POSTAL REGN. NO. MP/IDC/412/2018-2020

34th YEAR OF PUBLICATION

Tax Law Decisions

A UNIQUE AND BEST MONTHLY MAGAZINE ON GST, VALUE ADDED TAX AND ALLIED LAWS IN TWO VOLUMES PER YEAR

FOUNDER EDITOR : DINESH GANGRADE

EDITOR : NILESH GANGRADE

Volume 65 Part - 3 September 2020

Associate : R.S. Arora Ret. Dy. CCT and Tax Consultant

RENEWAL SUBSCRIPTION - 2020

We hope you are happy with our regular despatches, timely reporting and presentation. Your subscription for the journal "Tax Law Decisions" end with the Part No. 6 of Volume 63 i.e. December 2019.

The Magazine **Tax Law Decisions** is entered into **34th year** of its publication from January, 2020. The Subscription Renewal **Rs. 2500/-** may be send by DD or MO or Cheque payable to TAX LAW DECISIONS at Indore at the following address

TAX LAW DECISIONS

'Tax Law House' F-312, Sewa Sardar Nagar, INDORE-452001 (M.P.)

Mobile : 898993-5075, 93295-84011

BANK ACCOUNT DETAILS FOR DEPOSITING RENEWAL SUBSCRIPTION

A/C NAME : TAX LAW DECISIONS

CURRENT A/c NO.: 05250200000193

IFSC CODE : UCBA0000525

UCO BANK, GRAM PIPLIYAHANA (0525)

PAYTM MOBILE NO.: 8989935075

GOOGLE PAY : 9329584011

Visit us on : dineshgangrade.com

अखण्ड मंडलाकारं व्याप्तं येन चराचरं
तत्पदं दर्शितं येन तस्मै श्री गुरुवे नमः

जय श्री कृष्ण

टीचर्स डे आ गया है। अंग्रेजी में एक ही शब्द है टीचर । परंतु हिंदी में कई शब्द है जैसे शिक्षक अध्यापक, उपाध्याय, आचार्य ,पंडित ,गुरु आदि ।

अंग्रेजी का यह दुर्भाग्य है कि एक ही शब्द टीचर हिंदी के इन सभी शब्दों के वास्तविक अर्थ की पूर्ति नहीं कर पाता है। पुराणों में कहा गया है कि वह व्यक्ति जो सिर्फ जानकारी देता है उसे अध्यापक कहा जाता है। जो व्यक्ति उसमें ज्ञान भी जोड़ दें उससे उपाध्याय कहते हैं । जो व्यक्ति कौशल भी दे उसे आचार्य कहते हैं। जो गहरी समझ प्रदान करें उसे पंडित कहते हैं ।

और जो व्यक्ति विवेक या बुद्धिमत्ता दे उसे गुरु कहा जाता है ।

इन सब पदों के लिए अंग्रेजी में एक ही शब्द टीचर कुछ अधूरा सा लगता है इस सबके उपरांत भी जो टीचर का कार्य कर रहे हैं उन सबको बधाई ।

प्रस्तुति - **राघवेंद्र दुबे**
से.नि. अपर आयुक्त वाणिज्यिक कर एवं
से.नि. लेखापाल सदस्य, म.प्र. वाणिज्यिक कर अपील बोर्ड

Volume 65 **Part – 3** **September 2020**

Tax Law Decisions

CONTENTS

STATUTES

* Central Goods and Services Tax (Tenth Amendment) Rules, 2020 **[No. 62/2020-Central Tax]** 98
G.S.R. 517(E). New Delhi, Dated 20th August, 2020

* Madhya Pradaesh Goods and Services Tax Rules, 2017-Amendment in Rules 125
No. F-A-3-06-2020-1-V(46) Bhopal, the 31st August 2020

☆☆

ARTICLES

* क्या जीएसटी कभी सरल होगा ? - सीए. सुधीर हालाखंडी 81

* जीएसटी ब्याज का प्रावधान - एक गंभीर विषय - सीए. सुधीर हालाखंडी 82

* इंस्पेक्शन, सर्च और सीजर के प्रावधान - सीए. सुधीर हालाखंडी 83

* जीएसटी के तहत गिरफ्तारी के प्रावधान - सीए. सुधीर हालाखंडी 88

* GST - Arrest Provisions - Sudhir Halakhandi 92

* राज्यों की क्षतिपूर्ति का मामला आखिर क्या हुआ जीएसटी की 41वीं मीटिंग में - सीए. सुधीर हालाखंडी 95

* साक्षात्कार श्री जी.पी. तिवारी साहब पूर्व अपर आयुक्त विक्रय कर/ वाणिज्यिक कर - नीलेश गंगराड़े 120

☆☆

PRESS RELEASES : PRESS INFORMATION BUREAU & CBIC

* Interest on delayed payment of GST: CBIC (26-8-2020) 103

* जीएसटी के विलंबित भुगतान पर ही देना होगा ब्याज : सीबीआईसी (26-8-2020) 103

* Borrowing options to meet the GST Compensation requirement for 2020-21 (29-8-2020) 104

* 2020-21 के लिए जीएसटी क्षतिपूर्ति आवश्यकता को पूरा करने के लिए ऋण विकल्प (29-8-2020) 115

* Launch of GSTR-2B for the month of July 2020 (29-8-2020) 115

* जुलाई 2020 का 'जीएसटीआर-2बी' अब पोर्टल पर उपलब्ध (29-8-2020) 117

* Import data in GSTR-2A (29-8-2020) 118

* 'जीएसटीआर-2ए' में आयात डेटा (29-8-2020) 119

☆☆

MISCELLANEOUS

* Gist of Chhattisgarh Notifications - 2020 127

☆☆

NOTIFICATIONS -

CENTRAL GOODS AND SERVICES TAX ACT, 2017

* Notification u/s **1(2)** of Finance Act, 2019 oppointing 1-9-2020 the date from which the provisions of Section 50 of the CGST Act, 2017 shall come into force **[No. 63/2020-Central Tax]** ***G.S.R. 527(E). New Delhi, Dated 25th August, 2020*** 101

* Notification u/s **148** of CGST Act, 2017 extending the due date for filing FORM GSTR-4 for financial year 2019-2020 to 31-10-2020 **[No. 64/2020-Central Tax]** ***G.S.R. 539(E). New Delhi, Dated 31st August, 2020*** 101

* Notification u/s **168A** of CGST Act, 2017 r/w Section 20 IGST Act amending No. 35/2020-Central Tax dated 3-4-2020 extending due date of compliance under Section 171 which falls during the period from '20-3-2020 to 29-11-2020' till 30-11-2020 **[No. 65/2020-Central Tax]** ***G.S.R. 542(E). New Delhi, Dated 1st September, 2020*** 102

☆☆

M.P. VAT ACT, 2002

* Notification u/s 9(2) of M.P. VAT Act, 2002 notifying Reliance BP Mobility Limited w.e.f. 3-6-2020 126
No. F A3-17-2010-1-V(47) Bhopal the 5th September 2020

☆☆

CHHATTISGARH CENTRAL GOODS AND SERVICES TAX ACT, 2017

* Notification u/s 2(99) of C.G. GST Act, 2017 appointing revisional authority w.e.f. 13-1-2020 126
[Notification No. 05/2020- State Tax]
No. F 10-64/2020/CT/V(98) Dated 7th August 2020

☆☆

CHRONOLOGICAL LIST OF NOTIFICATIONS -

CENTRAL GOODS AND SERVICES TAX ACT, 2017

* No. 62/2020-Central Tax Dated 20th August, 2020 98

* No. 63/2020-Central Tax Dated 25th August, 2020 101

* No. 64/2020-Central Tax Dated 31st August, 2020 101

* No. 65/2020-Central Tax Dated 1st September, 2020 102

☆☆

M.P. CENTRAL GOODS AND SERVICES TAX ACT, 2017

* No. F-A-3-06-2020-1-V (46) Dated 31st August 2020 125

☆☆

M.P. VAT ACT, 2002

* No. F A3-17-2010-1-V (47) 5th September 2020 126

☆☆

CHHATTISGARH CENTRAL GOODS AND SERVICES TAX ACT, 2017

* No. F 10-64/2020/CT/V (98) Dated 7th August 2020 126

☆☆

LIST OF CASES REPORTED

*	Agarwal Coal Corporation Pvt. Ltd., Indore	(AAR-MP)	231
*	Mahadeo Construction Co. Vs. The Union of India	(Jharkhand)	177
*	Mahadeo Construction Co. Vs. The Union of India	(Jharkhand)	177
*	Pushpak Chauhan & Other Vs. Harish Bakers & Confectioners Pvt. Ltd.	(NAA)	210
*	Saha Hospitality Ltd. Vs. The State of Maharashtra	(Bom)	204
*	Shree M. Revathi Printers Vs. The Deputy Commissioner, Chennai	(Mad)	206
*	Siddhi Developers Vs. Union of India	(Guj)	191
*	Sri Siddhi Kalko Bhagavan Stone Crusher Vs. The Assistant Commissioner ST	(AP)	208
*	Udaipur Cement Works Ltd. Vs. State of Gujarat	(Guj)	240
*	Union of India Vs. Saraf Natural Stone	(Guj)	196
*	Vippy Industries Ltd., Dewas	(AAR-MP)	213

☆☆

SUBJECT INDEX

* **AAR-MP -** Coal handling and distribution charges - Coal handling and distribution charges will be taxable @ 18% and not 5% wherever supply of such services only is intended to be expressly made to a customer. **Agarwal Coal Corporation Pvt. Ltd., Indore (AAR-MP) 231**

* **AAR-MP -** Rectification order - Bio Processed Meal - Preparation of a kind used in Animal Feeding 'Bio Processed Meal' is entitled to classify under HS Code 23099090. **Vippy Industries Ltd., Dewas (AAR-MP) 213**

* **Appeal -** The High Court held when substantial justice is pitted against technical considerations, it is always necessary to prefer the ends of justice and directed the respondents to entertain manually filed appeal - Section 107 of APGST Act, 2017 and Rule 108. **Sri Siddhi Kalko Bhagavan Stone**

Crusher Vs. The Assistant Commissioner ST & Others (AP) 208

* **C Form -** The assessee of Rajasthan purchased diesel from Gujarat and on refusal of Rajasthan authorities to issue C Form the seller of Gujarat charged full tax @ 20% - The Rajasthan High Court directed the authorities to issue C Form and held that petitioner was entitled to refund from concerned authorities who collected the excess tax - Finally on writ petition to Gujarat High Court, the High Court directed the authorities of Gujarat to refund the excess tax collected from the petitioner. **Udaipur Cement Works Ltd. Vs. State of Gujarat & 2 Other(s) (Guj) 240**

* **COVID-19 -** Attachment of bank account for realizing tax dues - The High Court allowed 6 months time for payment of balance due and also directed the respondents to defreeze bank account. **Shree M. Revathi Printers Vs. The Deputy Commissioner, Chennai (Mad) 206**

* **Interest -** Section 50 of the CGST Act, 2017 - Interest can not be determined without initiating any adjudication process either u/s 73 or 74 of the CGST Act. **Mahadeo Construction Co. Vs. The Union of India & Others (Jharkhand) 177**

* **Interest on delayed refund -** Section 56 of CGST Act, 2017 - Review - The High Court rejected the review application made by department and upheld its earlier order by which High Court directed to pay @ 9% per annuam interest on delay in grant of refund to exporters. **Union of India Vs. Saraf Natural Stone (Guj) 196**

* **NAA - Profiteering -** Reduction in rate - Since, no penalty provisions were in existence between the period w.e.f. 15-11-2017 to 31-3-2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. **Pushpak Chauhan & Other Vs. Harish Bakers & Confectioners Pvt. Ltd. (NAA) 210**

* **Recovery proceedings -** Section 79 of the CGST Act, 2017 - Without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount. **Mahadeo Construction Co. Vs. The Union of India & Others (Jharkhand)177**

* **Show cause notice -** Email sent to the petitioner was merely an intimation of payment of interest U/s. 50 of CGST Act and not the final order. **Saha Hospitality Ltd. Vs. The State of Maharashtra & Ors. (Bom) 204**

* **Tran-1 - Technical difficulties -** The High Court directed the respondents to complete the exercise of verification and permit the petitioner to upload the form GST TRAN-1. **Siddhi Developers Vs. Union of India (Guj) 191**

☆☆

(21) क्या जीएसटी कभी सरल होगा ?

