to sub-rule (2) have now been omitted.

o) Amendment in rule 108 (Appeal to the Appellate Authority) and rule 109 (Application to the Appellate Authority)

Rules 108 and 109 have been amended to provide that an appeal or application to the Appellate Authority shall be filed electronically. However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-01/ APL-03, along with the relevant documents, only if -

(i) the Commissioner has so notified, or

(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal.

A provisional acknowledgement shall be issued to the appellant immediately in case of manual filing.

p) Insertion of rule 138F (Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof)

(1) Where a Commissioner of State tax or Union territory (UT) tax mandates furnishing of information regarding intra-State movement of following goods in accordance with rule 138F of the State or UTGST Rules, –

(i) Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal

(ii) Jewellery, goldsmiths' and silversmiths' wares and other articles [excepting Imitation Jewellery]

and the consignment value of such goods exceeds such amount, not below rupees two lakhs as may be notified by the Commissioner of State/UT tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him,

Notwithstanding anything contained in Rule 138, every registered person who causes intra-State movement of such goods, -

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated.

Where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(2) The information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of the above movement of goods and after furnishing information in Part-A of FORM GST EWB-01, the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.

(3) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1.

(4) Where an e-way bill has been generated, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled, electronically on the common portal, within twenty-four hours of generation of the e-way bill. However, such e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) Notwithstanding anything contained in this rule, no e-way bill is required to be generated –

(a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs, or

(b) where the goods are being transported-

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal.

(6) The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

For the purpose of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State tax or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

q) Insertion of rule 142B (Intimation of certain amounts liable to be recovered under section 79 of the Act)

(1) Where, in accordance with section 75 read with rule 88C or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid,

the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may be, the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.

(2) This intimation shall be treated as the notice for recovery.

(3) Where any amount of tax or interest specified in the intimation remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.

r) Amendment in rule 162 (Procedure for compounding of offences)

a) Sub-rule (3) has been amended to provide that the Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD-02, on being satisfied that the applicant has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.The requirement of co-operation of the applicant in the proceedings before him for the purpose of allowing the application for compounding of offence has now been done away with.

b) A new sub-rule (3A) has been inserted to prescribe the compounding amount for various offences as under:

S. No.	Offence	Compounding amount if offence is punishable under clause (i) of sub-section (1) of section 132	Compounding amount if offence is punishable under clause (ii) of sub-section (1) of section 132
(1)	(2)	(3)	(4)
1	Offence specified in clause (a) of sub-section (1) of section 132 of the Act	Up to 75% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 50% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.	Up to 60% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.
2	Offence specified in clause (c) of sub-section (1) of section 132 of the Act		
3	Offence specified in clause (d) of sub-section (1) of section 132 of the Act		
4	Offence specified in clause (e) of sub-section (1) of section 132 of the Act		
5	Offence specified in clause (f) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Offence specified in clause (h) of sub-section (1) of section 132 of the Act		
7	Offence specified in clause (i) of sub-section (1) of section 132 of the Act		
8	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of subsection (1) of section 132 of the Act	Amount equivalent to 25% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.

If the offence committed by the person falls under more than one category specified in the table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

The above amendments shall become applicable with effect from 01.10.2023.

s) Insertion of rule 163 (Consent based sharing of information)

A new rule 163 has been inserted as under:

(1) Where a registered person opts to share the information furnished in—

(a) FORM GST REG-01 as amended from time to time;

(b) return in FORM GSTR-3B for certain tax periods;

(c) FORM GSTR-1 for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time

with the requesting system referred to in section 158A, the requesting system shall obtain the

consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

(2) The registered person shall give his consent for sharing of information only after he has obtained the consent of all the recipients to whom he has issued the invoice, credit notes and debit notes during the said tax period and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

(3) The common portal shall communicate the information referred to in sub-rule (1) with the requesting system on receipt from the said system-

(a) the consent of the said registered person, and

(b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

t) Amendment in Forms

Amendments have been made in the following forms:

(i) In FORM GSTR-3A, a notice for default in filing annual return has been inserted.

