



43rd Edition

ICAI-GST

NEWSLETTER
APRIL 2024

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



ICAI-Set up by an Act of Parliament

THE COUNCIL

- CA. Ranjeet Kumar Agarwal
President
- CA. Charanjot Singh Nanda
Vice President
- CA. Sushil Kumar Goyal
Chairman, GST & Indirect Taxes Committee
- CA. Rajendra Kumar P
Vice Chairman, GST & Indirect Taxes Committee
- CA. (Dr.) Rajkumar Satyanarayan Adukia
CA. Piyush Sohanrajji Chhajed
CA. Chandrashekhar Vasant Chitale
CA. Vishal Doshi
CA. Durgesh Kabra
CA. Dheeraj Kumar Khandelwal
CA. Purushottamlal Hukamichand Khandelwal
CA. Mangesh Pandurang Kinare
CA. Priti Paras Savla
CA. Umesh Sharma
CA. Aniket Sunil Talati
CA. Dayaniwas Sharma
CA. Muppala Sridhar
CA. Prasanna Kumar D
CA. Cotha S Srinivas
CA. Sripriya K
CA. (Dr.) Debashis Mitra
CA. (Dr.) Rohit Ruwatia Agarwal
CA. Abhay Chhajed
CA. (Dr.) Anuj Goyal
CA. Gyan Chandra Misra
CA. Prakash Sharma
CA. (Ms.) Kemisha Soni
CA. Sanjay Kumar Agarwal
CA. (Dr.) Raj Chawla
CA. Hans Raj Chugh
CA. Pramod Jain
CA. (Dr.) Sanjeev Kumar Singhal
Shri Sanjay Kumar
Shri Ritvik Ranjanam Pandey
Shri Manoj Pandey
Shri Deepak Kapoor
Shri Rakesh Jain
Dr. P. C. Jain
Shri Vijay Kumar Jhalani, Advocate
Shri Chandra Wadhwa

CONTENTS

- President's Communication 3
- Chairman's Communication 4
- Input Tax Credit under section 16(4) 5
- Navigating E-way Bill : Contravention vs. Intention 8
- Judicial Pronouncements 11
- GST Updates 14
- GSTN Advisories 16
- Crossword 18
- GST Quiz 19



Disclaimer : The views and opinions expressed or implied in the ICAI-GST Newsletter are those of the authors and do not necessarily reflect those of ICAI. Material in the publication may not be reproduced, whether in part or in whole, without the consent of ICAI.

President's Communication



Dear Professional Colleagues,

Greetings!

From the year in which GST was rolled out, in July 2017, the GST collections have shown a phenomenal growth from Rs. 7.41 lakh crore in the year 2017-18 to Rs. 20.14 lakh crore in the year 2023-24. The financial year 2024-25 has also made a stellar beginning with April 2024 recording the highest-ever GST collection at Rs. 2.10 lakh crore. Earlier the ever-highest GST collection was recorded a year ago in April 2023 at Rs 1.87 lakh crore. The surge in GST collections reflects the buoyant economic activity, robust consumption trends, and positive investment sentiment in the country. While the boost in collections is primarily due to increased economic activity, Chartered Accountants have also played a vital role for the same. The expert advice and guidance provided by Chartered Accountants to the taxpayers have been instrumental in ensuring seamless GST compliances.

The ICAI continues to play an instrumental role in enhancing GST literacy through its technical publications, newsletters etc. and supports the Government by providing technical inputs and suggestions for simplification of GST law and making it more taxpayer friendly. Recently, a representation was submitted to CBIC to extend the deadline for submitting appeals under *Notification No. 53/2023 CT dt. 2.11.2023* till 30th April, 2024 and consider extending the benefit of this notification to orders issued under sections 29, 54, 73, 74 and 129 up to 31st October, 2023. The ICAI also facilitated GST Council and National Academy of Customs Indirect Taxes and Narcotics (NACIN) in conducting a training for Central and State GST officers on GST Audit of Banking Sector at NACIN Palasamudram (Andhra Pradesh) from 4th - 7th March, 2024. Encouraging feedback from participants led to further training programs on the same topic, collaborating with NACIN Faridabad and NACIN, Chandigarh from 8th- 10th April, 2024.

The GST and Indirect Taxes Committee of ICAI has also come out with the 12th Edition of *'Background Material on GST'* for the benefit of the members and all other stakeholders. This updated publication is crafted to offer comprehensive insights on the provisions contained in the whole spectrum of GST law. Further, the Committee has also revised its another useful publication, *'Compliances of GST in Banking Sector'* which discusses the GST provisions relevant for Banking Sector including Non-banking Financial Companies.

I, urge to all the Professionals to come together to build a community that is well-versed and proactive in embracing the challenges and opportunities that GST presents.

Wishing you continued success and prosperity

CA. Ranjeet Kumar Agarwal

President

The Institute of Chartered Accountants of India

Chairman's Communication



Dear Members,

Warm Greetings.

I am pleased to present to you the 43rd edition of ICAI-GST Newsletter, with a fond hope that the same will aid you in updating your GST knowledge base.

The CBIC has issued guidelines to be followed by CGST field formations while engaging in investigation with regular taxpayers. These guidelines aim to streamline various processes such as initiation of investigations, seeking information/documents during investigation and timely conclusion of the investigations. Further, the guidelines lay down that the Additional/Joint Commissioner in-charge of investigation will be the Grievance Officer for handling the concerns of regular taxpayers regarding ongoing investigations. These instructions will go a long way in enhancing ease of doing business.

The Government is also upgrading the GST portal to improve user experience and ensure that the needed information is accessible and easy to navigate. The key enhancements include news and updates section, user interface improvements and updated website policy etc. Further, GSTN has launched its revamped e-invoice master information portal <https://einvoice.gst.gov.in/einvoice/dashboard>. The revamped portal has some very good and useful features for the taxpayers like PAN-Based search for checking the e-invoice enablement status, global search for quick access to the information across the portal, automatic e-invoice exemption list providing GSTINs that have filed for e-invoice exemptions at the start of the month etc.

The GST & Indirect Taxes Committee is continually working towards the benefit of members by coming out with new publications, revised publications, organising seminars, conferences, workshops etc. Recently, the Committee organised panel discussions through webinars on '*GST on Banking: Auditor's Roles*' and '*New Financial Year: GST Perspective*' wherein some important questions pertaining to the topics were deliberated upon. The recording of these webinars is available on ICAI TV at <https://icaitv.com/> which can be viewed anytime at one's convenience.

In the month of April, the Committee organised Residential Refresher Course on GST Demands & Appellate Remedies at Centre of Excellence, Hyderabad. The feedback received from the participants encourages us to organise more such programmes in near future.

Thank you for your continued support, and we look forward to bringing you more relevant and insightful content in our future editions.

Yours sincerely,

CA. Sushil Kumar Goyal

Chairman

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

INPUT TAX CREDIT UNDER SECTION 16(4)

Introduction

Multiple department proceedings involving the disallowance of Input Tax Credit (ITC) on account of expiry of time limitation under section 16(4) have been doing the rounds throughout the country. The resulting amount involved on this particular issue is running into huge amount threatening the existence itself of some entities facing this rigour.

What does section 16(4) provide?

Section 16(4) provides that a person would not be able to avail any ITC in respect of any invoice or debit note for supply of goods or services or both after 30th November following the end of the financial year to which document pertains or the date of filing annual return, whichever is earlier.

Before 1st October 2022, such due date provided as per law was due date of filing of return for the month of September of the next financial year instead of 30th November.

All laws provide a time limit for availing ITC – Then what's the difference?

One may understand that there has always been time limitation for availment of ITC prescribed even under the erstwhile regime. Further, the Government is well within its power to prescribe such limitation. Then, what makes section 16(4) distinct is key to understand.

Under the CENVAT regime, the time limitation was not based on the date of filing of return but the period for which return was filed. Under the erstwhile regime, if any ITC would have been taken in the return of a month for an invoice which is more than a year old, the ITC used to be denied.