- सीए. सुधीर हालाखंडी

इस शीर्षक से ही आपको समझ आ जाएगा कि इस समय जीएसटी सरल नहीं है लेकिन जैसा कि मैंने अभी एक दिन पहले ही लिखा है कि **''जीएसटी को सफल होना है तो जीएसटी को सरल होना होगा''**। तो आईये देखें इस सवाल का जवाब कि जीएसटी क्या अब सरल होगा और इससे जुड़े सवाल कुछ महत्वपूर्ण मुद्दों को । जीएसटी को सफल होना है तो इसे सरल होना होगा इस विषय से ना सरकार को ऐतराज होना चाहिए ना डीलर्स को और ना ही जीएसटी से जुड़े सभी प्रोफेशनल्स को ।

आईये सबसे पहले देखें कि सरलीकरण के एक बड़े दावे के साथ लाया गया जीएसटी जटिल क्यों हो गया कि इसके सरलीकरण के लिए आवाज उठाने की जरुरत हो गई । जीएसटी में रिटर्न फाइलिंग की व्यवस्था, इनपुट क्रेडिट देने से सम्बंधित नियम और इनपुट क्रेडिट के लेने पर लगाए गए अव्यवहारिक प्रतिबन्ध, टैक्स जमा कराने और उस पर ब्याज लगाने के प्रावधान, ई-वे सम्बंधित कानून, जीएसटी का वार्षिक रिटर्न और जीएसटी के अन्य प्रावधान इस तरह से बनाए गए की कर की चोरी रुक सके । यदि सरकार ने ऐसा किया भी है तो इसमें कुछ गलत नहीं है लेकिन इस सोच के पीछे जो मानसिकता थी वह इतनी सख्त थी कि ये प्रक्रियाएं भी काफी सख्त हो गईं जबकि कर की चोरी में जो डीलर्स शामिल होते हैं वह कुल डीलर्स का एक या दो प्रतिशत भी नहीं होते हैं और आप इन्हें डीलर्स कह भी नहीं सकते क्योंकि इनका उद्देश्य व्यापार करना नहीं होता है लेकिन इनके कारण पूरे उद्योग और व्यापार जगत को कठिन प्रक्रियाओं में उलझा कर रख दिया गया है ।

देखिये, कर या राजस्व अपने आप में कोई उत्पाद नहीं है यह तो अर्थव्यवस्था का एक सह-उत्पाद है और अगर अर्थव्यवस्था में व्यापार एवं उद्योग का विकास होता है तभी कर एकत्र होता है । आपको याद होगा कि जीएसटी लागू करते समय यह कहा गया था कि जीएसटी लागू होने से अर्थव्यवस्था का त्वरित विकास होगा तब भी मैंने लिखा था कि केवल किसी कर प्रणाली के लागू होने से अर्थव्यवस्था का विकास हो यह एक भ्रम है । अर्थव्यवस्था के विकास में कई कारक होते हैं और इनमें सरल कर प्रणाली भी एक कारक हो सकती है । लेकिन यहाँ ध्यान दें कि यह नयी कर प्रणाली सरल भी तो नहीं है इसलिए जीएसटी को अर्थव्यवस्था में जो योगदान देना था वह भी संभव नहीं हो पाया ।

अब एक मुख्य सवाल – क्या जीएसटी कभी सरल होगा ? इसका जवाब यह है कि जीएसटी के तीन मुख्य पक्ष हैं जिनमें से दो डीलर्स और प्रोफेशनल्स तो जीएसटी की जटिलताओं से परेशान हैं ही इसलिए वे तो सरल जीएसटी चाहतें ही हैं लेकिन उनके ये हाथ में नहीं है ।

जैसा कि मैंने ऊपर बताया सरल जीएसटी ही अर्थव्यवस्था के विकास में एक बड़ा कारक हो सकता है और अर्थव्यवस्था का विकास होगा तभी कर राजस्व में वृद्धी होगी और जीएसटी का तीसरा पक्ष अर्थात सरकार भी यही चाहेगी कि जीएसटी राजस्व में वृद्धि हो तो यह पक्ष भी देर-सवेर यह समझ जाएगा कि जीएसटी का सरल होना जरुरी है इसलिए जीएसटी सरल तो होगा ही और मेरी राय में अब वह समय आ भी गया है जब कि सरकार को जीएसटी को सरल बनाने की और त्वरित कदम उठाने प्रारम्भ कर देने चाहिए क्योंकि जीएसटी को सफल होना है तो जीएसटी को सरल होना ही होगा ।

❑

(22) जीएसटी ब्याज का प्रावधान – एक गंभीर विषय

- सीए. सुधीर हालाखंडी

जीएसटी की एक और विवादास्पद अधिसूचना जारी : जीएसटी की एक और विवादास्पद अधिसूचना संख्या 63 /2020 दिनांक 25 अगस्त 2020 जारी की है जिसके अनुसार जीएसटी में नेट टैक्स पर ब्याज लगाने का प्रावधान अब 1 सितम्बर 2020 से लागू होगा जब कि प्रारम्भ से ही यह प्रावधान ग्रॉस टैक्स पर लगने वाले ब्याज का प्रावधान अविवेकपूर्ण, अतार्किक एवं प्राकृतिक न्याय के विरुद्ध था और स्वयं जीएसटी कौंसिल 'नेट टैक्स' पर ब्याज लगाने के प्रावधान को 1 जुलाई 2017 से लागू करने की सिफारिश कर चुकी है ।

यह एक विवादास्पद अधिसूचना है जो कि किसी भी कानून के तहत विवेक, तर्क और न्याय के सिद्धांतों को तोड़ते हुए जारी की गई है क्योंकि ब्याज तो उसी टैक्स की रकम पर होना चाहिए जो सरकार को भुगतान होने से रह गई है और ऐसा 1 जुलाई 2017 से होना चाहिए और अधिसूचना का अर्थ कुछ भी हो सरकार को किसी भी तरह यह व्यवस्था तो लानी ही होगी कि 'नेट टैक्स' का प्रावधान 1 जुलाई 2017 से लागू हो ।

जीएसटी कौंसिल की अध्यक्षा वित्तमंत्री स्वयं ही हैं और यह अधिसूचना भी उनके अधीन आने वाले वित्त मंत्रालय ने ही जारी की है और जीएसटी कौंसिल की मीटिंग के बाद उन्होंने स्वयं ही यह घोषणा की थी तो फिर क्या हम मान कर चलें कि एक ही व्यक्ति के तहत आने वाली दो संस्थाओं में विवाद है और इसी विवाद के चलते यह अन्यायपूर्ण और विवादास्पद अधिसूचना जारी हुई है । वित्त मंत्री महोदया इस अधिसूचना का औचित्य तय करें और इसके प्रभाव को 1 जुलाई 2017 से लागू करवाएं यदि ऐसा नहीं हुआ तो जीएसटी कौंसिल की उपयोगिता और विश्वसनीयता पर यह एक बड़ा प्रश्नचिन्ह लग जाएगा ।

इस अधिसूचना के जारी होने का कारण कुछ भी हों इसमें संशोधन अब शीघ्र जारी हो जाना चाहिए अन्यथा जीएसटी कानून से अब हमें ज्यादा न्याय की उम्मीद नहीं करनी चाहिए ।

❑

(23) इंस्पेक्शन, सर्च और सीजर के प्रावधान

- सीए. सुधीर हालाखंडी

इंस्पेक्शन का आम बोलचाल की भाषा में हिंदी अर्थ है निरिक्षण। सर्च यानी तलाशी, सीजर का अर्थ है जब्त करना। हमारे आज के लेख में हम देखेंगे की जीएसटी के तहत निरिक्षण, तलाशी और किसी माल को, माल या सेवा से सम्बंधित दस्तावेजों, लेखों को जब्त करने के क्या प्रावधान हैं। चूँकि हम किसी कानून को समझने का प्रयास कर रहें हैं तो आपको आसानी से समझने के लिए और आपको कानून से जोड़ने के लिए हम निरिक्षण, तलाशी और जब्त करने के लिए इंस्पेक्शन, सर्च और सीजर शब्दों का भी प्रयोग कहीं-कहीं करेंगे।

निरीक्षण (INSPECTION) धारा 67(1) :

धारा 67 इंस्पेक्शन, सर्च और सीजर के सम्बन्ध में जीएसटी अधिकारियों के अधिकारों की बात करता है और धारा 67 (1) इंस्पेक्शन अर्थात निरिक्षण के सम्बन्ध में हैं और इस धारा के अनुसार इंस्पेक्शन का फैसला लेने का अधिकार एक ऐसे समुचित अधिकारी (Proper Officer) को है जो कि संयुक्त आयुक्त है या इससे ऊपर का अधिकारी है अर्थात संयुक्त आयुक्त से नीचे के अधिकारी इंस्पेक्शन का फैसला नहीं ले सकते हैं। अब सवाल उठता है कि इंस्पेक्शन करेगा कौन ? इंस्पेक्शन वो अधिकारी करेगा जिसे संयुक्त आयुक्त या उससे ऊपर का अधिकारी लिखित रूप में अधिकृत करेगा। आईये देखें इस संबंध में इंस्पेक्शन का फैसला कब लिया जा सकता है।

कब हो सकता है निरिक्षण :

यदि संयुक्त आयुक्त या इससे ऊपर के अधिकारी के पास यह विश्वास करने के कारण है कि-

(अ) किसी करयोग्य व्यक्ति (Taxable Person) ने निम्न में से कोई कार्य किये हैं :-

* किसी बिक्री या सप्लाई के व्यवहार जो कि माल, सेवा या दोनों के सम्बंध में है को छिपाया है
* अपने पास रखे स्टॉक के सम्बन्ध में किसी व्यवहार को छिपाया है।
* अपनी कानून के अनुसार पात्रता अधिक इनपुट क्रेडिट ली है अर्थात कानूनी प्रावधानों के तहत जो इनपुट क्रेडिट उचित रूप से उसे मिलनी थी उससे ज्यादा इनपुट क्रेडिट ले ली है।
* कर चोरी के उद्देश्य से जीएसटी कानून के विभिन्न प्रावधानों एवं बने हुए नियमों का उल्लंघन में शामिल रहा हो

(ब) किसी ट्रांसपोर्टर या किसी गोदाम, भण्डारण या किसी अन्य स्थान के मालिक या संचालक

ने निम्न में से कोई कार्य किया हो :-

1. ऐसा माल रखते हैं जिस पर कर का भुगतान नहीं किया गया है अर्थात कर बचाया गया है।

2. अपना हिसाब, रिकार्ड्स या कोई माल इस तरह से रखा है कि जिससे कर की चोरी होने की संभावना बनती है।

आईये यहाँ यह देख लें कि करयोग्य व्यक्ति की परिभाषा कानून में क्या दी हुई है। जीएसटी कानून की धारा 2(107) में Taxable Person की परिभाषा दी गई है। आईये इसे भी देख लेते हैं :

* करयोग्य व्यक्ति से यहाँ अभिप्राय उस व्यक्ति से है जो कि इस अधिनियम की धारा 22 या 24 के तहत रजिस्टर्ड है या रजिस्ट्रेशन के लिए उत्तरदायी है। - धारा 2(107)

अब यहाँ हमें समुचित अधिकारी (Proper Officer) की परिभाषा भी देख लेनी चाहिये :

* समुचित अधिकारी का आशय उस अधिकारी से आशय कमिश्नर या उनके द्वरा अधिकृत कोई अधिकारी जिसे समुचित अधिकारी के रूप में कमिश्नर द्वारा अधिकृत किया गया है -धारा 2(91)

यहाँ यह ध्यान रखे जहां धारा 67 के अधिकारों का प्रयोग करने का मामला है वहां समुचित अधिकारी संयुक्त आयुक्त के नीचे के पद का अधिकारी नहीं हो सकता है।

क्या इस प्रकार के जो कारण हैं उन्हें दर्ज करना जरुरी है तो आप याद रखें ऐसा करना अनिवार्य नहीं है क्योंकि कानून में विश्वास करने के कारण को लिखना जरुरी नहीं है लेकिन इस सम्बन्ध में **सीबीआईसी** की साईट पर इस सम्बन्ध में जो सामग्री उपलब्ध है उसमें से एक प्रश्न यहाँ दे रहे हैं जिससे इस सम्बन्ध में स्थिति कुछ ज्यादा स्पष्ट हो जायेगी।

प्रश्न :- निरीक्षण या तलाशी और जब्ती की प्राधिकृति जारी करने से पहले, क्या कथित 'विश्वास करने के कारण' को उचित अधिकारी द्वारा लिखित रूप में दर्ज किया जाना अनिवार्य है ?