(ii) FORM GSTR-8 (Changes in view of the amendment to allow unregistered suppliers to sell through ECO – To be effective from 01.10.2023)

(iii) FORM GSTR-9

(iv) FORM GSTR-9C

(v) FORM RFD-01

4. Widening of territorial jurisdiction of Principal Commissioner/Commissioner of Central Tax

The territorial jurisdiction of Principal Commissioner/ Commissioner of Central Tax has been widened for the cities of Guntur, Tirupati and Vishakhapatnam in the State of Andhra Pradesh with retrospective effect from 04.04.2022.

Notification No. 39/2023-CT dt. 17.08.2023

5. Appointment of common adjudicating authority in respect of show cause notices issued in favour of M/s United Spirits Ltd.

In exercise of powers conferred under section 5 of the CGST Act, 2017 and section 3 of the IGST Act, 2017, the Board has appointed Joint or Additional Commissioner of Central Tax, Kolkata North Central Excise and GST Commissionerate (a common adjudicating authority) to exercise the powers and discharge the duties conferred or imposed on Joint or Additional Commissioner, CGST and Central Excise, Mumbai Central Commissionerate in respect of show cause notices issued in favour of M/s United Spirits Ltd. located in Mumbai.

Notification No. 40/2023- CT dt. 17.08.2023

6. Extension of due date of Forms GSTR-1, GSTR-3B and GSTR-7 for the State of Manipur

The due date of filing following forms for the month of April, May, June and July 2023 has been extended to 25th August, 2023 for registered persons, whose principal place of business is in the State of Manipur:

S. No.	Forms	Extended Due Date
1.	GSTR-1 (Statement of outward supplies)	25th August, 2023
2.	GSTR-3B (Monthly return & Quarterly return for the quarter ending June 2023)	25th August, 2023
3.	GSTR-7 (Return by a registered person required to deduct tax at source under section 51)	25th August, 2023

Notification No. 41/2023 – CT dated 25.08.2023, Notification No. 42/2023 – CT dated 25.08.2023, Notification No. 43/2023 – CT dated 25.08.2023, Notification No. 44/2023 – CT dated 25.08.2023

7. CGST (Amendment) Act, 2023

The following amendments have been made by the Central Goods and Services Tax (Amendment) Act, 2023 in the CGST Act, 2017, the effective date of which shall be notified subsequently.The amendments are to give effect to the recommendations made by the GST Council relating to taxability of casinos, horse racing and online gaming:

a. Amendment in Schedule III

Para 6 of Schedule III has been amended to substitute the words "lottery, betting and gambling" with the words "specified actionable claims".

b. Amendments in section 2 (Definitions)

i) Definition of specified actionable claim– A new clause 102A has been inserted to define specified actionable claim to mean the actionable claim involved in or by way of

- betting;
- casinos;
- gambling;
- horse racing;
- lottery; or
- online money gaming

ii) Definition of online money gaming– A new clause 80B has been inserted to define online money gaming to mean online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

iii) Definition of online gaming - A new clause 80A has been inserted to define online gaming

to mean offering of a game on internet or an electronic network and includes online money gaming.

iv) **Amendment in the definition of supplier -** Clause 105 has been amended by inserting a proviso therein. The proviso states that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner.

All the provisions of the CGST Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

v) **Definition of virtual digital asset –** A new clause 117A has been inserted to define virtual digital asset to have the same meaning as assigned to it in section 2(47A) of the Income Tax Act, 1961.

c. Amendment in section 24 (Compulsory registration in certain cases)

Clause (xia) has been inserted in section 24 to provide that every person supplying online money gaming from a place outside India to a person in India shall be required to be mandatorily registered under the CGST Act, 2017.

d. The amendments made under this Act shall be without prejudice to provisions of any other law for the time being in force, providing for prohibiting, restricting or regulating betting, casino, gambling, horse racing, lottery or online gaming.

8. IGST (Amendment) Act, 2023

The following amendments have been made by the Integrated Goods and Services Tax (Amendment) Act, 2023 in the IGST Act, 2017 the effective date of which shall be notified subsequently.The amendments are made to give effect to the recommendations made by the GST Council relating to taxability of casinos, horse racing and online gaming:

a. Insertion of new section 14A (Special provision for specified actionable claims supplied by a person located outside the taxable territory)

A new section 14A has been inserted to provide as under:

(i) A supplier of online money gaming located in a non-taxable territory shall be liable to pay IGST on the supply of online gaming by him to a person in taxable territory.