However, GST has made the date of filing of return as the relevant date for availment of ITC. Therefore, even if the ITC is availed in the return of the relevant period, the same has been brought into question merely on account of filing such return after the due date prescribed under section 16(4). For instance, even if the return of March of the financial year is filed after 30th November of the subsequent financial year, the whole ITC of the said month is brought into question. This was not the case in erstwhile regime. When ITC of multiple periods get denied and the output is taxable, there is a risk of facing demands that could reach such high values that they may threaten the very existence of the business.

What are the grounds that one can take to defend their case?

There are several grounds which can be used to argue the

notices received from the GST department regarding the denial of ITC merely on account of late filing of returns. Some of the grounds have been illustrated below:

a) Return cannot be filed without payment of taxes

On the GST portal, there is no option of availment of ITC without making the payment of taxes first.

- i. Section 39 of the CGST Act, 2017 read with rule 61 of the CGST Rules, 2017 states the form and manner for the filing of return in GSTR-3B. Neither of these provisions require a person to furnish to discharge full taxes before filing the return. In fact, the due date of payment of taxes and the due date for filing of return have been prescribed separately under section 39(7) and 39(1) read with rule 61 of the CGST Act, 2017 respectively.
- ii. Therefore, the requirement of payment of taxes before filing of return seems to be condition of the GST portal without authority of any provisions under law.
- iii. Another principle which should be considered here is “*Lex non cogitadi impossibilia*” which means that the law cannot compel a person to do something which is otherwise impossible. GSTR-3B requires payment of taxes without which the return cannot be filed. As already stated above, if a person wishes to avail ITC in his return, he cannot do so without making the payment of taxes. Such requirements are not as per provisions of law.

b) Where late fees on account of delayed filing have been discharged, the return gets regularized and shall be treated as filed on the due date

- i. Filing of returns is a mere procedure. Delay in the filing of returns is in the nature of only procedural lapse. The delay in filing of returns stands regularized upon making payment of the late fees. Once all the infirmities on account of late filing of return have been removed, the return should be treated as good as filed on the due date.
- ii. In the case of *Mr Rashmikant Kundalia vs Union of India W.P 771 of 2014 (Bom.)*, *Howrah Taxpayers' Association Vs. The Government of West Bengal and Anr. 2010 SCC Online Cal 2520*, it was held that upon discharging of late fees, the belated return stands regularized.
- iii. Having said this, there can be a contrary view to this matter also. In the case of *Thirumalakonda Plywoods, Vs. The Assistant Commissioner – State Tax, Anantapur Circle [2023 (76) G.S.T.L. 172 (A.P.)]*, it was held that the late fee is only for acceptance of return. Further, ITC is to be claimed as per section 16.

c) Section 16(2) starts with a non-obstante clause and shall prevail over section 16(4) of the CGST Act

It may be noted that section 16(2) begins with a non-obstante clause. This means that it overrides the entire provisions of section 16 including section 16(4). Therefore, if a person satisfies all the conditions provided in the aforesaid provisions, there cannot be any denial of ITC under section 16(4).

d) Where all conditions for availment of ITC have been satisfied, it becomes a vested right in the hands of the taxpayer

Where all the conditions of availment of ITC are fulfilled, it becomes a vested right and the same has been held in various decisions of Courts. The Hon'ble Apex Court in the case of *M/s Eicher Motors Ltd v Union of India, 1999 (106) E.L.T. 3 (SC)* has recognized the provision for the facility of credit as a vested right.

The credit earned under the GST Act is the property of the taxable person and therefore the denial of ITC is in violation of Article 300A of the Constitution of India. Article 300A provides that no person shall be deprived of his property save by authority of law. While the right to property is no longer a fundamental right, it is still a constitutional right. Input tax credit is a right of the taxpayer that cannot be denied simply because of late filing of a return.

Having said this, there can be a contrary view to this argument. The Hon'ble Supreme Court in *TVS Motor Company Limited* after taking note of the decision in *ALD Automotive [2018 (364) E.L.T. 3 (S.C.)]* held that ITC is a form of concession which is provided by the Act and cannot be claimed as a matter of right but only in terms of the provision of the statute. Therefore, the conditions mentioned had to be fulfilled by the dealer. The Hon'ble Division Bench of the High Court of Andhra Pradesh had considered an identical case as that of the case on hand, wherein a pari materia provision under the Andhra Pradesh General Sales Tax, 2017 namely section 16(4) of the Act was considered in a challenge to its validity on the ground that it violates Article 14, 19(1)(g) and 300A of the Constitution of India and whether the non-obstante clause in section 16(2) of the APGST, CGST Act, 2017 would prevail section 16(4) of the APGST/CGST Act, 2017.

e) Substantive right cannot be denied on account of procedural lapse

i. A delay in filing of return is only a procedural lapse. There should not be denial of ITC which is a substantive right merely on account of delay in filing of return.

- ii. The Hon'ble Supreme Court, in the case of *Sambhaji and Others v. Gangabai and Others, [2009 (240) E.L.T. 161 (S.C.)]*, has held that procedure cannot be a tyrant but only a servant. It is not an obstruction in the implementation of the provisions of the Act, but an aid. The procedure is handmaid and not the mistress. It is a lubricant and not a resistance.
- iii. Procedural law should not ordinarily be construed as mandatory; procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.
- iv. It has been held in a catena of judgement that conditions can be prescribed for taking of ITC. Whether mere delayed filing of return can be considered as a strict condition to be followed for claiming of ITC is a matter of debate which can only be settled by the higher Courts.

f) Violative of Article 19(1)(g) of the Constitution

- i. Denial of credit affects his ability to do business. In fact, businesses depend heavily on the credit available to them under the Act for discharging their tax liability. If the eligible credit is blocked or credit already taken is to be reversed, it affects the business operations of such taxable person. If the department initiates coercive proceedings against them, it again affects the business operations of such persons.
- ii. After payment of taxes and filing of returns along with late fees would cause serious troubles to us in carrying on of business. To this extent, it is a hindrance to Article 19(1)(g) of the Constitution of India which allows a person to freely practice any profession or occupation.

What is the view of the judiciary?

Madras High Court has held a favourable view allowing the ITC beyond the prescribed period under section 16(4). However, the other High Courts including Andhra Pradesh, Calcutta, Patna etc. have taken a contrary view on the said matter.

The Hon'ble High Court in case of *Tvl. Kavin HP Gas Gramin Vitrak vs Commissioner of Commercial Taxes [W.P. (MD) Nos. 7173 & 7174 of 2023 W.M.P. (MD) Nos. 6764 & 6765 of 2023, decided on 24.11.2023]* has held section 16(4) in the assessee's favour by considering the below:

- i. When the petitioner is entitled to ITC as per the provisions, disallowing the same by observing that the returns are not filed in prescribed time and the same is totally irrelevant.

- ii. Since the GSTR-2 was not notified, which is meant for claiming ITC, hence the petitioner could not claim the ITC within the prescribed time.
- iii. If the dealer is not enabled to pay output tax, he is not permitted to file GSTR-3B return in online.
- iv. The error committed by the petitioner is an inadvertent human error and the petitioner should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute.

The adverse view taken by the other High Courts includes the following common points:

- i. Section 16(1) is an enabling clause for ITC. Section 16(2) subjects such entitlement to certain conditions. Section 16(3) and 16(4) further restrict the entitlement given under section 16(1). It is out of context to contend that one of the restricting provisions overrides other two restrictions.
 - ii. If really the legislature has no intention to impose time limitation for availing ITC, there was no necessity to insert a specific provision under section 16(4) and to further intend to override it through section 16(2) which is a futile exercise.
 - iii. Reference was made to the decision in *Jayam and Company v. Assistant Commissioner and Another [2018 (19) G.S.T.L. 3 (S.C.)]* wherein the Court held that whenever concession is given by the statute, the conditions thereof are to be strictly complied with in order to avail such concession.
 - iv. Further they took reliance of the Supreme Court decision in the case of *ALD Automotive* which imposes time limit for claiming input tax credit was challenged on the ground that it was arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. The said judgement held that the statutory scheme delineated by section 19(11) neither can be said to be arbitrary nor can be said to violate the right guaranteed to the dealer under Article 19(1) (g) of the Constitution.
- It was held that the right of registered person to take ITC under section 16(1) becomes a vested right only if the conditions to avail it are fulfilled, without any restriction as prescribed under section 16(2).

What is the way ahead for stakeholders on this issue?