उत्तर :- हालांकि अधिकारी को तलाशी के लिए एक प्राधिकृति जारी करने से पहले इस तरह के विश्वास के लिए कारणों को व्यक्त करना आवश्यक नहीं है, उसे वह सामग्री जिस पर उसका विश्वास आधारित था उसे विश्वास है उसका खुलासा करना होगा। विश्वास करने का कारण प्रत्येक मामले में निरपवाद रूप से दर्ज किये जाने की जरूरत नहीं है। हालांकि, यह बेहतर होगा यदि सामग्री/जानकारी आदि सर्च वारंट जारी करने से पहले या तलाशी की कार्यवाही से पहले दर्ज की जाएं।

तलाशी और जब्ती (Search and Seizer) धारा 67(2) :

ऊपर वर्णित निरिक्षण की रिपोर्ट के आधार पर या अन्य किसी आधार पर यदि संयुक्त आयुक्त या उनसे ऊपर का अधिकारी को ऐसा विश्वास करने का कारण है कि ऐसे माल जो जब्ती (Confiscation) के योग्य है या ऐसे दस्तावेज, बहियाँ या वस्तुएं जो इस कानून के तहत किसी प्रक्रिया में उपयोगी या महत्वपूर्ण होंगी को छिपाकर रख दिया गया है तो वह ऐसे माल, दस्तावेज, बहियाँ या वस्तुओं की तलाशी एवं जब्ती (सीजर) के लिए किसी जीएसटी अधिकारी को अधिकृत कर ऐसा करने के आदेश दे सकते है ।

इसके साथ ही संयुक्त आयुक्त या उनसे ऊपर के अधिकारी स्वयं भी चाहे तो तलाशी और जब्ती की कार्यवाही स्वयं भी कर सकते हैं ।

यहाँ यह स्वाभाविक ही है कि तलाशी के आदेश उसी जगह के लिए दिए जायेंगे जिस जगह के बारे में इस अधिकारी अर्थात संयुक्त आयुक्त या उनसे ऊपर के अधिकारी को कुछ कारणों के चलते विश्वास है कि उपरोक्त वर्णित माल, बहियाँ, दस्तावेज या वस्तुएं छिपाया गया है ।

जब माल की जब्ती व्यवहारिक रूप से संभव नही हो :

कई बार ऐसा भी होता है कि जो माल जब्त करना है उसे जब्त करना व्यवहारिक रुप से संभव नहीं होता है तो संयुक्त आयुक्त या उनके ऊपर का अधिकारी अथवा उनके द्वारा अधिकृत किये हुए अधिकारी ऐसे माल के मालिक या उस माल का संरक्षक को ऐसा आदेश देंगे कि वे बिना ऐसे अधिकारी की आनुमति के वह ऐसे माल को किसी भी प्रकार से वहां से हटाये नहीं, अलग नहीं करे या उसके सम्बन्ध में किसी भी तरह से व्यवहार नहीं करे ।

कब तक रखे जा सकेंगे बहियाँ और दस्तावेज :

यहाँ ध्यान रखें कि तलाशी और जब्ती के दौरान जब्त किये दस्तावेज, बहियाँ और अन्य वस्तुएं तब तक ही अपने कब्जे में रखेगा जब तक कि जीएसटी कानून की किसी भी प्रक्रिया के उनकी जांच के लिए जरूरी हो। अब कब तक जरुरी है इसका फैसला भी तो वही अधिकारी करते हैं जो कि जांच करते हैं अतः व्यवहारिक रूप से आप मान लें कि यह अधिकारियों के विवेक पर निर्भर है कि वे कब इन दस्तावेजों की जांच पूरी कर इन्हें सम्बंधित व्यक्ति को लौटाते हैं ।

कौन से दस्तावेज, बहियाँ पहले लौटानी होंगी - धारा 67 (3) :

वे दस्तावेज, बहियाँ और अन्य वस्तुएं जो जब्त की गई हैं या किसी भी व्यक्ति द्वारा पेश की गई हैं लेकिन इस कानून के प्रावधानों और नियमों के तहत किसी प्रकार का नोटिस जारी करते समय इन दस्तावेजों, बहियों और अन्य वस्तुओं पर कोई भरोसा नहीं किया गया या ये

नोटिस जारी करने के दौरान इन्हें आधार नहीं बनाया गया तो नोटिस जारी करने के 30 वें दिन तक लौटा दिया जाएगा। सीधी सी बात यह है कि जिन दस्तावेजों, बहियों और वस्तुओं के आधार पर कोई कर चोरी का या कोई नोटिस जारी ही नहीं किया गया है तो फिर उनका विभाग के लिये उपयोग ही नहीं होगा फिर उन्हें अपने पास रखने का कोई औचित्य नहीं है।

सील करने एवं ताला इत्यादि तोड़ने के अधिकार - धारा 67(4) :

यदि तलाशी के दौरान अधिकारी को उस किसी परिसर, अलमारी, इलेक्ट्रॉनिक साधन, बॉक्स या संदूक में जाने से या खोलने से रोका जाता है जहाँ उसे यह शक है कि कोई माल, बहियाँ, दस्तावेज, रजिस्टर्स छिपाए गए हैं, में जाने से रोका जाता है तो उस अधिकारी के पास उसे सील करने या तोड़ने का अधिकार होगा। यहाँ तोड़ने से आशय अन्दर घुसने के लिये ताला तोड़ना, पासवर्ड तोड़ना इत्यादि है। ये एक स्वाभाविक प्रावधान है जिससे अधिकृत अधिकारी तालाशी के दौरान अपना कार्य पूरा कर सके यदि सामान्य तरीके से उस अधिकारी को परिसर, अलमारी, इलेक्ट्रॉनिक साधन, बॉक्स या संदूक तक जाने से या खोलने से रोका जाता है।

जिस व्यक्ति से दस्तावेज, लेखे जब्त किये गए हैं क्या उसे उनकी प्रति या नकल लेने का अधिकार है - धारा 67 (5) :

यह बहुत ही महत्वपूर्ण प्रश्न है जो हर बार वहां विवाद का कारण बनता है जहाँ जब्ती और तलाशी की कार्यवाही होती है। आइये देखें कि जीएसटी कानून क्या कहता है इस सम्बन्ध में। जिस व्यक्ति से कोई भी बहियाँ, दस्तावेज इत्यादि जब्त किये जाते हैं वह अधिकृत अधिकारी की उपस्थिति में उनकी कॉपी ले सकता है या नकल कर सकता है। इसके लिए अधिकृत अधिकारी तय करेगा कि कॉपियां एवं नकल कब, किस समय और कहाँ से ली जा सकती हैं।

लेकिन यहाँ भी कानून ने एक और विवेकाधिकार अधिकृत अधिकारी को दे दिया है कि यदि वह ऐसा समझता है कि इस तरह से ली गई नकल एवं कॉपियां आगे होने वाली जाँच पड़ताल के लिये हानिकारक होंगे तो वे इसके लिए मना कर सकते हैं जहाँ भी इस तरह के प्रावधान बना कर अधिकृत अधिकारी को विवेकानुसार निर्णय लेने का अधिकार दिया जाता है उसमें परेशानी तो कर दाता को ही होती है।

तत्कालिक रूप से जब्त किये हुए माल को छोड़ना - धारा 67(6) :

जब्त किये हुए माल को नियमानुसार बांड भरने और वांछित जमानत देने के बाद या फिर वांछित टैक्स, ब्याज और पेनाल्टी भरने के बाद तात्कालिक आधार पर (on provisional basis) छोड़ दिया जाएगा। इसका प्रावधान जीएसटी अधिनियम के नियम संख्या 140 में किया गया है। इस सम्बन्ध में यदि माल पर लगने वाला कर, ब्याज एवं पेनाल्टी को चुकाए

बिना भी माल को एक सिक्युरिटी बांड भरने एवं उस माल पर लगने वाले कर, ब्याज और पेनाल्टी के बराबर बैंक गारंटी देनी होगी। यहाँ एक और बात ध्यान रखें कि यदि कोई माल जो तात्कालिक आधार पर छोड़े जाने के योग्य है और सम्बंधित व्यक्ति उसे बांड भरने के 30 दिन के भीतर इस तरह से नहीं छुड़ाता है तो समुचित अधिकारी को ऐसे माल को धारा 67 (8) के तहत निपटाने का अधिकार मिल जाएगा। धारा 67 (8) के तहत एक अधिसूचना जारी की गई है जिसमें ऐसे माल का जिक्र है जिसका निपटारा तुरंत करना हुआ है और यह सूचि जो दिनांक 13-6-2018 को अधिसूचना 27/2018 के जरिये जारी की गई है उसकी प्रविष्टी संख्या 17 में ऐसे माल का जिक्र है जो कि तात्कालिक रूप से छोड़ा जा सकता है लेकिन सम्बंधित व्यक्ति ने उसे सिक्यूरिटी बांड देने के 30 दिन के भीतर प्राप्त नहीं किया है।

यदि माल जब्ती के बाद नियत अवधि में नोटिस ही जारी नहीं हो ? धारा 67(7):

कानून की इस धारा के तहत यदि कोई माल जब्त किया गया है और ऐसी जब्ती के 6 माह तक इस माल के सम्बन्ध में कोई नोटिस नहीं जारी नहीं किया जाता है तो जब्त की गई तारीख से 6 माह बीत जाने के बाद वह माल छोड़ दिया जाएगा। यहाँ एक और बात है जो कि ध्यान रखने के योग्य है और वह है कि यदि पर्याप्त कारण प्रदर्शित किये जाते हैं तो यह 6 माह की अवधि समुचित अधिकारी द्वारा 6 माह तक के लिए और बढ़ाई जा सकती है।

भारतीय दंड प्रक्रिया संहिता 1973 के प्रावधान लागू होना - धारा 67(10) :

भारतीय दंड संहिता प्रक्रिया के तलाशी एवं जब्ती के सम्बन्ध में जो भी प्रावधान हैं, वे जहाँ तक हो सके, वह जीएसटी के दौरान की गई तलाशी एवं जब्ती पर भी लागू होंगे। लेकिन इसमें सिर्फ एक ही फर्क होगा कि जहाँ भारतीय दंड प्रक्रिया संहिता 1973 की धारा 165 (5) में जहाँ मजिस्ट्रेट शब्द प्रयोग किया गया है वहां जीएसटी में इसकी जगह आयुक्त शब्द का प्रयोग होगा।

करावंचन में लिप्त व्यक्ति के लेखे, दस्तावेज इत्यादि जब्त करना - धारा 67(11):

यदि समुचित अधिकारी के पास यह विश्वास करने के कारण है कि किसी व्यक्ति ने कर की चोरी की है या वह कर चोरी करने के प्रयास कर रहा है तो ये अधिकारी ऐसे कारणों को पहले रिकॉर्ड करेंगे और उसके समक्ष ऐसे व्यक्ति द्वारा प्रस्तुत लेखों, रजिस्टर और दस्तावेज को जब्त करेंगे और इसकी रसीद उस व्यक्ति को देंगे। इस तरह जब्त किये गए लेखों, रजिस्टर और दस्तावेज तब तक रोके रखेंगे जब तक कि उनकी जरुरत इस अधिनियम या उसके तहत बनाये गये नियमों के तहत किसी अभियोजन की कार्यवाहियों के लिए आवश्यक है।

आइये देखें कि यह धारा 67 (11) क्यों बनाई गयी है ?