(ii) Such supplier shall obtain a single registration under the Simplified Registration Scheme as referred to in section 14(2).

(iii) If any person located in the taxable territory is representing such supplier for any purpose in the taxable territory, then such person shall get registered and pay the IGST on behalf of the supplier. If the supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, then he shall appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for payment of such tax.

(iv) Failure to comply with above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.

b. Amendment in section 2(17) (Online information and database access or retrieval services)

Sub-clause (vii) of clause (17) has been amended to exclude online money gaming as defined in section 2(80) of the CGST Act, 2017, from the scope of online information and database access or retrieval services.

c. Amendment in section 5 (Levy and collection)

Section 5 has been amended to provide that the IGST on goods *other than the goods as may be notified by the Government on the recommendations of the Council* imported in to India shall be levied and collected in accordance with the provisions of section 3 of the Custom Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Thus, in case of import of such notified goods IGST shall not be levied in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 read with section 12 of the Customs Act, 1962 but shall be levied and collected as inter-State supply as per the provisions of section 5(1).

d. Amendment in section 10 (Place of supply of goods other than supply of goods imported into, or exported from India)

A new clause (ca) has been inserted in section 10(1) to provide that where the supply of goods is made to an unregistered person, the place of supply shall be the location of the said person as recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice.

Further, the explanation to the clause clarifies that recording of the name of State of the said person in the invoice shall be deemed to be recording of the address of the said person.

Circulars

1. Clarification regarding GST rates and classification of certain goods

a) Applicability of GST on unfried or uncooked snack pellets, by whatever name called, manufactured through process of extrusion

Notification No. 09/2023-CT(R) dt. 26.07.2023 had clarified that w.e.f. 27.07.2023 un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion shall attract GST rate of 5% (earlier taxable at 18%). Now, the circular has clarified that extruded snack pellets in ready-to-eat form will continue to attract GST rate of 18%.

Further, the applicability of GST rate on the un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion, the issue for past period upto 27.7.2023 has been regularized on "as is" basis.

b) Regularization of GST rates for the past periods on an 'as is basis'

In view of the prevailing genuine doubts regarding the applicability of GST rate on the following items, the issue for the past periods have been regularized on 'as is basis':

- Fish Soluble Paste (upto 27.07.2023)
- Desiccated coconut (from 01.07.2023 upto and inclusive of 27.07.2017)
- Biomass briquettes (from 01.07.2017 upto and inclusive of 12.10.2017)
- Plates, cups made from areca leaves (upto 01.10.2019)
- Imitation Zari thread or yarn known by any name in trade parlance (upto 27.07.2023)

c) Supply of raw cotton by agriculturist to cooperatives

It has been clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply of raw cotton by agriculturist to the cooperatives (being a registered person) attracts 5% GST on reverse charge basis under *Notification no. 43/2017-Central Tax (Rate) dated 14.11.2017.*

Further, in view of prevailing genuine doubts, the issue for the past periods prior to issue of this clarification has been regularized on "as is basis".

d) GST rate on goods falling under HSN 9021

As per recommendations of the GST council in its 50th Meeting, it is hereby clarified that the GST rate on all the goods falling under heading 9021 (trauma, spine and arthroplasty implants) shall attract GST rate of 5%, thereby doing away with the duality of rates on similar items leading to ambiguity.

Further, in view of the prevailing genuine doubts, the issue for the past periods has been regularized on "as is basis".

It has also been clarified that no refunds will be granted in cases where GST has already been paid at higher rate of 12%.

Circular No. 200/12/2023-GST dt. 01.08.2023

2. Clarifications regarding applicability of GST on certain services

a) Clarification regarding services supplied by director of the company in his personal capacity

It has been clarified that services supplied by a director of the company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property shall not be taxable under RCM. Only those services which are supplied by him in the capacity of director of the company or body corporate shall be taxable under RCM in the hands of the company or body corporate under *Notification No. 13/2017-CT(R) dated 28.06.2017*.

b) Clarification on taxability of the supply of foods or beverages in cinema halls

As per Explanation at Para 4 (xxxii) to *Notification No. 11/2017-CT(R) dated 28.06.2017*, "Restaurant Service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."