In a significant development, the Supreme Court of India has taken up the challenge to the time limit imposed for availing ITC under section 16(4) of the CGST, 2017. The case, *Shanti Motors v. Union of India & Ors.*, questions the constitutional validity of the said provision, asserting that it infringes upon Articles 14, 19(1)(g), and 300A of the Constitution of India. The Special Leave Petition (SLP) challenges the constitutional validity of section 16(4) of the CGST Act, which sets time limit for availing ITC. The petition contends that the provision is

violative of fundamental rights enshrined in Articles 14, 19(1)(g) and 300A of the Constitution. The Supreme Court has admitted the SLP and issued notices to the respondents, signalling the initiation of a thorough judicial examination of the issue. Alongside admitting the SLPs, the Supreme Court has issued notice on the interim reliefs as well.

Conclusion

The stakeholders should neither be too excited nor bogged down with every judgement on this matter. Even though most of the GST departments have taken a stand to issue notices and confirm demand on the said matter, this litigation is far from reaching its final conclusion. Till the Supreme Court intervenes or the legislature provides any relief, the taxpayers should aim to keep litigating this matter. Having said this, one should make a proper cost benefit evaluation before reaching their decision.

If one decides to pay the demand and conclude the matter at the current stage, one cannot take benefit of an eventual positive outcome, if that arises. The advantage to this approach is that the interest and penalty is known and limited to the extent of the total demand on the current date.

However, if one decides to litigate, one runs the risk of increased interest @ 18% and stage-wise penalty under section 73 / 74 as the case may be. Having said this, if there is an eventual positive outcome, the entire demand would be liable to be dropped. They should also be prepared for the litigation cost and efforts associated with it at multiple levels. Further, they should be tracking cases at High Court levels because they hold a strong persuasive value. Also, the arguments accepted at such higher forums should be factored in while defending the cases through various levels.

Therefore, one needs to accept that this issue is far from resolved till the decision of Supreme Court is laid down. Till then, all the stakeholders need to take important decision – Fight or Flight?

Contributed by CA. Shubham Khaitan



NAVIGATING E-WAY BILL : CONTRAVENTION VS. INTENTION

This article discusses provisions related to e-way bill under the GST law in detail. It is important to understand that the provisions related to e-way bill have been introduced in the GST law to:

- ensure the proper tracking and documentation of goods;
- streamline the movement of goods;
- enhance tax compliance; and
- reduce tax evasion.

Such provisions aim to bring transparency and accountability to the logistics and transportation sector by ensuring that the details of goods in transit are readily available to tax authorities.

Section 68 of CGST Act, 2017 stipulates that the person in charge of a conveyance carrying any consignment of goods of value exceeding the limit of Rs. 50,000, generally in the context of inter-State transportation in India. Any person who is in charge of a conveyance carrying goods of value more than Rs. 50,000 is required to carry electronic way bill ('e-way bill') along with other documents as prescribed under section 68 of the Central Goods and Services Tax Act, 2017 ("CGST Act"). The limit of Rs. 50,000 prescribed under the CGST Act is applicable in the context of inter-state trade. However, e-way bill is also required for intra-state (i.e., within the same State) movement of goods if the value of the goods being transported exceeds specified threshold limit. The threshold limit may vary from State to State.

Section 68 of the CGST Act further provides that if a conveyance is intercepted by the Proper Officer at any place, the person in charge of the conveyance shall be liable to produce the documents for verification and also allow the inspection of goods being transported.

As per Rule 138 of Central Goods & Services Tax Rules, 2017 ("CGST Rules") every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

- (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 commencement of such movement, furnish

information relating to the said goods as specified in **Part A of FORM GST EWB-01**, electronically, on the Common Portal along with such other information as may be required on the Common Portal and a unique number will be generated on the said portal.

Rules 138 to 138E of the CGST Rules lay down, in detail, the provisions relating to e-way bills.

In case of any deficiency in documents, the consequences that are laid out in section 129 or section 130 of the CGST Act get attracted. Section 129 of the CGST Act provides for detention, seizure and release of goods and conveyances in transit upon payment of prescribed penalty. Section 130 of the CGST Act provides for the confiscation of goods or conveyances and imposition of penalty.

Section 129 of the CGST Act 2017 states that where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the CGST Act or the CGST Rules, then all such goods and conveyance would be liable to detention or seizure. After detention or seizure, the goods can be released on payment of penalty, i.e.:

- Where the owner of the goods comes forward for payment of the penalty:
 - o in the case of taxable goods, penalty equal to 200% of the tax payable on such goods;
 - o in the case of exempted goods, penalty equal to 2% of the value of goods or Rs. 25,000 whichever is less.
- Where the owner of the goods does not come forward for payment of the penalty:
 - o in the case of taxable goods, payment of penalty equal to 50% of the value of goods or 200% of the tax payable on such goods, whichever is higher;
 - o in the case of exempted goods, on payment of an amount equal to 5% of the value of goods or Rs. 25,000/-, whichever is less.

Further, under the provisions of section 130 of the CGST Act, for the specified contraventions of the provisions of the CGST Act or CGST Rules, the goods being transported or the conveyances may be confiscated and the person found guilty may be liable to penalty under section 122.

An important aspect to be noted is that the penal provisions for contravention of e-way bill provisions are attracted in cases where assessee had intention to evade payment of tax, i.e., in cases such as forgery or connivance on part of the assessee. Further, in the case of intention to evade payment of tax or transportation of goods clandestinely, department can invoke provisions of section 130 and may confiscate goods and initiate penalty proceedings thereon. From a practical standpoint, the firstly the authorities need to look into the nature of the contravention of the provisions of the Act or the Rules. Secondly, the authorities are required to examine whether such contravention of the provisions of the CGST Act or the CGST Rules was made with an intent to evade the payment of tax. Generally, in such cases the onus is on authorities to prove that the assessee had mala-fide intention to evade the payment of tax.

For the purpose of issuing a notice for confiscation under section 130 of the CGST Act at the threshold, i.e., at the stage of section 129 of the Act itself, there should be sufficient basis to establish that the contravention was with a definite intent to evade payment of tax.

In a case where consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, the proceedings under section 129 of the CGST Act may not be initiated in certain situations as given in *Circular no. 64/38/2018-GST dated 14.09.2018*. Thus, in case of minute errors such as error in the address of the consignee to the extent that the locality and other details of the consignee are correct, error in one or two digits of the document number mentioned in the e-way bill etc., where assessee's intention was not to evade payment of tax, the proceedings under section 129 of the CGST Act may not be initiated.

Following are the important case laws discussing the principals to be applied while invoking section 129 and section 130 of the CGST Act:

- Penalty under section 129 is a 'penalty in action', that is, penalty cannot be imposed after completion of movement in case goods are not intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing e-way bill, even then penalty under section 129 cannot be imposed if such investigation is conducted after movement has ended. In the case of *Ram Charitra Ram Harihar Prasad v. State of Bihar [2020 (34) G.S.T.L. 151 (Pat.)]*, Hon'ble Patna High Court held that if e-way bill generated had expired but another fresh e-way bill was generated just before vehicle was intercepted which was produced to the inspecting officer, the intercepting officer cannot question if a valid e-way Bill was produced even though, from the facts, the vehicle can be understood to have travelled without a valid EWB but not intercepted. Offence cannot be reconstructed 'in theory'. Penalty under section 129 will arise only when offence is 'in progress'.
- Hon'ble High Court of Gujarat in the case of *Synergy Fertichem Pvt. Ltd. v. State of Gujarat [2020 (33) G.S.T.L. 513 (Guj.)]*, inter alia, held that mere suspicion is not sufficient to invoke the provision for confiscation.
- Hon'ble Allahabad High Court in the case of *Hawkins Cookers Limited Vs State of U.P. [Writ Tax No. 739 of 2020, decided on 12.2.2024]* held that when most of documents were accompanied with goods and there were some typographical and/or clerical error, a presumption to evade tax does not arise. Goods were accompanied with relevant invoices, bilty documents and only four out of eight of e-way bills had incorrect address, even said incorrect address was registered office of assessee. Therefore, there was no intention to evade tax, which should be present in order to impose penalty under section 129. Mere technical error committed could not result in imposition of harsh penalty. Hence, impugned detention order was quashed and set aside.
- In a recent landmark judgment, Hon'ble Allahabad High Court addressed critical issue in tax law enforcement through the case of *Falguni Steels v. State of Uttar Pradesh and Ors. [Writ Tax No. 146 of 2023, decided on 25.01.2024]*. Hon'ble High Court held that the requirement of intent to evade tax for the imposition of penalties is a fundamental principle that underpins the fairness and integrity of taxation systems. Recognizing the distinction between technical errors and intentional evasion is essential for maintaining a balanced and equitable approach to tax enforcement. Although, the registered person failed to generate e-way bill on time, tax invoices issued contained all relevant details including detail of vehicle transporting goods. Therefore, no intention to evade tax was evident in instant case. If penalty is imposed, in presence of all valid documents,

even if e-way bill had not been generated, and in absence of any determination to evade tax, it cannot be sustained. Once e-way bills were presented before passing of penalty order, and all documents including tax invoices, were found to be in order. Revenue had no sound rationale to pass order under section 129.