यह धारा किसी भी व्यक्ति पर लागू हो सकती है उस व्यक्ति का करयोग्य व्यक्ति होना, ट्रांसपोर्ट ऑपरेटर होना या किसी गोदाम या भण्डारघर का मालिक या संचालक होना आवश्यक नहीं है । यह प्रावधान सभी व्यक्तियों पर लागू है ।

जीएसटी अधिकारी द्वारा जांच के लिए माल खरीदना - धारा 67(12) :

जीएसटी आयुक्त या उनके द्वारा अधिकृत किये गए अधिकारी बीजक या बिल से जुड़े मामलों की जाँच करने हेतु अपने द्वारा अधिकृत किये हुए किसी भी व्यक्ति द्वारा किसी भी करयोग्य व्यक्ति के कारोबार परिसर से माल या सेवा या दोनों के सेवा या माल को खरीद कर सकेंगे । ऐसे खरीदे गए माल को बेचने वाले व्यक्ति को वापिस लेना होगा और इस सम्बन्ध में जारी बिल को निरस्त कर वह राशि लौटानी होगी । जीएसटी अधिकारी जीएसटी डीलर्स के द्वारा जारी किये जाने वाले बिलों की जाँच कर सके इसलिए यह प्रावधान बनाया गया है इसके लिए आम तौर पर जरुरत पड़ने पर जीएसटी अधिकारी अपने द्वारा एक व्यक्ति को अधिकृत करते हैं जो कि डमी खरीददार बनाकर माल या सेवा की खरीद करता है ।

❑

(24) जीएसटी के तहत गिरफ्तारी के प्रावधान

- सीए. सुधीर हालाखंडी

आज आपसे हम जीएसटी कानून से जुड़े एक बहुत ही संवेदनशील मुद्दे पर चर्चा कर रहें है और वह है जीएसटी कानून में गिरफ्तारी के प्रावधान। जीएसटी जिस समय भारत में लगाया गया था उस समय एक सवाल सबसे अधिक चर्चा का विषय था वह था क्या जीएसटी में गिरफ्तारी भी हो सकती है ? और यदि हाँ तो किन परिस्तिथियों में किसी एक डीलर को जीएसटी अधिकारियों द्वारा गिरफ्तार किया जा सकता है और क्या जीएसटी कानून की किसी भी प्रक्रिया का पालन नहीं किये जाने पर ही किसी डीलर को जीएसटी अधिकारी गिरफ्तार कर सकते हैं।

आईये देखें कि क्या है जीएसटी कानून में गिरफ्तारी के प्रावधान और किस तरह हम यह कह रहें हैं कि सामान्य रूप से आम करदाता इनसे लगभग अप्रभावित है ।

कब लागू होंगे जीएसटी में गिरफ्तारी के प्रावधान :

जीएसटी में गिरफ्तारी के प्रावधान जीएसटी कानून की धारा 69 में दिए गए हैं जिसे हम धारा 13 के साथ पढ़ेंगे तो यह पायेंगे कि यह प्रावधान केवल विशेष प्रकार की कर की चोरी पर ही लागू है और तभी लागू होंगे जब कि कर की चोरी की रकम 2 करोड़ रुपये से अधिक हो तो आप यह मान कर चलिए आम करदाता का इस प्रावधान से सामान्य तौर पर कोई सम्बन्ध नहीं है । एक और बात जो इस प्रावधान के साथ जुड़ी है वह यह है कि स्थानीय जीएसटी अधिकारीयों को गिरफ्तारी का अधिकार प्राप्त नहीं है और यह गिरफ्तारी जरूरी है या नहीं है

इसका फैसला लेने का अधिकार सिर्फ जीएसटी आयुक्त को ही है और ऐसा फैसला लेने के बाद आयुक्त ही किसी अधिकरी को इस गिरफ्तारी के लिए अधिकृत करेंगे ।

आईये इन प्रावधानों का अध्ययन करें जो कि जीएसटी कानून की धारा 69 में दिये गये हैं :

जो मामले धारा 69 में गिरफ्तारी के लिए बताये गए हैं वे धारा 132(1) की उपधारा (a), (b), (c) और (d) में उल्लेखित हुए कर चोरी के मामले हैं आईये देखें कि ये क्या मामले हैं जिनमें यदि जीएसटी आयुक्त, यदि उनके पास ऐसा विश्वास करने के कारण हैं कि डीलर ने निम्नलिखित अपराध किये हैं और इनमें कर चोरी की रकम एक निश्चित सीमा से अधिक है तो वे डीलर की गिरफ्तारी के आदेश दे सकते हैं । आईये देखें कि धारा 132 (1) में उल्लेखित वे अपराध कौन से हैं :-

धारा 132 के वे मामले जिनमें जीएसटी आयुक्त धारा 69 के तहत गिरफ्तारी के आदेश दे सकते हैं -

धारा 132 की उपधारा	अपराध का विवरण
(a)	कर चोरी के उद्देश्य से कोई भी व्यक्ति बिना बिल जारी किये किसी भी माल या सेवा की सप्लाई करता है ।
(b)	कोई भी व्यक्ति जीएसटी प्रावधानों का उल्लंघन करते हुए किसी माल या सेवा अथवा दोनों की सप्लाई किये बिना ही बिल जारी करता है जिससे कोई गलत इनपुट ली गई हो या किसी प्रकार का रिफंड लिया गया हो ।
(c)	कोई भी बिना माल या सेवा अथवा दोनों की सप्लाई हुए बिना जारी किये गए ऐसे बिल जिनका उल्लेख ऊपर (b) में किया गया है के आधार पर इनपुट क्रेडिट लेता है ।
(d)	कोई भी व्यक्ति यदि जीएसटी कर अपने ग्राहक से एकत्र करता है और उसके जमा करने की नियत तिथी से तीन महीने तक उसे जमा नहीं कराता है ।

इन 4 प्रकार के अपराधों पर जीएसटी आयुक्त डीलर की गिरफ्तारी का फैसला ले सकते हैं यदि वे जरुरी समझे तो लेकिन यह फैसला लेने के पहले यह भी देखना होगा कि यह अपराध धारा 132(1) की उपधारा (i) अथवा (ii) के तहत दंडनीय हैं और यदि ऐसा नहीं है तो फिर गिरफ्तारी के आदेश नहीं दिए जा सकते हैं ।

132(1) की उपधारा (i) या (ii) का अध्ययन करने पर ये पता लगता है कि उपधारा

(i) तो 5 करोड़ से ऊपर की कर चोरी को संबोधित करती है और उपधारा (ii) 2 करोड़ से 5 करोड़ की कर चोरी के लिए है यहाँ आप ध्यान रखें कि हम यहाँ गिरफ्तारी के प्रावधान जो कि धारा 69 में दिए हैं उनका अध्ययन कर रहें हैं ना कि इन अपराधों पर सजा के प्रावधानों का। 2 करोड़ से ऊपर की चोरी पर गिरफ्तारी का प्रावधान तो है ही लेकिन इससे नीचे के अपराध भी तय हो जाने पर भी सजा का प्रावधान तो है ही लेकिन इनमें धारा 69 में दिए गए प्रावधानों के अनुसार गिरफ्तारी के आदेश नहीं दिये जा सकते हैं। इस प्रकार से यह स्पष्ट है कि किन अपराधों के लिए गिरफ्तारी के आदेश देने के अधिकारों का प्रयोग किया जा सकता है लेकिन यह भी ध्यान रखें इन प्रकरणों में टैक्स की चोरी की रकम 2 करोड़ से अधिक होनी चाहिए।

आईये इस सम्बन्ध में धारा 69 जो कि जीएसटी आयुक्त के गिरफ्तारी के अधिकारों के सम्बन्ध में है के अन्य प्रावधानों का अध्ययन करें :-

क्र.	प्रावधान
1.	यदि जीएसटी आयुक्त के पास ऐसे कारण हैं जिनसे उन्हें यह विश्वास होता ही कि एक डीलर ने धारा 132 की उपधारा (a), (b) , (c) और (d) में उल्लेखित कर चोरी का अपराध किया है और जीएसटी आयुक्त ऐसे विशिष्ट मामलों में जहां कर चोरी की रकम 2 करोड़ रूपये से अधिक हो गिरफ्तारी के आदेश दे सकते हैं। इसी तरह का अपराध यदि एक बार सजा पाने के बाद दूसरी बार किये जाते हैं और जिनमें धारा 132 के तहत 'फिर से सजा हो सकती है' तो आयुक्त 2 करोड़ की कर चोरी की सीमा को ध्यान में रखे बिना गिरफ्तारी का आदेश दे सकते हैं। आयुक्त ऐसे हर मामले में गिरफ्तारी के आदेश देंगे ही ऐसा भी कानून में नहीं लिखा है वे गिरफ्तारी के आदेश दे सकते हैं और यह जीएसटी आयुक्त के विवेक पर छोड़ा गया है कि वे इस बारे में क्या ऐसा आदेश देना चाहते हैं।
2.	यदि जीएसटी आयुक्त गिरफ्तारी का आदेश देते हैं तो वे इसके लिए अधिकारी को अधिकृत करेंगे। यहाँ ध्यान रखें गिरफ्तारी तो अधिकृत अधिकारी करेगा लेकिन उसे गिरफ्तारी का फैसला लेने का अधिकार नहीं है।
3.	गिरफ्तारी के लिए दो तरह के मामले होंगे। एक तो वह जिनमें जमानत मिल सकती है और दूसरे वे जिनमें गैर-जमानती होंगे। इन दोनों का विवरण इस लेख में आगे दिया जा रहा है।
4.	जिस भी व्यक्ति को इस कानून के तहत गिरफ्तार किया जाता है उसके अधिकारों की रक्षा का भी प्रबंध इस कानून में है। जिस व्यक्ति को इस धारा के तहत गिरफ्तार किया जाता है जहाँ उल्लेखित अपराध की श्रेणी गैर जमानती है तो उस डीलर को गिरफ्तारी

के कारण बताने होंगे और गिरफ्तारी के 24 घंटे के अन्दर मजिस्ट्रेट के सामने प्रस्तुत करना होगा ।

गैर जमानती अपराध वे होंगे जिनमें कर चोरी का आरोप 5 करोड़ से अधिक है ।

---

5. जहां उल्लेखित अपराध जिसके लिए गिरफ्तारी की गई है जमानती है अर्थात कर चोरी की आरोपित रकम 5 करोड़ रूपये से कम है वहां डीलर को जमानत दे दी जाएगी और यदि जमानत में कोई व्यवधान आता है तो उसे मजिस्ट्रेट को सुपुर्द करना होगा ।

---

6. जमानती मामलों के संबंध में गिरफ्तार व्यक्ति को जमानत पर या किसी अन्य तरीके से छोड़ने के जीएसटी के सहायक आयुक्त एवं उपायुक्त को वही अधिकार प्राप्त हैं जो कि एक पुलिस स्टेशन के इंचार्ज को इस सम्बन्ध में प्राप्त है ।