The cinema operators may run these refreshments or eating stalls/ kiosks/ counters or restaurant themselves or they may give it on contract to a third party.

It has been clarified that supply of food or beverages in a cinema hall shall be taxable as 'restaurant service' as long as:

a) the food or beverages are supplied by way of or as part of a service, and

b) supplied independent of the cinema exhibition service.

It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema i.e., the principal supply.

Circular No. 201/13/2023-GST dt. 01.08.2023

GST QUIZ

1. **Revisionary Authority is permitted to:**
   a) enhance, modify or annul adjudication order.
   b) reduce, modify or annul adjudication order.
   c) re-adjudicate based on facts available on record.
   d) rectify errors of fact or law in notice and pass fresh demand orders.
2. **Mr. X, a person registered in the state of Delhi purchased goods from Mr. Y, registered in the state of Haryana. Mr. X instructed Mr. Y to deliver the goods to a place of Mr. Z in Uttar Pradesh. What will be the place of supply in case of supply of goods from Mr. Y to Mr. X?**
   a) Haryana
   b) Delhi
   c) Uttar Pradesh
   d) None of the above
3. **Mr. Q has supplied a new laptop for Rs. 40,000 to Mr. R along with exchange of old laptop. If the price of new laptop without exchange is Rs. 50,000, the value of supply of laptop by Mr. Q to Mr. R shall be**
   a) 40,000
   b) 10,000
   c) 50,000
   d) Either (a) or (c)
4. **Rule 86A of the CGST Rules, 2017 empowers the authorised officer to block input tax credit in the electronic credit ledger if:**
   a) the credit of input tax has been availed without receipt of goods or services.
   b) the tax charged on the goods or services has not been paid.
   c) the registered person is not in possession of tax invoice.
   d) All of the above
5. **Which of the following is not included in the aggregate turnover of job worker under GST?**
   a) Goods returned to the principal
   b) Goods sent to another job worker on the instruction of principal
   c) Goods directly supplied from the job worker's premises by the principal
   d) All of the above
6. **In case of refund claim on account of export of goods and/or services made by such category of registered taxable persons as may be notified in this behalf, what percent would be granted as refund on provisional basis?**
   a) 70%
   b) 65%
   c) 80%
   d) 90%
7. **The information relating to the bank account of the registered person shall be furnished not later than**
   a) 30 days from the date of grant of registration or the date of furnishing the details of outward supplies u/s 37 in FORM GSTR-1 or IFF, whichever is earlier.
   b) 45 days from the date of grant of registration or the date on which return required u/s 37 is due to be furnished.
   c) 45 days from the date of grant of registration.
   d) 30 days from the date of grant of registration.
8. **Can appeal to an Appellate Authority be filed manually now?**
   a) No
   b) Yes, in all cases
   c) Yes, if the Commissioner so notifies or the same cannot be filed due to non-availability of the decision or order to be appealed against on the portal.
   d) At the discretion of the appellant
9. **In cases, where no explanation has been provided for differences in liability reported in FORM GSTR-1 and FORM GSTR-3B or where explanation is provided, the proper officer is not satisfied with the same, the proper officer can initiate action under**
   a) section 73
   b) section 74
   c) both (a) and (b)
   d) section 79
10. **Where any tax, interest or penalty due from a company in respect of any supply of goods or services or both for any period cannot be recovered, then, the same can be recovered from which of the following persons?**
    a) Person who was Chief Executive Officer during the period of demand
    b) Person responsible for filing GST returns during the period of demand
    c) Person responsible for filing Income Tax returns during the period of demand
    d) Person who was director during the period of demand

The names of first five members who provided all the correct answers of the last Quiz within 48 hours are as under:

Name	Membership No.
CA. Rakesh Kumar Miglani	090734
CA. Amar G Oza	157708
CA. Swapnil Jain	300170
CA. Vineet	060669
CA. Sourabh Gupta	311410

Please provide reply of the above MCQs in the link given below. The name of the first 5 members who provide all the correct answers within 48 hours of receipt of this Newsletter, would be published in the next edition.

Link to reply: https://forms.gle/pEabs8Jq6EDeSiDq9

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Your suggestions on the website are welcome at gst@icai.in

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