Hon'ble Allahabad High Court, in the case of *Vacmet India Ltd v. Additional Commissioner Grade 2 (Appeal) [Writ Tax No. 687 of 2019, decided on 17.10.2023]* dealt with the challenge to the provisions of imposition of penalty on the assessee for the technical breach related to an e-way bill. The judgement sheds light on the importance of intent and prompt rectification in cases of procedural errors, emphasizing that penalties should not be imposed when there is no intention to evade payment of tax.

- Hon'ble Supreme Court of India in *Assistant Commissioner ST v. Satyam Shivam Papers Pvt. Ltd. [2022 (57) G.S.T.L. 97 (S.C.)]* held that tax evasion cannot be presumed on mere non-extension of validity of e-way bill by the assessee due to traffic blockage and agitation.
- In the case of *Sidhbali stone Gallery vs State of Gujarat*, Hon'ble High Court has reiterated the principles its laid down in the case of *Synergy Fertichem Pvt.Ltd v. State of Gujarat* stating that at the time of detention and seizure of goods or conveyance, the first thing authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rules. The second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was made with an intent to evade the payment of tax. Section 135 of the Act provides for presumption of culpable mental state, but such presumption is available to the department only in the cases of prosecution and not for the purpose of section 130 of the Act. In a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was with the necessary intent to evade payment of tax. In such circumstances, the authorities may not be justified to straightway issue a notice of confiscation under section 130 of the Act. For the purpose of issuing a notice of confiscation under section 130 of the Act at the threshold, i.e. at the stage of section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that

the contravention was with a definite intent to evade payment of tax

- Hon'ble Allahabad High Court in the case of *VSL Alloys (India) Pvt. Ltd. v. State of U.P. [2018 (17) G.S.T.L. 191 (All.)]* ruled that even though the applicant did not file Part-B of the Goods and Services Tax e-way bill, there was no intent to evade tax since the additional documents carrying goods held all required vehicle information. The Court concluded that there was no tax evasion intent on the part of the assessee since all details with a vehicle transporting information of the goods were mentioned in the tax invoices carrying the goods.
- In case of *Modern Traders v. State of U.P. [2018 (14) G.S.T.L. 184 (All.)]*, Hon'ble Allahabad High Court held that once an e-way bill was produced and other documents clearly indicated that the goods belong to the registered dealer and the IGST had been charged, there was no justification in detaining and seizing the goods and asking for imposition of the penalty.

Conclusion

In light of our above discussion, it is apparent that intentional and unintentional errors committed in the process of generation of e-way bill should not be treated on the similar footing to the cases where there was an intent to evade the tax. To explain further, the cases of procedural lapse, such as clerical errors in e-way bills, wherein the assessee did not have any intention to evade payment of tax should not be automatically perceived as malafide intention on the part of the assessee to evade payment of tax.

Only in the cases where intention to evade payment of tax is proved by the GST authorities, the proceedings for confiscation and penalty under section 130 of the CGST Act may be initiated.

Contributed by CA. Pallavi Garg & CA. Nikhil Gupta



JUDICIAL PRONOUNCEMENTS

1. **Opportunity of being heard to be provided before cancellation of registration [Maa Jhandewali Traders – Delhi High Court - W. P. No. 1131 of 2024, dt. 25.01.2024]**
2. **Retrospective cancellation of registration [Pratima Tyagi – Delhi High Court – W. P. No. 16016 of 2023, dt. 13.12.2023]**

Facts: Petitioner's registration was cancelled and he had been issued Show Cause Notice (SCN) where in it has been alleged that the registration was obtained by misstatement or suppression of facts. Petitioner had replied to the SCN and requested for 4-5 days' time to respond to the SCN and had stated that the petitioner is unable to personally attend being out of station. There was no further response submitted by the petitioner. Petitioner submitted that impugned cancellation order did not contain any specifics of the alleged fraud, misstatement or suppression and neither any name nor designation of the officer was disclosed in the show cause notice to be appeared before the Adjudicating Authority.

Contentions by the Department: SCN is uploaded on the portal which is accessible by the taxpayer and all information is also uploaded with regard to the detailed reasons, etc. on the portal, which can be accessible by the petitioner. He submits that the action was taken because the Deputy Commissioner (AE) CGST, Delhi (North) had informed that the petitioner firm was non-existent at the subject address.

Observations by the Hon'ble High Court: Normally, we would have set aside the SCN because of the infirmities pointed out by learned counsel for the petitioner. However, in the facts of the present case since petitioner has responded to the SCN and filed a reply which is not in commensurate with the reasons mentioned for the cancellation, we are of the view that an opportunity needs to be granted to the petitioner to file a detailed response to the SCN and thereafter for the authorities to re-adjudicate the SCN.

Ruling: In view of the above cancellation order is set aside. Petitioner is granted one week's time to file a detailed response to the SCN. Thereafter, the authority shall dispose of the SCN within a period of 30 days. Petitioner shall also be afforded an opportunity of personal hearing.

Facts of the matter:

Petitioner was carrying on the proprietorship business and closed down business activities on 11.11.2019 on account of ill-health. Therefore, the petitioner filed an application on the said date for cancellation of her GST registration. The same was duly acknowledged, but the petitioner's application for cancellation of the registration was not processed.

Thereafter, the proper officer issued a SCN dated 12.01.2021 proposing to cancel the petitioner's GST registration on the ground that the petitioner had not filed the returns for a continuous period of six months. SCN did not specify the appointed date and time fixed for hearing the petitioner. Proper officer passed the impugned order cancelling the petitioner's GST registration. The impugned order does not specify any reason for cancelling the petitioner's GST registration. However, it mentions that no reply was received to the SCN.

Observations by the Delhi Hon'ble High Court: It is apparent from the above that the impugned order is not sustainable as it is not informed by reason. The impugned order has also been passed in violation of the principles of natural justice as opportunity of being heard was not afforded. Although, the SCN called upon the petitioner to appear for personal hearing did not specify the date, time or venue of the personal hearing. Thus, there was no possibility for the petitioner to appear at the hearing.

The impugned order cancelled the petitioner's GST registration with retrospective effect from 01.07.2017. As per section 29(2) of the CGST Act, 2017, the proper officer has a discretion to cancel the registration from any date including with retrospective effect, however, the said discretion cannot be exercised in arbitrary manner. The decision to cancel the registration with retrospective effect must be based on some objective criteria. In the present case, the petitioner's GST registration was cancelled on account of non-filing of returns for a period of six months. We find no reason for cancellation of the petitioner's GST registration even for a period when she was filing the returns.

Ruling: As stated above, the impugned order is required to be set aside, however, we do not consider it apposite to do so since the petitioner's prayer is limited. She prays that her GST registration be cancelled with effect from 11.11.2019 as the petitioner had stopped her business from the said date. Accordingly, we direct that the impugned order cancelling the petitioner's GST registration would take effect from 11.11.2019 and not from 01.07.2017.