यहाँ यह ध्यान रखें कि गिरफ्तारी का आदेश देने के पहले जीएसटी आयुक्त को यह सुनिश्चित करना होगा कि उनके पास यह विश्वास करने के कारण हैं कि डीलर ने, ये अपराध जो ऊपर उल्लेखित हैं, किये हैं जिनका जिक्र धारा 132 (1) (a), (b), (c) और (d) में है और कर चोरी की रकम 2 करोड़ रूपये से अधिक है । डीलर की गिरफ्तारी एक बहुत ही संवेदनशील विषय है और इसलिए कानून में इस प्रावधान को बहुत ही सावधानी के साथ बनाया गया है । यहाँ यह ध्यान रखें कि 5 करोड़ से ऊपर की कर चोरी के अपराध गैर जमानती हैं और इससे नीचे के अपराध में जमानत उसी समय मिल सकती है ।

गिरफ्तारी कब की जानी चाहिए :

यह विशुद्ध रूप से आयुक्त के विवेकाधीन निर्णय पर आधारित है लेकिन जैसा कि मैंने पहले भी लिखा है गिरफ्तारी और वह भी एक कर कानून के तहत यह एक बहुत ही संवेदनशील मामला है । अत: इन अधिकारों का प्रयोग बहुत ही सावधानी से किया जाना चाहिए । निर्णय लेने के दौरान सामन्य रूप से निम्नलिखित कारकों को ध्यान में लेने के बाद ही शक्ति का उपयोग किया जाना चाहिए :-

1. अपराध की उचित जांच ।
2. फरार होने से व्यक्ति को रोकने के लिए
3. सबूतों के साथ छेड़छाड़ होने की संभावना को रोकने के लिए ।
4. गवाह या गवाहों को डरा देने या प्रभावित करने से रोकने के लिए ।

ये कुछ कारण हैं जिन्हें एक व्यक्ति को गिरफ्तार करने का निर्णय करते समय विचार किया जाना चाहिए ।

❑

(25) GST - Arrest Provisions

- CA. Sudhir Halakhandi

What is the Meaning of Arrest :

Taking into custody of a person under some lawful command or authority. In other words, a person is said to be taken and restrained of his liberty by power or colour of Lawful warrant.

From various Judicial Pronouncements.

When to Arrest :

* To ensure proper investigation of the case.
* To prevent such person from absconding.
* To prevent the possibility of tempering the evidence.
* Intimidating or influencing the witnesses.

Power of Arrest :

69(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or subsection (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

69(1) in Simple Language :

Commissioner has reason to believe that :-

a person has committed any offence which is specified in clause (a) or Clause (b) or Clause (c) or Clause (d) of Section 132(1)
and
which is punishable under Section 132(1)(i) or 132(1)(ii) or 132(2).

He may by order, authorise any officer of central tax to arrest such Person.

Offences for Arrest :

Section 132(1)(a)
Supplies any Goods or Services or both without issue of Invoice in violation of provisions of Act and Rules, with a intention to evade Tax.

Section 132(1)(b)
Issue any invoice without supply of Goods or services or both in violation of Provisions of this Act and rules leading to wrongful availment or utilisation of input credit or refund of Tax.
Section 132(1)(c)
Avails input credit using such invoices or bill referred to in clause (b)
Section 132(1)(d)
Collects any amount as Tax but fails to pay the same to the Government beyond a period of three months from the date on which payment becomes due.

When these offences can lead to arrest :

If these offences are punishable under section 132(1)(i) or 132(1)(ii) or 132(2).

132(1) (i) :- TAX EVASION ETC. EXCEEDS 5 CRORE

In cases where the amount of tax evaded or the amount of input credit wrongly availed or utilised or the amount of refund wrongly taken exceeds 5 crore rupees with a imprisonment for a term which may extend to 5 years and with fine.

132(1)(ii) :- TAX EVASION ETC. EXCEEDS 2 CRORE BUT NOT 5 CRORE

In cases where the amount of tax evaded or the amount of input credit wrongly availed or utilised or the amount of refund wrongly taken exceeds 2 crore rupees but does not exceed 5 Crore rupees with a imprisonment for a term which may extend to 3 years and with fine.

When these offences can lead to Arrest- 132(2) :

Second offence by a person who is already convicted under Section 132 for an offence then he shall be punishable for the second and every subsequent offences with imprisonment for a term which may extend to five years or with fine.

Section 69(2):- Cognizable offence :

When a person is arrested under section 69(1) for an offence which is mentioned under section 132(5) then the officer authorised to arrest the

person shall inform such of the grounds of arrest and produce him before him before a Magistrate within twenty – four hours.

Section 132(5) :- offences specified in Clause (a) to (d) of Section 132(1) which is punishable under Section 132(1)(i) shall be cognizable and nonbailable [i.e. exceeding 5 Crores]

Non-Cognizable or bailable offence :

As per Section 69(3)(a)

Where a person is arrested under sub-section (1) for any offence specified under Section 132(4), he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.

Section 132(4)

Notwithstanding anything contained in the code of criminal procedure, 1973 (32 of 1974), all the offences under this Act, except referred to in Section 132(5) shall be Non Cognizable and bailable.

Power of the Authorised officer in case of Non Cognizable Offence:

Section 69(3)(b):

In case of Cognizable and bailable offence, the deputy commissioner or Assistant commissioner shall, for the purpose of relating to an arrested person on bail or otherwise have the same powers and subject to the same provisions as an office in-charge of a Police station.

Precautions to be taken while arresting :

DK Basu Vs. State of West Bengal 1997 (1) SCC 416 Hon. Supreme Court has issued following guidelines:

1. Clear Identification of the Authorised Officers.
2. Arrest Memo- attested by witness either family member or respectable person of locality and counter signed by the arrestee.
3. The person arrested and detained shall have a right to inform to his one relative, friend or well wisher unless the witness of Arrest memo is a friend or relative of the arrestee.
4. The Time, Place of arrest and venue of custody to informed to next friend or relative of the arrestee, if he is living outside the city within 8 to 12 years.
5. The person arrested shall be informed about his right to inform his

relative or friend as soon as he put under arrest or detained.

6. An entry must be made in the diary regarding arrest of person, the name of next friend of the persons informed about the arrest and the name of officer whose custody the arrestee is.

* The arrestee should be examined at the time of arrest for major or minor injuries, at his request.
* The arrestee should be medically examined for every 48 Hours during his detention.
* The copies of all the documents including arrest memo should be sent to magistrate for his record.
* The arrestee may be permitted to meet his lawyers during interrogation though not throughout the interrogation.
* The police control room should be provided for the display of the arrest information within 12 hours of the arrest.

❑

(26) राज्यों की क्षतिपूर्ति का मामला आखिर क्या हुआ जीएसटी की 41वीं मीटिंग में

- सीए. सुधीर हालाखंडी

कोविड -19 के प्रभाव से केंद्र और राज्यों के राजस्व में भारी कमी आई है लेकिन सरकारों को अपने खर्चे और विकास की योजनाएं चलाने के लिए धन की आवश्यकता तो रहेगी ही और जीएसटी कौंसिल की 41वीं मीटिंग इसी मुद्दे का हल निकालने के लिए पहल की गई है। देखिये राजस्व यदि राज्यों का कम हो रहा है तो केंद्र का राजस्व भी इससे अछूता नहीं है और इस मुद्दे पर राजस्व का संकट दोनों ओर ही है या हम यह कहें कि चारों ओर ही है। लेकिन यहाँ चर्चा राज्यों के इस साल के जीएसटी राजस्व में नुकसान की है कि इसके लिए क्या किया जा सकता है।

जीएसटी कौंसिल की 41वीं मीटिंग में जो कुछ विचार विमर्श हुआ और केंद्र सरकार द्वारा जो राज्यों को राजस्व में कमी से क्षतिपूर्ति के लिए ऋण लेने का प्रस्ताव दिया गया जिस पर राज्यों से अलग अलग प्रतिक्रियाएं आ रही हैं। आईये सरल भाषा में समझें कि यह मुद्दा क्या है और इतना अधिक इस पर चर्चा क्यों हो रही है और यह भी देखें कि इसके अलावा कोई और विकल्प भी हैं ?

असल में इस मीटिंग का उद्देश्य केंद्र की ओर से राज्यों को राजस्व नुक्सान से भरपाई

नहीं था बल्कि राजस्व में कमी और क्षतिपूर्ति सेस से होने वाली वसूली के बीच जो बड़ा अंतर आने वाला है उसकी क्या व्यवस्था हो सकती है इसके बारे में केंद्र के विचारों या विकल्पों से केंद्र राज्यों को अवगत कराया गया है ।

आप यह मान कर चलिए जो भी राजस्व में कमी आई है या इस वर्ष बचे हुए समय में आने वाली है उसका कोई अतिरिक्त बोझ नहीं डाला जा रहा है क्योंकि इस सम्बन्ध में जो भी ऋण लिया जाएगा उसका और उसके ब्याज का भुगतान क्षतिपूर्ति सेस की वसूली से ही किया जाएगा और इसके लिए क्षतिपूर्ति सेस को जो कि इस समय 5 साल के लिए ही है उसे आगे बढ़ाया जाएगा ।

देखिये यदि राज्यों को जीएसटी लागू होने के कारण कोई राजस्व का नुक्सान हो रहा है तो केंद्र को इसकी पहले 5 वर्ष तक भरपाई करनी है और इसके लिए क्षतिपूर्ति सेस कुछ वस्तुओं पर लाया गया है जिनमें तम्बाकू और उससे जुड़े उत्पाद मुख्य रूप से शामिल हैं और इस रकम से राज्यों को राजस्व में कमी की क्षतिपूर्ति की जाती है लेकिन यह पूर्ति इस सम्बन्ध में एकत्र सेस से ही की जा सकती है और इस अंतर को भारत सरकार के कंसोलिडेटेड फण्ड से नहीं किया जा सकता अर्थात इसकी आपूर्ति तो होगी लेकिन यह क्षतिपूर्ति सेस की वसूली से ही होगी भले ही इसके लिए सेस को 5 साल से आगे बढ़ाना पड़े । इस समय सेस से भी वसूली एक सीमा तक ही हो सकती है और इसके द्वारा क्षतिपूर्ति की भी सीमा है लेकिन इस समय जो राजस्व का नुक्सान है वह कोविड-19 के कारण बहुत अधिक होने वाला है इसलिए विकल्पों की तलाश भी जरुरी है क्योंकि राज्य और केंद्र दोनों सरकारों को अपने खर्चे और विकास के लिए धन की आवश्यकता तो रहेगी ही ।

केंद्र के आकलन के अनुसार इस वित्त वर्ष में 10 प्रतिशत राजस्व की वृद्धि मानी जाए तो क्षतिपूर्ति की राशि पिछली वर्ष की राशि से कम होकर 97 हजार करोड़ होनी चाहिए और यह केंद्र का अनुमान है कि वह सेस के रूप में 65 हजार करोड़ की वसूली कर सकेगी । लेकिन इस वर्ष कोरोना के प्रकोप के प्रभाव से राज्यों के राजस्व में कमी की राशि लगभग 3 लाख करोड़ रुपये के आसपास रहने की उम्मीद है इसमें केंद्र के अनुमान के अनुसार 65 हजार करोड़ रुपये तो सेस से वसूल हो जाएगा लेकिन शेष रहा लगभग 2.35 लाख करोड़ के घाटे की कोई पूर्ति का फिलहाल कोई साधन केंद्र के पास नहीं है । इस सम्बन्ध में कुछ राज्यों की राय यह है की पहले 5 साल तक होने वाले हर घाटे की आपूर्ति केंद्र को किसी भी तरह से करनी चाहिए और इसके लिए ऋण भी लेना पड़े तो केंद्र सरकार ले और उसे राज्यों में आवश्यकता अनुसार बाँट दे ।

एक तो इस मीटिंग को लेकर कोई प्रेस रिलीज़ भी जारी नहीं हुआ और सरकार के प्रस्ताव का भी प्रिंट उपलब्ध नहीं है और इसका इन्तजार हमने 29 तारीख की शाम तक किया लेकिन

इसके बाद जो भी जानकारी जहाँ से भी उपलब्ध हुई उसके अनुसार आपको सरल भाषा में इस मीटिंग में रखे गए विकल्पों और उससे जुड़े मुद्दों के बारे में बता रहे हैं ताकि आप समझ सकें की आखिर यह क्या समस्या है जिसकी इतनी चर्चा हो रही है ।

इस 3.00 लाख करोड़ के अनुमानित घाटे के लिए केंद्र ने राज्यों के सामने 2 प्रस्ताव रखें हैं एक तो राज्य 97 करोड़ के घाटे के लिए एक विशेष व्यवस्था के अंतर्गत रिजर्व बैंक से ऋण ले जिसकी गारंटी केंद्र सरकार देगी जिसका भुगतान सेस से हुई वसूली से किया जाएगा ताकि राज्यों के राजस्व में कमी की तत्कालीन आपूर्ति हो सके और इस पर ब्याज भी उचित दर से ही लगाया जाएगा । यह ऋण सेस की वसूली से प्राप्त रकम के द्वारा चुकाया जाएगा और यह ऋण छोटा भी होगा और इसे 5 साल बाद सेस की वसूली किया जाएगा अर्थात इन राज्यों का 5 बाद भी सेस में हिस्सा बना रहेगा और इस इस प्रस्ताव से ऐसा लगता है कि सेस को जो कि 5 साल के लिए था उसे आगे बढ़ाया जाएगा लेकिन सवाल यह है कि क्या इस ऋण से राज्य सरकारों का काम चल जाएगा ? यह तो प्रत्येक राज्य की अपनी स्थिति पर निर्भर करता है कि इस समय उनकी जरुरत क्या है ।

लेकिन सवाल यह है राजस्व का घाटा तो 3 लाख करोड़ रुपये का है तो शेष राशि सेस की वसूली जो की 65 हजार अनुमानित है के बाद 2.35 लाख करोड़ रुपये का अन्तर बचता है उसकी राज्य व्यवस्था कैसे करेंगे और इसीलिये एक और विकल्प दिया गया है और यह दूसरा विकल्प यह है राज्य कुल 3 लाख करोड़ में से 65 करोड़ की सेस से वसूली को छोड़ते हुए बचे हुए लगभग 2.35 लाख करोड़ के लिए रिजर्व बैंक से विचार विमर्श कर ऋण लें ।

राज्य भी एक असमंजस की स्थिति में हैं और वे इस समय बहुत अधिक ऋण लेना नहीं चाहते लेकिन अभी शायद और कोई विकल्प नहीं है क्योंकि इस समय कर की दर बढ़ाकर राजस्व एकत्र करने का ना तो समय है ना ही इसमें कोई समझदारी है और इसके अतिरिक्त जबकि यह ऋण उसके संसाधनों पर कोई अतिरिक्त भार भी नहीं डालेगा क्योंकि इसका भुगतान तो आगे जाकर उपभोक्ताओं से वसूल होने वाले सेस से ही होने वाली है । अधिकांश राज्यों को इस दूसरे विकल्प का ही सहारा लेना पड़ेगा क्योंकि इस समय राजस्व वृद्धि की तो कोई आशा नहीं है । देखते हैं आने वाले दिनों में कौन सा राज्य किस विकल्प के लिए जाता है ।

राज्यों को इस विकल्प का चुनाव 7 दिन के भीतर करना है कि वे 97 हजार करोड़ रुपये का ऋण लेना चाहते हैं या वे पूरे शेष आपूरित घाटे अर्थात 2.35 का ऋण लेना चाहते हैं । राज्यों के पास ज्यादा विकल्प नहीं है उन्हें यह 2.35 लाख करोड़ का घाटा कहीं से तो जुटाना ही पड़ेगा वरना उनका काम कैसे चलेगा? सच बात यह है कि केंद्र सरकार इस मामले में और कोई सीधी मदद करने की स्थिति में नहीं है तब फिर राज्यों के लिए ऋण की व्यवस्था करना या करवाना और बाद में इसे उपभक्ताओं से सेस वसूल कर इसको चुकाना ही एक विकल्प है ।

राज्यों का भी एक प्रस्ताव हो सकता है कि केंद्र राज्यों की जरुरत के हिसाब से एक ऐसी रकम का आंकलन करे और इसके लिए स्वयं लोन ले और जब यह लोन क्षतिपूर्ति सेस से ही होना है तो फिर राज्यों के आलग अलग ऋण लेने की कहाँ जरुरत है जिसके जवाब में कुछ विशेषज्ञों की यह राय है कि यह सारा कर का अंतर जीएसटी को लागू करने से नहीं है बल्कि इसका बहुत बड़ा अंतर कोविड के कारण है लेकिन ऋण चाहे पहले विकल्प के तहत हो या दूसरे विकल्प के रूप में इसका भुगतान तो क्षतिपूर्ति सेस से ही होना है। यदि राज्य कम ऋण लेंगे तो क्षतिपूर्ति सेस 5वें वर्ष के बाद एक या दो साल ही आगे बढ़ेगा और यदि राज्यों ने ज्यादा ऋण लिया तो क्षतिपूर्ति सेस 5वें वर्ष के बाद अधिक साल तक आगे बढ़ेगा।

केंद्र सरकार ने भारत सरकार के महाअधिवक्ता की राय से भी मीटिंग के दौरान राज्यों को अवगत करा दिया है जिसके अनुसार राज्यों के इस घाटे की पूर्ति के लिए सेस फंड के अलावा भारत सरकार के कंसोलिडेटेड फण्ड का इस्तेमाल नहीं किया जा सकता है लेकिन इस कारण से राजस्व की कमी से राज्य और केंद्र दोनों ही जूझ रहें है इसलिए अब इसका कोई हल तो केंद्र के नेतृत्व में निकालना ही होगा क्योंकि यह जैसा कि माननीय वित्त मंत्री महोदया ने भी कहा है कि एक 'प्राकृतिक आपदा' है तो फिर केंद्र और राज्यों दोनों को ही इसका सामना आपसी सामंजस्य से ही करना होगा।

सेस इस समय मुख्य रूप से तम्बाकू और इससे जुड़े पदार्थों पर है और इसके अतिरिक्त कुछ प्रकार की करों पर है और चूँकि ऑटोमोबाइल सेक्टर से आप ज्यादा उम्मीद नहीं कर सकते तो फिर आने वाले समय में तम्बाकू पदार्थों पर आप बढ़ी हुई सेस देखेंगे जो शायद कोविड का प्रभाव कम होने पर ही नजर आयेगा। यह सेस 5 साल से ज्यादा चलेगी यह भी लगभग तय है वैसे भी एक बार कोई सेस लग जाए और वसूल भी होती रहे तो वह या तो उसी नाम से या किसी और नाम से जारी रहता ही है।

आपके लिए सरल भाषा में समझाया गया है कि जीएसटी कौंसिल की 41वीं मीटिंग में हुआ क्या है। जीएसटी कौंसिल इस मसले पर फिर से कुछ दिन बाद मिलेगी तब यह मामला और इस पर लिया गया फैसला और भी ज्यादा स्पष्ट हो जाएगा।

❑

(27) Central Goods and Services Tax (Tenth Amendment) Rules, 2020

No. 62/2020-Central Tax

G.S.R. 517(E). New Delhi, Dated 20th August, 2020 - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend

the Central Goods and Services Tax Rules, 2017, namely:-

1. Short Title and commencement.- (1) These rules may be called the Central Goods and Services Tax (Tenth Amendment) Rules, 2020.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 8, for sub-rule (4A), the following sub-rule shall be substituted with effect from 01st April, 2020, namely: -

"(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), with effect from 21st August, 2020, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in **Part B** of **FORM GST REG-01** under sub-rule (4), whichever is earlier.".

3. In the said rules, in rule 9, with effect from 21st August, 2020,-

(i) in sub-rule (1), for the proviso, the following provisos shall be substituted, namely:-

"Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the registration shall be granted only after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25:

Provided further that the proper officer may, for reasons to be recorded in writing and with the approval of an officer not below the rank of Joint Commissioner, in lieu of the physical verification of the place of business, carry out the verification of such documents as he may deem fit.";

(ii) in sub-rule (2), before the Explanation, the following proviso shall be inserted, namely:-

"Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of

Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the notice in **FORM GST REG-03** may be issued not later than twenty one days from the date of submission of the application.";

(iii) in sub-rule (4), for the word, "shall", the word "may" shall be substituted;

(iv) for sub-rule (5), the following sub-rule shall be substituted, namely:-

"(5) If the proper officer fails to take any action, -

(a) within a period of three working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number or is notified under sub-section (6D) of section 25; or

(b) within the time period prescribed under the proviso to sub-rule (2), in cases where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8; or

(c) within a period of twenty one days from the date of submission of the application in cases where a person does not opt for authentication of Aadhaar number; or

(d) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under subrule (2),

the application for grant of registration shall be deemed to have been approved.".

4. In the said rules, in rule 25, with effect from 21st August, 2020, after the words "failure of Aadhaar authentication", the words "or due to not opting for Aadhaar authentication" shall be inserted.

Note : The principal rules were published in the Gazette of India, *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published *vide* number G.S.R. 610(E), dated the 19th June, 2017 and was last amended *vide* notification No. 60/2020-Central Tax, dated the 30th July, 2020, published *vide* number G.S.R. 480(E), dated the 30th July, 2020.

[*Published in the Gazette of India dated 20-8-2020*]

❑

(28) Notification u/s 1(2) of Finance Act, 2019 oppointing 1-9-2020 the date from which the provisions of Section 50 of the CGST Act, 2017 shall come into force

No. 63/2020-Central Tax

G.S.R. 527(E). New Delhi, Dated 25th August, 2020 - In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of September, 2020, as the date on which the provisions of section 100 of the Finance (No. 2) Act, 2019 (23 of 2019), shall come into force.

[*Published in the Gazette of India dated 25-8-2020*]

❑

(29) Notification u/s 148 of CGST Act, 2017 extending the due date for filing FORM GSTR-4 for financial year 2019-2020 to 31-10-2020

No. 64/2020-Central Tax

G.S.R. 539(E). New Delhi, Dated 31st August, 2020 - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:-

In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words 31st day of August, 2020 , the figures, letters and words 31st day of October, 2020 shall be substituted.

Note : The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 322(E), dated the 23rd April, 2019 and last amended by notification No. 59/2020-Central Tax, dated the 13th July, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 443(E), dated the 13th July, 2020.

[*Published in the Gazette of India dated 31-8-2020*]

❑

(30) Notification u/s 168A of CGST Act, 2017 r/w Section 20 IGST Act amending No. 35/2020-Central Tax dated 3-4-2020 extending due date of compliance under Section 171 which falls during the period from '20-3-2020 to 29-11-2020' till 30-11-2020

No. 65/2020-Central Tax

G.S.R. 542(E). New Delhi, Dated 1st September, 2020 - In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (i), the following proviso shall be inserted, namely: -

Provided that where, any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of November, 2020.

Note : The principal notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 235(E), dated the 3rd April, 2020 and was last amended by notification No. 55/2020–Central Tax, dated the 27th June, 2020, published in the Gazette of India, Extraordinary *vide* number G.S.R. 416(E), dated the 27th June, 2020.

[*Published in the Gazette of India dated 1-9-2020*]

❑

(31) Interest on delayed payment of GST: CBIC

Press Information Bureau
Government of India, Ministry of Finance

26-August-2020, 5:34 PM

The Central Board of Indirect Taxes & Customs (CBIC) today clarified that the Notification No. 63/2020-Central Tax dated 25th August 2020 relating to interest on delayed payment of GST has been issued prospectively due to certain technical limitations. However, it has assured that no recoveries shall be made for the past period as well by the Central and State tax administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the taxpayers as decided by the GST Council.

CBIC explanation came in response to an assortment of comments in the social media with respect to Notification dated 25th August 2020 regarding charging of interest on delayed payment of GST on net liability (the tax liability discharged in cash) w.e.f. 1st September 2020.