3. Penalty of 200% not mandatory when if intent to evade payment of tax is not established [Saraf Trexim Limited – Appeal No. FMA/256/2023, dt. 06.02.2024 – Calcutta High Court]

Facts of the matter: Petitioner transported certain goods in the vehicle accompanied by an e-way bill generated on 11.06.2022. The e-way bill was valid up to midnight on 13.06.2022. On 14.06.2022 the vehicle was intercepted at about 5:30 p.m. The authorities found that the e-way bill had expired at 12 midnight on 13.06.2022 and fresh e-way bill has not been generated. Consequently, it was held that the goods were transported without a valid e-way bill. Though the appellant had sought to explain the lapse on the ground that the vehicle met to the accident. This had added to the delay in the process and in any event on 15.06.2022 the second e-way bill was generated and at the time when the vehicle was intercepted, hardly 24 hours had expired from the time at which the first e-way bill had expired. Vehicle had been intercepted and officer in charge had levied penalty equivalent to 200% of the tax amount.

Observation by The Hon'ble High Court: In similar matters, Court has taken a view that unless and until it is established by the department that the transporter or the owner of the goods had an intention to contravene the provisions of the Act, the question of imposing penalty under Section 129 of the CGST Act, 2017 would not be justified. Each case has to be decided on the peculiar facts and circumstances and the Court can definitely take into consideration the bonafide of the transaction and in the instant case, the delay have been less than 24 hours. We are of the view that it is not a case where penalty can be imposed that too 200%. The other factors which are also to be taken note of that the goods have been transported and the goods in question have been exported to Bangladesh.

Ruling: Considering all these facts, we are of the view that in the instant case no penalty can be imposed on the appellant and the order of the penalty imposed

on the appellant is set aside and quashed. Since the appellant had paid the penalty during the pendency of the proceedings, the appellant is entitled to file an application for refund of the amount of the penalty collected which shall be considered and refund be effected as expeditiously as possible preferably within six weeks from the date of receipt of the server copy of this order.

Similar Judicial Pronouncements:

- a) Mohammad Shamsher vs. Calcutta High Court – [W.P.A. No. 85 of 2024, dt. 01.02.2024]
- b) Bitumix India LLP vs. Calcutta High Court – [W.P.A. No. 1011 of 2023, dt. 16.06.2023]
- c) Globe Panel Industries P. Ltd. vs. Allahabad High Court – [W.T. No. 141 of 2023, dt. 05.02.2024]

4. Commissioner has power to extend the time limit for filing Appeal petition [S. K. Chakraborty & Sons – M.A.T. 81 of 2022, dt. 01.12.2023 – Calcutta High Court]

Facts of the matter: Appellant, a partnership firm, had been served with show cause notice alleging suppression of sales for FY 2017–18 and FY 2018-19. Authority had passed the order on 23.04.2019 by confirming the tax liability on suppression of sales. The appellant had preferred an appeal against the said order on 16.12.2019 which was beyond 60 days. The appellate authority, by an order dated 24.12.2019 had refused to condone the delay on the ground of section 107 of the SGST Act, 2017.

Observation of the Hon'ble High Court: It is in the interest of the nation that litigations come to an end as expeditiously as possible. To achieve such purpose, legislature has enacted the Act of 1963 and prescribed various period of limitation beyond which, the right to approach an authority for redressal of the grievances remain suspended. Apart from the general law of Limitation as prescribed in the Act of 1963, special statutes prescribe period of limitation for specific scenarios and mandates completion of proceedings within the specified time period. Prescription of a period of limitation by a special statute may or may not exclude the applicability of the Act of 1963. In the context of the issue that has fallen for consideration herein the provision of the Act of 1963 particularly, section 29(2) there of should be considered which provided for situations where special or local law prescribes a period of limitation different from the period prescribed by the Act of 1963. It has provided that the provisions of section 3 shall apply as if such

period were the period prescribed by the schedule to the Act of 1963, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 both inclusive shall apply only in so far as and to the extent to which they are not expressly excluded by the special or the local law.

Section 107 of the CGST Act, 2017 does not exclude the applicability of the Act of 1963 expressly. It does not exclude the applicability of the Act of 1963 impliedly also if one has to consider the provisions of section 108 of the CGST Act, 2017. In case of revision, a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/noticee.

Section 107 does not have a non-obstante clause rendering section 29(2) of the Act of 1963 non-applicable. In absence of specific exclusion of the section 5 of the Act of 1963, it would be improper to read an implied exclusion thereof. Moreover, section 107 in its entirety has not expressly stated that, section 5 of the Act of 1963 stands excluded.

Ruling: Since provisions of section 5 of the Act of 1963 have not been expressly or impliedly excluded by section 107 of the Act of 2017 by virtue of section 29(2) of the Act of 1963, section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filling the appeal can be extended by the Appellate Authority.

5. GST on clinical bio medical waste disposal [Instromedix Waste Management P. Ltd. AAR Rajasthan – Order No. RAJ/AAR/2023-24/16, dt. 31.01.2024]

Facts of the matter: Applicant is engaged in providing services of non-hazardous waste treatment and disposal services (HSN Code 999433) & sewage and waste collection, treatment and disposal and other environmental protection services (HSN Code 9994). In this the clinical establishments at the facility allotted

by the State Government in this activity, the applicant is collecting the bio medical waste from the empanelled activity establishments and disposed off or treats the same at its facility and charges the fixed contracted amount as per the state guidelines.

Till 17.07.2022, all the services listed under Tariff Heading 9994 were exempted from tax. Vide *Notification No. 03/2022 – CT(R)*, dt. 13.07.2022 (w.e.f. 18.07.2022), the disposal or treatment of bio medical waste was brought into the purview of GST taxed @ 12%. Appellant seeks ruling on –

- a) Whether the services of disposal and treatment of bio-medical waste obtained from clinical establishments is liable to tax under *Notification No. 03/2022-CT(R)* dt. 13.07.2022?
- b) If yes, from which date, the registered dealer is liable to pay GST on the above services?
- c) If yes, what is the rate of GST, which the registered dealer is required to pay on the services mentioned in Point 1 above?

Observation of the Authority:

The services of disposal and treatment of bio-medical waste obtained from clinical establishments was exempted vide Entry No.75 of *Notification No.12/2017- CT(R)*. The said Entry No.75 was omitted vide *Notification No.-04/2022 CT(R)* (effective from 18.07.2022). The service of disposal and treatment of bio-medical waste obtained from clinical establishment (9994) was made taxable vide *Notification No. 03/2022 – CT(R)* (effective from 18.07.2022).

Ruling:

The services of disposal and treatment of bio-medical waste obtained from clinical establishments is liable to tax under *Notification No. 03/2022 – CT(R)*. The registered dealer is liable to pay GST on the aforesaid service from 18.07.2022 @ 12%.

Contributed by CA. Ashit Shah



GST UPDATES

1. Notification of special procedure to be followed by a registered person engaged in manufacturing of pan-masala and tobacco products

Notification No. 30/2023 CT dt. 31.07.2023 which laid down the special procedure to be followed by the registered person engaged in manufacturing of pan masala and tobacco products was rescinded with effect from 01.01.2024 vide *Notification No. 03/2024 CT dt. 05.01.2024*. Thereafter, *Notification No. 04/2024 CT dt. 05.01.2024* has been issued to notify the special procedure to be followed by the registered person engaged in manufacturing of pan masala and tobacco products. In terms of *Notification No. 4/2024 CT*, the prescribed details shall now be furnished in different tables of a single FORM GST SRM-I instead of multiple forms prescribed in the earlier notification. Such persons are required to furnish the following details within the time limit as prescribed in the notification-

| Table No. of FORM GST SRM-I | Description |
|-----------------------------|---|
| 6 - Part (A) | Details of existing packing machines being used for filling and packing of packages |
| 6 - Part (B) | Additional filling and packing machines being installed in the registered place of business |
| 6A | Amendment in the declared production capacity of the manufacturing unit or machines |
| 7 | Details of the intimation of the machines furnished to other departments |
| 8 | Disposal of the packing machines |

The registered person is also required to furnish the following forms:

| FORM | Particulars |
|--------------|--|
| FORM SRM-II | Monthly Statement of inputs used and the final goods produced by the manufacturer of goods specified in the Schedule to be furnished by 10 th of the succeeding month |
| FORM SRM-III | Certificate of Chartered Engineer - In respect of machines declared in FORM SRM-I (If details of any machine are amended subsequently, then fresh certificate in respect of such machine shall be uploaded.) |

This notification shall come into effect from 1st April, 2024 as per the aforesaid notification. However, *Notification No. 08/2024-CT dt. 10.04.2024* has been

issued to extend the timeline from 1st April, 2024 to 15th May, 2024.