❑

(32) जीएसटी के विलंबित भुगतान पर ही देना होगा ब्याज : सीबीआईसी

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

26 अगस्त, 2020, 5:34 पीएम

केन्द्रीय प्रत्यक्ष कर एवं सीमा शुल्क (सीबीआईसी) विभाग ने आज स्पष्ट किया कि जीएसटी के भुगतान में देरी पर ब्याज से संबंधित 25 अगस्त, 2020 की अधिसूचना संख्या 63/2020-केन्द्रीय कर संभावित रूप से कुछ तकनीक सीमाओं को देखते हुए जारी की गई है। हालांकि यह भरोसा दिलाया गया है कि जीएसटी परिषद की 39वीं बैठक के दौरान लिए गए फैसले के क्रम में केन्द्र और राज्य सरकार द्वारा पिछली अवधियों के लिए कोई वसूली नहीं की जाएगी। इससे जीएसटी परिषद द्वारा लिए गए फैसले के क्रम में करदाताओं को पूरी राहत सुनिश्चित की जाएगी।

सीबीआईसी का स्पष्टीकरण 1 सितंबर, 2020 तक कुल देनदारी (नकद में कर देयता निर्वहन) पर जीएसटी के विलंबित भुगतान पर वसूले जा रहे ब्याज के संबंध में 25 अगस्त, 2020 की अधिसूचना के संबंध में सोशल मीडिया में आई कुछ टिप्पणियों के क्रम में आया है।

❑

(33) Borrowing options to meet the GST Compensation requirement for 2020-21

Press Information Bureau
Government of India, Ministry of Finance

29-August-2020, 3:45 PM

The two borrowing options to meet the GST Compensation requirement for 2020-21 consequent to the discussions in the 41stmeeting of the GST Council held on 27th August, 2020 has been communicated to States, **as per the document** attached with this press note, to communicate their preference within seven working days. A meeting of State Finance Secretaries with the Union Finance Secretary and Secretary (Expenditure) is scheduled to be held on 1st September, 2020 for clarifying issues, if any.

Please see Annexure

GST COMPENSATION OPTIONS

This paper describes the two options mentioned at the GST Council meeting on 27th August 2020, with a view to enabling the States to give their preference and views thereon within seven working days. Certain background information as furnished in the Council meeting is appended in Annex 1.

After the scheme is finalized, the states can chose either Option 1 or Option 2 and accordingly their compensation, borrowing , repayment etc will be dealt as per their individual choice. The options are applicable **only for the shortfall occurring in the current financial year**.

BACKGROUND AND LEGAL POSITION

Legal position

The Constitution (101st Amendment) Act 2016 contains the following provision:

Parliament shall, by law, on the recommendation of the Goods and Services Tax Council,provide for compensation to the States ***for loss of revenue arising on account of implementation of the goods and services tax*** *for a period of five years (emphasis added)*

In pursuance of this provision, Parliament enacted the Goods and Services Tax (Compensation to States) Act 2017. The preamble of this Act reads as follows:

An Act to provide for compensation to the States ***for the loss of revenue arising on account of implementation of the goods and services tax*** *in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016 (emphasis added).*

The said Act provides in Section 7 the detailed mechanism for calculation and payment of compensation to the States. In essence, the compensation payable is the projected revenue (at a compound growth rate of 14% from the base figure of 2015-16) minus the actual revenue in each period.

The Constitution and the preamble to the Act lay out the spirit and purpose of the GST compensation: namely that it is to compensate states for loss of revenue "**arising on account of implementation of GST".** The wording of the Constitutionand statutory preamble make it clear that the spirit of the law is not to compensate states for all types of revenue losses, but rather for that loss arising from GST implementation.

This year the Indian economy, nay the global economy, is suffering from an exogenous shock, namely the Covid-19 pandemic, whose scope and scale is unprecedented in history.

Parliament obviously could not have contemplated a historically unprecedented situation of huge losses of revenue from the base-arising from an Act of God quite independently of GST implementation-affecting both Central and State revenues, direct and indirect.

Nevertheless, the operative sections of Section 7 do not make such a distinction. Compensation is payable for the entire shortfall (even if it is not on account of GST implementation). This position has been clarified by the Attorney General and **is accepted by the Central Government**.

The manner of payment of compensation is also prescribed under the Act in Section 10. Compensation is to be paid out of the non-lapsable GST Compensation Fund. As per Section 10(1), the inflows to the Fund are from the GST Compensation Cess levied under Section 8 of the Act and "such other amounts as may be **recommended by the Council**". There is no provision for any amount other than Cess to be credited except based on recommendations of the Council. Section 10(2) provides that all compensation payable under Section 7 "shall be paid out of the Fund".

It has been clarified by the Attorney General that the Act does not require the Government of India to bear the liability of making good the

shortfall and that it is the GST Council which has to decide on making good the shortfall.

In short the correct legal position is that:

(i) The states are entitled to compensation as per the method provided in Section 7 for the transition period, regardless of the cause of the shortfall

(ii) However, compensation is to be paid only from the Compensation Fund and it is not an obligation of the Government of India in the event of a shortfall

(iii) It is for the GST Council to decide on the mode of making good the shortfall.

(iv) To the extent the shortfall is not made good, the States would still be eligible to get it in arrears after the transition period through extension of the Cess, if so decided by the Council.

EARLIER DISCUSSIONS ON RESPONSIBILITY FOR SHORT-FALL IN GST COUNCIL & PARLIAMENT

The possibility of a shortfall was **anticipated even at the time of the contemplation and passing of the relevant legislation**.

During the discussions in the 5th GST Council meetings held on 2nd/ 3rd December, 2016, the 7th GST Council meeting held on 22nd /23rd December, 2016 and the 8th GST Council meeting held on 3rd /4thJanuary 2017, the relationship between compensation andcompensation cess was extensively discussed. Several states raised the point that the obligation to give compensation should not berestricted to the amount of compensation cess and in case of any shortfall, theshortfall should be made good by the Centre.

In the 7th Council Meeting held on 22-23 December, 2016, the then Chairperson ShriArun Jaitley, while expressing the commitment to provide full compensation, stated that

"the demand for payment of compensation from the Consolidated Fund of India essentially meant funding compensation from Income Tax or non-tax revenues of the Central Government, which would be a challenge as the Central Government also had its own committed expenditure. He said that based on these considerations, certain principles had been agreed upon, namely that the compensation would be funded out of the cess mechanism, which would have a pool of

revenue and if there was any shortfall in this pool, it could be supplemented by some mechanism that the Council might decide"[Para 21].

Therefore, it is very clear from the deliberations of the Council that the compensation had to be paid out of the Compensation Fund and not the Consolidated Fund of India. This issue was again raised in the 8th meeting held on 3-4 January, 2017, wherein the Chairperson stated that

"…..in case the amount in the GST Compensation Fund fell short of the compensation payable in any bimonthly period, the GST Council shall decide the mode of raising additional resources including borrowing from the market which could be repaid by collection of cess in the sixth year or further subsequent years". [Para 23 (iii)].

The Government of India (GOI)stands by the statement of Shri Jaitley and is actively working with the States to work out such an arrangement.

The issue of Government of India's responsibility for meeting any shortfall was also explicitly brought up in Parliament, where an amendment had been tabled seeking that compensation be paid from the Consolidated Fund of India.Hon'ble Member of Parliament Shri. K.C. Venugopal (Alappuzha) moved the following amendment:

"The compensation to the States for loss of revenue arising on account of implementation of the Goods and Service tax shall be paid from the Consolidated Fund of India"

The said amendment was **voted on and negatived**. Hence this was a conscious decision of the legislature that compensation shall not be from the Consolidated Fund of India. There is no scope for ambiguity about the legislative intent.

In short:

(i) The legal position as set out above regarding the role of the Government of India is not a new or fanciful interpretation of the law.It is the correct and proper interpretation which was **thoroughly discussed in the GST Council and in Parliament before the relevant legislation was passed.**

(ii) The **Government of India is committed to implementation of the Act in letter and in spirit - in letter by adhering to the legal**

provisions and in spirit by honouring the commitment made by the former Chairperson in regard to the manner of meeting the shortfall. In accordance with this commitment, certain options for borrowing are presented here. The Government of India **will support extension of the Compensation Cess for such period as may be necessary to completely discharge any arrears of compensation.**

Ways of Meeting the Shortfall:

The prevailing economic situation is such that Central revenues are under greater strain than GST revenue. While indirect taxes are linked to transactions, and recover in proportion to activity, direct taxes on profits are disproportionately reduced in the present situation. Direct taxes on wages and salaries are also seriously affected. Customs revenues are also hit by the slowdown in imports. Central expenditures are stretched not only by the pandemic response but also by the needs of national security. This is a national problem not a Central Government problem alone.

As such the only practical way forward is based on the statement of the former Chairperson mentioned earlier, namely by borrowing and then repaying the borrowing by extension of cess beyond the fifth year.

The question arises of who should borrow. The notion of borrowing by the GST Council is not practically or legally feasible or desirable. This leaves the options of Central or state borrowing.

The Government of India faces a very large borrowing requirement this year. Additional borrowing by the Centre influences the yields on Central government securities (g-secs) and has other macro-economic repercussions. The yield on G-secs acts as a benchmark for State borrowing as well as private sector borrowing. Hence any rise in Central borrowing costs ipso facto drives up borrowing costs for all borrowers, including not only the States but also the entire private sector.

On the other hand, the yields on State Government securities do not directly influence other yields and do not have the same type of macroeconomic repercussions. Hence it is in the collective interest of Centre and States, and in the interest of the nation and of all economic entities including the private sector, not to do any avoidable borrowing at the Central level when it could be done at the State level.

Borrowing by states typically incurs a higher interest cost than borrowing

by the Centre. **The Government of India is conscious of this and has factored this below, with a view to protecting the states so that they are not adversely affected.**

Option 1

I. The shortfall **arising out of GST implementation** (calculated at Rs. 97,000 crores approximately) will be borrowed by States through issue of debt under a Special Window coordinated by the Ministry of Finance.

II. It will be the endeavour to ensure steady flow of resources similar to the flow under GST compensation on a bi-monthly basis.

III. The GOI will endeavour to keep the cost at or close to the G-sec yield, and in the event of the cost being higher, will bear the margin between G-secs and average of State Development Loan yields up to 0.5% (50 basis points) through a subsidy.

IV. A special borrowing permission will be given by the GOI under Article 293 for this amount, **over and above any other borrowing ceilings eligible under any other normal or special permission notified by Department of Expenditure.**

V. In respect of Union Territories (including National Capital Territory), suitable arrangements to ensure flow of resources under the Special Window to them would be made by the Government of India

VI. The interest on the borrowing under the Special Window will be paid from the Cess as and when it arises until the end of the transition period. After the transition period, principaland interest will also be paid from proceeds of the Cess, by extending the Cess beyond the transition period for such period as may be required. **The State will not be required to service the debt or to repay it from any other source.**

VII. States will also be given permission to borrow the final instalment of 0.5% (originally intended as a bonus for completing at least three of the four specified reforms) allowed in para 4 of the Department of Expenditure's OM F.No. 40(06)/PF-S/2017-18 dated 17-5-20 (hereinafter referred to as DOE OM) even without meeting the pre-conditions. This will enable borrowing of approximately Rs. 1 lakh crores in aggregate.

VIII. The first instalment of 0.5% unconditional borrowing permission granted vide para 4 of the DOE OM remains unaffected. The reform-linked

tranches specified in paras 5 to 8 of that OM also remain unaffected.

IX. In modification of para 9 of the DOE OM, States will be able to carry forward unutilised extra borrowing ceilings given under that OM to the next financial year; the instalments under para 4 (0.5 unconditional + another 0.5 as per para VII above) can be carried forward unconditionally; the reform-linked portions can be carried forwardif the States meet the reform criteria within the dates already prescribed for this year.