2. Jurisdiction of Pune II Principal Commissioner/Commissioner

The Central Government vide *Notification No. 05/2024-CT dt. 30.01.2024* has made amendment in *Notification No. 02/2017-CT dt. 19.06.2017* to notify the jurisdiction of Principal Commissioner/Commissioner of Central Tax (Pune II) over Pin code 411069 of Haveli Taluka of Pune District.

3. Notification of system for sharing of information by Common Portal

Exercising its power under section 158A of the CGST Act, 2017, the Central Government, on the recommendation of the Goods and Services Tax Council, has notified "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the Common Portal based on consent under sub-section (2) of Section 158A.

"Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualized by the RBI as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023. This platform is developed by Reserve Bank Innovation Hub, a wholly owned subsidiary of RBI. The platform is meant for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

Notification No. 06/2024-CT dt. 22.02.2024

4. Enactment of the Finance Act, 2024

The Finance Act, 2024 has received the assent of the President of India on 15th February, 2024. The amendments have been made in the CGST Act, 2017 vide the Finance Act, 2024 which shall be effective from a date to be notified.

5. Guidelines to be followed in the CGST Zones while engaging in Investigation

Instruction No. 01/2023-24-GST (Inv.) dt. 30.03.2024 has been issued prescribing guidelines for maintaining ease of doing business while engaging in investigation with regular taxpayers:

- a) As per *Notification No. 02/2017-CT dt. 19.06.2017*, the (Pr.) Commissioner is responsible for developing and approving any intelligence, conducting search, and completing investigation in a case and the relevant subsequent action, including in

the divisional formations, etc. within the allocated jurisdiction of Commissionerate.

Any information or intelligence which pertains to another CGST field formation, that may have been generated /collected /received /recorded by such field formation shall be forwarded by the (Pr.) Commissioner to the concerned CGST field formation or DGGI, as the case may be.

b) Each investigation must be initiated only after the approval of the (Pr.) Commissioner. However, the prior written approval of the zonal (Pr.) Chief Commissioner shall be required in the following four categories-

- i) matters of interpretation seeking to levy tax/ duty on any sector/ commodity/ service for the first time, whether in Central Excise or GST;
- ii) big industrial house and major multinational corporations;

iii) sensitive matters or matters with national implementations;

iv) matters which are already before GST Council.

In all the above four categories of cases, the concerned CGST field formation should also collect details regarding the prevalent trade practices and nature of transactions carried out from the stakeholders and study the implications / impact so as to have adequate justification for initiating investigation and taking action.

- c) The fact of initiation of inquiry, if any, already on the same subject matter with respect to the same taxpayer/ GSTIN by another investigating office/ tax administration must be ascertained and placed before the approving authority, before initiating any inquiry.
- d) During the investigation, the Commissioner may come across the below mentioned situations-

| S. No. | Situations | Report of Action |
|--------|--|--|
| 1. | Where it comes to the Commissionerate's notice that either the DGGI or the State GST department is also simultaneously undertaking record-based investigation of the same taxpayer on different subject matters. | The (Pr.) Commissioner must engage in dialogue with the other investigating office(s) to consider the feasibility of only one of the offices pursuing all these subject matters with respect to the taxpayer, and the other offices consolidating their material with that office. If this outcome is not feasible, the reasons therefore should be confirmed on file by such (Pr.) Commissioner. |
| 2. | Where the (Pr.) Commissioner has initiated an investigation with respect to a GSTIN in its jurisdiction and the issue is relevant to- | |
| i) | some or all of that taxpayers' GSTINs registered (under the same PAN) in multiple jurisdictions. If the matter also falls in the charter of DGGI and is not such that DGGI avoids taking up (as it is more appropriately in the purview of return scrutiny or audit etc) | The (Pr.) Commissioner shall expeditiously make a self-contained reference to its zonal (Pr.) Chief Commissioner who shall request the Pr. DG, DGGI to take up the matter in accordance with DGGI guidelines. |
| ii) | other taxpayers' GSTINs registered (under multiple PANs) across various CGST jurisdictions. | The (Pr.) Commissioner shall within 30 days of initiation of investigation take either of the following two actions with the approval of zonal (Pr.) Chief Commissioner – i) Description of GSTINs or similar entity types involved (or likely to be involved) across various jurisdictions related to the issue or topic is available, the self-contained reference shall be shared with each concerned zone or all the zones. ii) In other situations, Pr. DG DGGI shall be requested to issue suitable alert. |
| 3. | Where an issue investigated by one of the (Pr.) Commissioners is based on an interpretation of CGST Act/ Rules, notifications, circulars etc, and it is in the direction of proposing non-payment or short payment of tax, however, the background is that the taxpayer(s) is/are following, or have followed, a prevalent trade practice based on particular interpretation on that issue in the sector/industry. | In such a case, it is desirable that the zonal (Pr.) Chief Commissioner make a self-contained reference to the relevant policy wing of the Board i.e., the GST Policy or TRU. The endeavor, to make such reference before concluding investigation, as early as possible of the earliest due date for issuing of show cause notice, may be useful in promoting uniformity or avoiding litigation if the matter, after being processed, is amongst those that also gets placed before the GST Council. |

- e) In initiating investigation with respect to a listed company or PSU or Corporation or Govt Dept./ agency or an Authority established by law, or seeking details from them, the CGST officials should initially address official letters (instead of summons) to the designated officer of such entity (detailing the reasons for investigation, and the legal provisions) and requesting the submission of the relevant specified details in a reasonable time period as mentioned in the letter. Divergence from this practice at the initial stage must be backed by written reasons.
- f) The letter issued for seeking information/ documents from regular taxpayer should not contain vague (or general) expressions such as making inquiry in connection with “GST enquiry” or “evasion of GST”. The reference can be to inquiry “with respect to” or “in connection with” that entity.
- g) The information available digitally/online on GST portal cannot be called for under letters/summons. Further, a letter or summons should not be used as a means to seek information filled in formats or proforma (specified by investigation). The summons in conduct of investigation must not convey requests outside the scope defined for summons.
- h) The content of the summons to be printed by the summoning officer, including in terms of what is being sought and the time frame to be provided being reasonable for its compliance should have a prior reasoned approval (of officer not below Dy/ Asst. Commissioner level).
- i) Where for strictly operational reasons, it is not possible to obtain such prior written permission, the approval by such an officer can be verbal, however, this all must be confirmed in writing at the earliest opportunity.
- j) Scanned copy of a statement (recorded under summons) along with the outcome of search/ inspection conducted, including panchnama (if any) needs to be uploaded in the same e-office file in which approval was obtained to issue summons. The e-file should be submitted for information to Addl./Jt. Commissioner in not more than 4 working days from date of statement, completion of search/ inspection.
- k) An investigation initiated must reach the earliest conclusion which is not more than one year. It is not necessary to keep investigation pending till limitation in law approaches. Show cause notice and the closure report consequent to the appropriate payment of government dues by the person concerned should not be delayed and should have a brief self- explanatory narration of the issue and the period involved.
- l) Conclusion of investigation may also take the form of recording that investigation is not being pursued further as nothing objectionable was found in terms of matter investigated.

Grievance Redressal

- Commissioner is to be proactive in a manner that prevents complaints from arising in respect of the investigation and related work being undertaken within the jurisdiction.
- Taxpayer may approach with grievance, if any, related to an ongoing investigation, for appropriate redress to the Addl./Jt. Commissioner in-charge of investigation through letter, email or by appointment. In case the reasonable grievance persists, the (Pr.) Commissioner may consider meeting, by appointment, with the taxpayer.

GSTN ADVISORIES

1. Enhanced E-Invoicing initiatives & launch of enhanced <https://einvoice.gst.gov.in> portal

GSTN on occasion of one year of the successful going live with the additional five new IRP portals, the e-invoice master information portal, and the e-invoice QR Code Verifier app, announces the launch of the revamped e-invoice master information portal <https://einvoice.gst.gov.in>. New Features of the revamped E-Invoice Master Information Portal are as follows:

- i) **PAN-Based search:** Users can check the e-invoice enablement status of entities using their Permanent Account Number (PAN) in addition to search with GSTIN.
- ii) **Automatic E-invoice exemption list:** The portal now automatically publish updated list with all GSTINs that have filed for e-invoice exemptions at the start of the month and is available for users to download.
- iii) **Global search bar:** A comprehensive search tab has been introduced that allows for quick access to the information across the portal.
- iv) **Local search capabilities:** Enhanced search functionality within advisory, FAQ, manual and other sections for efficient information access.
- v) **Revamped Advisory and FAQ section:** Now organized year-wise and month-wise for easier reference, offering comprehensive guidance.
- vi) **Daily IRN count statistics:** The portal now includes statistics on the daily Invoice Reference Number (IRN) generation count.
- vii) **Dedicated section on Mobile App:** Information and support for the e-invoice QR Code Verifier app are readily available.
- viii) **Improved accessibility compliance and UI/UX:** Adhering to the GIGW guidelines, the portal now offers improved features such as contrast adjustment, text resizing buttons, and screen reader support for enhanced accessibility.
- ix) **Updated website policy:** The website policy has been thoroughly updated including the website

archival policy, content management & moderation policy, and web information manager details.

In the past year alone, more than 1.6 crore e-invoices were reported through the new IRPs, demonstrating the robustness and efficiency of the system. Furthermore, GSTN has introduced an internal e-invoice comprehensive health dashboard to further enhance monitoring of the e-invoice ecosystem. As a result of these improvements in the GSTN E-Invoicing system, today we have:

- a) **Expansion of IRP Portals:** Today, GSTN operates a total of six IRP portals through its partners, running robustly alongside the centralized de-duplication system.
- b) **E-Invoicing reporting accessibility:** All taxpayers who are eligible for e-invoicing can report e-invoices through any of these six IRP portals. The reporting can be done online, via APIs, or through a mobile app, all free of cost, making the process accessible and convenient for taxpayers nationwide.
- c) **Hourly Auto population** of e-invoices in GSTR-1 from new IRPs. Additionally, working with NIC-IRP to enable hourly auto-population of e-invoices in GSTR-1 reported on the NIC-IRP 1&2 portal.
- d) **E-invoice download** for past six months for both buyers and sellers via e-invoice portals and G2B APIs.
- e) **E-invoice QR code verifier App** for verification of e-invoice, and search IRN functionality for online verification of IRN.

Additionally, an enhanced version of the e-invoice verifier app, packed with new features, will be launched shortly.

2. Instances of delay in registration reported by some taxpayers despite successful Aadhar Authentication in accordance with Rule 8 and 9 CGST, Rules, 2017

In accordance with rule 9 of the Central Goods and Services Tax (CGST) Rules, 2017, pertaining to the verification and approval of registration applications it is informed that where a person has undergone Aadhar authentication as per sub-rule (4A) of rule 8 but has been identified in terms of rule 9(aa) by the Common Portal for detailed verification based on risk profile, the application for registration would be processed within thirty days of application submission.

Necessary changes would also be made to reflect the same in the online tracking module vis-à-vis processing of registration application.

3. Integration of E-Way bill system with new IRP portals

The E-Way bill services has been successfully integrated with four new IRP portals via NIC, enabling taxpayers to generate E-Way bills along side E-Invoicing on these four IRPs. This new facility complements the existing services available on the NIC-IRP portal, making

E-Way bill services, along with E-Invoicing, available across all six IRPs.

4. Introduction of New 14A and 15A tables in GSTR-1

As per *Notification No. 26/2022 – CT dt. 26.12.2022* two new Table 14A and Table 15A have been introduced in GSTR-1 to capture the amendment details of the supplies made through e-commerce operators (ECO) on which e-commerce operators are liable to collect tax under section 52 or liable to pay tax u/s 9(5) of the CGST Act, 2017. These tables have now been made live on the GST common portal from February, 2024 tax period onwards. These amendment tables are relevant for those taxpayers who have reported the supplies in Table 14 or Table 15 in earlier tax periods.

5. Reset and Re-filing of GSTR-3B of some taxpayers

There were discrepancies in the returns of some taxpayers during the filing process between the saved data in the GST system and actually filed data in the fields of ITC availment and payment of tax liabilities. The matter was examined and deliberated by the Grievance Redressal Committee of the GST Council and as a facilitation measure the Committee decided that these returns shall be reset, in order to give opportunity to such taxpayers to correct the discrepancy.

Accordingly, only the affected taxpayers have been communicated on their registered email-ids and the affected returns are visible on their respective dashboards for the purpose of re-filing with the correct data. The taxpayers who have received such communication, are requested to visit their dashboard and re-file their GSTR-3B within 15 days of receipt of such communication. You may reach out to your jurisdictional tax officer or may raise ticket of GST grievance redressal portal, in case you face any difficulty in re-filing of such GSTR-3B.

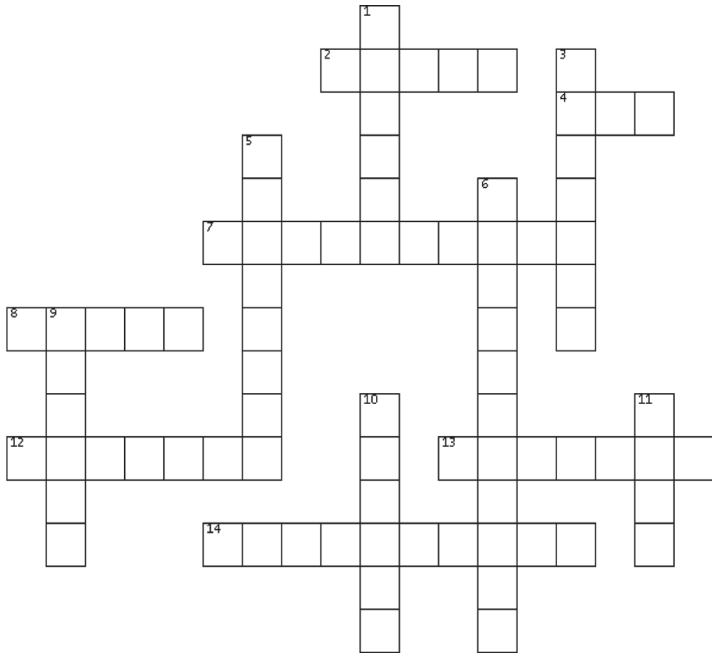
6. Enhancement in the GST portal

GSTN is pleased to inform that an enhanced version of the GST portal would be launched on 3rd May 2024. The effort is to improve user experience and ensure that the information you need is accessible and easy to navigate. Key Enhancements Include –

- i) **A dedicated tab for all news and updates:** This section now includes a beta search functionality, module wise drop downs and access to archived advisories dating back to 2017.
- ii) **User Interface Improvements:** Minor tweaks have been made to the homepage to enhance usability and aesthetics especially to make it convenient to use.
- iii) **Updated website policy, including the data archival policy:** Details regarding web managers have also been included.

These changes are scheduled to go live at midnight on 3rd May 2024.

CROSSWORD



ACROSS

2. No tax is payable on receipt of advance payment with respect to supply of _____.
4. Supplier supplying goods or services to UN Agencies should indicate _____ in the invoice so that recipient can claim refund.

7. Person liable to pay tax up to the date of transfer of business.
8. _____ return is to be filed in case of cancellation of registration.
12. Taxable actionable claim
13. No. of days for which GST PMT-06 is valid.
14. Vessel, aircraft and a vehicle

DOWN

1. Capital goods not covered under section 143
3. State in which Biometric Based Aadhar Authentication is applicable.
5. E – way bill is not required in transportation of _____.
6. _____ Assessment is done in case the value and rate of tax not known at the time of supply.
9. To be treated as supply of services even not made in the course or furtherance of business
10. Taking into custody of a person under some lawful command or authority
11. Open Market Value of Personal Guarantee provided by Director of the company to bank.

Invitation to write articles on GST

Chartered Accountants and other experts, with academic passion and flair for writing are invited to share their expertise on GST through ICAI-GST Newsletter. The article may be on any topic related to GST Law. While submitting the articles, please keep the following aspects in mind:

- 1) Article should be of 2000-2500 words.
- 2) An executive summary of about 100 words may accompany the article.
- 3) It should be original and not published/should not have been sent for publishing anywhere else.
- 4) Copyright of the selected article shall vest with the ICAI.

Please send editable soft copy of the article at gst@icai.in.



Answer to Crossword

Across: 2. Goods, 4. UIN, 7. Transferor, 8. Final, 12. Lottery, 13. Fifteen, 14. Conveyance

Down: 1. Moulds, 3. Gujarat, 5. Currency, 6. Provisional, 9. Import, 10. Arrest, 11. Zero

GST QUIZ

- If the assessment order under section 62(1) is withdrawn, will the registered person be exempt from late fees or applicable interest charges?**
 - Yes, registered person is exempt from payment of late fees only.
 - Yes, registered person is exempt from payment of interest only.
 - No, registered person is liable to pay both penalty and applicable interest.
 - Yes, registered person is exempt from both payment of late fees and interest.
- Specify the time period within which the seized goods, documents or books should be returned, if they have not been used for the purpose of issuing notice under the GST laws?**
 - 15 days
 - 30 days
 - 45 days
 - 60 days
- Is it possible for a casual taxable person to pay tax under composition scheme?**
 - Yes, subject to some conditions as specified in section 10.
 - Yes, the casual taxable person while taking registration shall specify that he needs to pay tax under composition scheme.
 - No, as the casual taxable person is registered only for a particular time period as specified in the application.
 - No, the casual taxable person does not have option to pay tax under composition scheme.
- PQR Ltd. has sold a laptop for Rs. 60,000/- to MNO Ltd. Both the companies are registered under same PAN. MNO Ltd. is not eligible for full input tax credit. The open market value and written down value of the laptop are Rs. 80,000/- and Rs. 50,000/- respectively. Determine the taxable value of supply of the above transaction.**
 - Rs. 20,000/-
 - Rs. 50,000/-
 - Rs. 60,000/-
 - Rs. 80,000/-
- Which of the following services would not qualify as online information database access and retrieval services?**
 - PDF document manually e-mailed by provider.
 - PDF document automatically downloaded from site.
 - Online course consisting of pre-recorded videos and downloaded videos.
 - Photographs available for automatic download.
- The Aadhaar authentication process is not necessary for person who is-**
 - Public Sector Undertaking
 - not a citizen of India
 - local authority or statutory body
 - All of the above
- Mr. A, registered in Delhi has supplied inputs of Rs. 40,000/- to Mr. B, registered in Haryana for job work. Is Mr. A required to generate E-way bill for the above supply of inputs for job work?**
 - Yes, E-way bill is required to be generated irrespective of the value of consignment.
 - No, E-way bill is not required to be generated as the consignment value is less than Rs. 1,00,000/-.
 - No, E-way bill is not required to be generated as the consignment value is less than Rs. 50,000/-.
 - No, E-way bill is required to be generated as the goods will be received back after job-work.
- The expenses of the examination and audit of records under special audit, including the remuneration of chartered accountant or cost accountant, shall be determined and paid by the-**
 - person authorised by the Commissioner.
 - registered person
 - Commissioner
 - Either (a), (b) or (c)
- The time period for filing an appeal before the Appellate Authority against the ruling pronounced by the Authority for advance ruling is-**
 - 30 days
 - 60 days
 - 90 days
 - 3 months
- Mr. A has purchased a washing machine from Mr. Y for Rs. 60,000/- (GST applicable @ 28%) having a warranty for 1 year. Mr. A wants to extend the warranty for further 2 years. Hence, he purchased extended warranty from Mr. Y for Rs. 5,000/- (GST applicable @ 18%) along with the purchase of machine. Determine the levy of tax on the above transactions.**
 - GST is levied on sale of washing machine @ 28% and for contract of extended warranty @ 18%.
 - GST is levied on sale of washing machine and for contract of extended warranty @ 18%.
 - GST is levied on sale of washing machine and for contract of extended warranty @ 28%.
 - GST is levied on sale of washing machine @ 18% and for contract of extended warranty @ 28%.

The names of first five members who were the top scorers in the last Quiz are as under:

| Name | Membership No. |
|----------------------------|----------------|
| CA. Kumar Sudhir Khanolkar | 154687 |
| CA. Anirudh Kashyap | 466175 |
| CA. Padmaja Vikas Sunkad | 215525 |
| CA. Ankit Soni | 551390 |
| CA. Arti Gupta | 509301 |

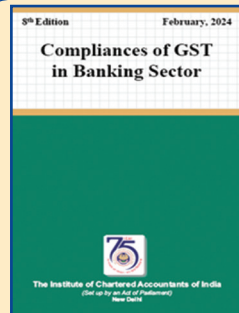
Please provide reply of the above MCQs in the link given below. Top five scorers will be awarded hard copy of the publication 'GST Act(s) and Rule(s)- Bare Law' & their names will be published in the next edition of the Newsletter.

Link to reply: <https://forms.gle/bwE8ePMnTRf4osqn7>

PUBLICATIONS

Background Material on GST –12th Edition (January, 2024)

This is a comprehensive publication covering the entire gamut of GST law. It was first published in 2016 (on the basis of Model GST Law). GST law has been explained in this publication through analysis, charts, tabular presentations, FAQs, MCQs etc. The publication is updated with all the amendments made by various notifications issued up to 1st February, 2024.

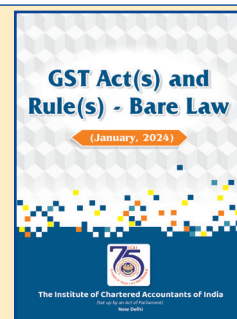


Compliances of GST in Banking Sector – 8th Edition (February, 2024)

This publication focusses on provisions of GST law which are relevant to different activities/ operations of banking sector like income earned by banks, claims of input tax credit, applicability of reverse charge, input service distributor etc. The publication has been updated with the latest provisions to facilitate members in discharging their professional duties.

GST Act(s) and Rule(s) - Bare Law

The publication “GST Act(s) and Rule(s) – Bare Law” is a compilation of seven Act(s) and two sets of Rule(s) pertaining to GST, namely the Constitution (101st Amendment) Act, the Central Goods & Services Tax Act, 2017, the Integrated Goods & Services Tax Act, 2017, the Union Territory Goods & Services Tax Act, 2017, the GST (Compensation to States) Act, 2017, the Central Goods & Services Tax (Amendment) Act, 2023, the Integrated Goods & Services Tax (Amendment) Act, 2023, the Central Goods & Services Tax Rules, 2017 and the Integrated Goods & Services Tax Rules, 2017. The publication is amended for the changes taken place up to 31st December, 2023.



GST & INDIRECT TAXES COMMITTEE OF ICAI

A ONE STOP DESTINATION FOR ALL INDIRECT TAXES

website: www.idtc.icai.org

The website of GST and Indirect Taxes Committee of ICAI viz. www.idtc.icai.org provides the users a well-set platform for sharing and gaining knowledge on GST and easy accessibility to the Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in all the indirect taxes laws vide various mediums like organising programmes, developing/ updating publications, sending regular updates, etc.

Main features:

- ❖ Regular GST/Indirect Taxes Updates
- ❖ Knowledge Bank of Indirect Taxes/GST-Articles, Legal Updates etc.
- ❖ Publications on GST and others IDT Law including UAE VAT Law etc.- (Available for free download and online ordering)
- ❖ Recordings of Live Webcasts/E-lectures on GST
- ❖ E-learning on GST
- ❖ Upcoming events
- ❖ Details of Certificate Courses, Programme, Seminars etc. on GST/Indirect Taxes
- ❖ Links of related important website

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

Secretary

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India
ICAI Bhawan, A-29, Sector - 62, NOIDA (U.P.) India

Telephone Board - +91 120 3045 900 Ext. 954, Website : <http://www.idtc.icai.org>

The ICAI-GST Newsletter being the property of The Institute of Chartered Accountants of India published from ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi-110002 and Printed from M/s CDC Printers Pvt Ltd, Tangra Industrial Estate- II (Bengal Pottery), 45, Radhanath Chaudhary Road, Kolkata-700015. Compiled by CA Sushil Kr Goyal