X. The borrowing under the Special Window **will not be treated as debt of the State** for any norms which may be prescribed by the Finance Commission etc.

XI. The Compensation Cess will be continued after the transition period until such time as all arrears of compensation for the transition period are paid to the States. The first charge on the Compensation Cess each year would be the interest payable; the second charge would be the principal repayment. The remaining arrears of compensation accrued during the transition period would be paid after the interest and principal are paid.

Option 2

I. The entire shortfall of Rs 235,000 crores (including the Covid-impact portion) may be borrowed by States through issue of market debt.The GOI will issue an OM committing to repayment of principal on such debt from Cess proceeds as per para IV below.

II. Appropriateenhanced special borrowing permission will be given by the GOI under Article 293 based on the following methodology, in modification of scheme notified earlier under the DOE OM:

a. Each state's borrowing limits for the year will be based on the following calculation:

Basic eligibility (3 % of GSDP) + Amount allowed for shortfall as per Item I above of Option 2+ up to 1% of GSDP (reform linked as per paras 5 to 8 of DOE OM)

or

Basic eligibility (3% of GSDP) + 1% of GSDP + up to 1% of GSDP (reform-linked as per paras 5 to 8 of DOE OM)

whichever is higher.

b. The additional unconditional borrowing limit of 0.5% and the final (bonus) tranche of 0.5% under para 4 of the DOE OM will not be separately available, being subsumed under the calculation above.

c. States will remain eligible for the reform-linked tranches of borrowing under paras 5 to 8 of the DOE OM this yearbut shall not be eligible to carry them forward. The maximum amount which can be availed under that OM shall stand reduced to 1% of GSDP instead of 2% of GSDP.

III. The interest shall be paid by the States from their resources.

IV. The principal on the amount under Item I above will, after the transition period,be paid from proceeds of the Cess.**The States will not be required to repay the principal from any other source**.

V. To the extent of the shortfall arising due to implementation of GST (i.e. Rs. 97,000 crores approximately in aggregate) the borrowing **will not be treated as debt of the State** for any norms which may be prescribed by the Finance Commission etc.

VI. The Compensation Cess will be continued after the transition period until such time as all arrears of compensation for the transition period are paid to the states. The first charge on the future Cess would be the principal repayment. The remaining arrears of compensation accrued during the transition period would be paid after the principal is paid.

Annex 1: Background Information

1. As per Section 7 of the GST (Compensation to States) Act, 2017, the States are required to be compensated for loss of revenue due to implementation of GST (w.e.f. 1-7-2017) for 5 years' period. For the purpose of paying such compensation to States, as per section 8 of GST (Compensation to States) Act, 2017, there is provision for levy of cess on certain luxury items and demerit goods and this cess collected is to be credited into a Public Account known as GST Compensation Fund and bi-monthly payment of GST Compensation to States is released from Compensation Fund during transient period.

2. As per Section 10(2) of this Act all amounts payable to the States under Section 7 shall be paid out of GST Compensation Fund.

3. Taking into account the adequate Cess collection during FY 2017-18

& 2018-19, regular GST compensation has been released to the States and certain amount of Cess remained unutilized during these years. However, the cess collected during FY 2019-20 has not been sufficient for GST Compensation payable to States/UTs for the year. The total amount of compensation released provisionally for the year 2019-20 is Rs. 1,65,302 crore whereas the amount of cess collected during the year 2019-20 was Rs. 95,444 crore. To meet this excess release of Rs. 69,858 crore during the year 2019-20, Centre had transferred Rs. 33,412 crore from Consolidated Fund of India to the Compensation Fund as a part of an exercise to apportion balance of IGST pertaining to 2017-18 and the rest came from the unutilised cess balance during the FY 2017-18 & 2018-19 and current year cess collection as well.

Compensation Cess collected and compensation released

(Figures in Rs. Crore)

	2017-18	**2018-19**	**2019-20**	**2020-21**	**Total**
Compensation Cess Collected (Net)	62,612	95,081	95,444	21,355 (till July'21)	2,74,492
Compensation released	41,146	69,275	1,20,498 (till Nov'19)	65,546 (till Mar'20)	2,96,465
Balance	21,466	25,806	(-25,054)	(-44,191)	(-21,973)[1]

4. Further, the likely monthly cess collection of less than RS. 8,000 cr per month after 30th June, i.e. on opening of Economic Activities after Covid-19 pandemic, is not sufficient to meet the requirement of GST compensation liability and therefore, there is a need to discuss ways and means to fill the gap between the compensation requirement and compensation cess collection.

5. This issue was discussed in the 41st GST Council meeting held on 27th August 2020. The GST Council took note of the fact the projected

1. *1 Taking into account the amount RS.33,412 crore transferred from the Consolidated Fund of India to Compensation Cess Fund as a part of an exercise to apportion balance of IGST pertaining to 2017-18, the cess balance available in CFI as on 31st July, 2020 is* ***Rs. 11,438*** *crore*

shortfall for the current year would be of the order of RS. 3 lakh crore. Against this shortfall, the compensation cess available during the year would be only RS. 70,000 crore leaving an unmet shortfall of RS. 2.3 lakh crore.

6. It was also presented before the Council that part of this shortfall can be attributed to **implementation of GST** and a part to COVID-19. To project the loss of revenue due to implementation of GST, it would be prudent to assume that in absence of impact of the pandemic, the post settlement GST revenues of the States would be an increase of about 10% over the post settlement GST revenues of 2019-20. The table shows the calculation of the revenue and compensation gap.

Rs. crore

1.	Protected Revenue (Apr-Jan)		6,38,339
2.	2019-20 SGST (Apr-Jan)		4,30,147
3.	2020-21 SGST (Apr-Jan projected) [10% over (2)]		4,73,161
4.	Revenue Gap [(1)-(3)]		1,65,178
5.	Estimated Compensation Cess available in 2020-21 [(a)+(b)]		68,700
	(a) Balance as on 31.07.2020	*11,438*	
	(b) Estimated collections till March	*57,266*	
6.	**Estimated Compensation Shortfall [(4)-(5)]**		**96,477**

Annex 2: Opinion of the Attorney General of India

Taking into account the shortage of cess collection during current FY, Central Government has sought the legal opinion of Ld. Attorney General of India on 5 points on the issue of release of GST compensation to States vide note dated 01.06.2020 and the point-wise summary of opinion given by Ld. Attorney General is as under:-

(i) In case the balance in the Goods and Services Tax Compensation Fund is not adequate to meet the compensation payable under Section 7, are the States still entitled to receive the full amount of compensation calculated as per the provisions of the Goods

and Services Tax (Compensation to States) Act, 2017?

Opinion – The States are entitled to receive the full amount of compensation during the "transition period", in accordance with the provisions of the Act, irrespective of shortfall.

(ii) In case the balance in the Goods and Services Tax Compensation Fund is not sufficient, is there an obligation on the Centre to meet the shortfall wholly or partly?

Opinion–There is no express provision in the Compensation Act for the Government of India to bear the liability of making good the shortfall. It is the GST Council which has to decide on making good the shortfall in the GST Compensation Fund, by providing for sufficient amounts to be credited to it.

(iii) What are the options before the GST Council, Union and States to meet the said shortfall? Can the GST Council recommend extension of period during which the compensation for the transition period can be paid to the States in terms of Section 8?

Opinion – No provision exists in the Compensation Act for extending the period of five years for payment of compensation to the States. Section 8(1) would only entitle an extension in regard to the period of the levy and collection of the Cess, beyond the period of five years, if the Council so recommends.

AG has further clarified that:

Where, on account of extraordinarycircumstances causing a steep fall in GST revenues and a shortfall in theFund, the states cannot be paid full compensation during the transitionperiod, the shortfall in the payment of compensation could be made up evenafter the transition period of 5 years.Of course, a recommendation by the GST Council extending the levy andcollection of the cess beyond 5 years under Section 8(1) of the Act, wouldrequire a decision by a three-fourth majority of the weighted votes.

(iv) Can the States borrow on the strength of the future receipts from the Compensation Fund to meet the compensation gap either fully or partially?

Opinion – Clause (2) of Article 292 authorizes Parliament to make loans to a State, subject to any limit which may have been fixed by law

made by Parliament. The entitlement of a State to borrow is set out in Article 293(1). The limitation on such right is found in Clause (3), which prohibits a State from raising any loan, without the consent of the Government of India, "if there is still outstanding any part of a loan which has been made to the State by the Government of India."

(v) Can the GST Council recommend or request the Centre to consider allowing States to borrow money to meet the compensation gap either fully or partially?

Opinion- The GST Council can, in the exercise of its duties under article 279A(4)(h) of the Constitution, recommend to the Central Government to permit the States to borrow money, as a measure for meeting the compensation gap. It would, however, be for the Central Government to take final decision in the matter, in exercise of its authority under article 293(3) of the Constitution.

❑

(34) 2020-21 के लिए जीएसटी क्षतिपूर्ति आवश्यकता को पूरा करने के लिए ऋण विकल्प

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

29 अगस्त, 2020, 3:45 पीएम

27 अगस्त, 2020 को आयोजित जीएसटी काउंसिल की 41वीं बैठक में चर्चा के परिणामस्वरूप, 2020-21 के लिए जीएसटी क्षतिपूर्ति की आवश्यकता को पूरा करने के लिए दो ऋण विकल्पों के बारे में राज्यों को सूचित किया गया है। इस प्रेस नोट के साथ दस्तावेज संलग्न है, जिसके अनुसार सात कार्य दिवसों के भीतर राज्यों को वरीयता विकल्प के बारे में सूचित करना है। मुद्दों को, यदि कोई हो, स्पष्ट करने के लिए केंद्रीय वित्त सचिव और सचिव (व्यय) के साथ राज्य वित्त सचिवों की बैठक 1 सितंबर, 2020 को आयोजित की जायेगी।

कृपया अनुलग्नक देखें

❑

(35) Launch of GSTR-2B for the month of July 2020

Press Information Bureau
Government of India, Ministry of Finance

29-August-2020, 5:11 PM

The GST Council, in its 39th meeting held on 14th March 2020, had

recommended to adopt and implement the incremental approach of linking the present system of filing of **GSTR-3B** and **GSTR-1** and other significant changes like enhancements in **GSTR-2A** and its linking to **GSTR-3B**. One such enhancement that the Council recommended was introduction of an auto-drafted input tax credit (ITC) statement which would aid in assisting / determining the input tax credit that is available for every taxpayer.

GSTR-2B is going to be such an auto-drafted ITC statement which will be generated for every registered person on the basis of the information furnished by his suppliers in their respective GSTR-1, 5 (non-resident taxable person) and 6 (input service distributor). It is a static statement and will be made available for each month, on the 12thday of the succeeding month.It is expected that **GSTR-2B** will help in reduction in time taken for preparing return, minimising errors, assist reconciliation & simplify compliance relating to filing of returns.

Key features in **GSTR-2B** which would assist taxpayers in return filing are as under:

i. It contains information on import of goods from the ICEGATE system including inward supplies of goods received from Special Economic Zones Units / Developers. This is not available with the release of GSTR-2B for the month of July and will be made available shortly.

ii. A summary statement which shows all the ITC available and non-available under each section. The advisory given against each section clarifies the action to be taken by the taxpayers in their respective section of **GSTR-3B;**

iii. Document level details of all invoices, credit notes, debit notes etc. is also provided both for viewing and download;

- GSTR-2B for the month of July 2020 has been made available on the common portal on trial basis.
- Since, this is the first time that the statement is being introduced, taxpayers are advised to refer to GSTR-2B for the month of July, 2020 only for feedback purposes.
- All taxpayers are requested to go through their GSTR-2B for July 2020 and after comparing the same with the credit availed by them in July 2020, provide feedback (if any) on any aspect of GSTR-2B by raising a ticket on the self-service portal (https://selfservice.gstsystem.in/).

- All taxpayers are advised to view the detailed advisory relating to GSTR-2B on the common portal before using the statement.

Taxpayers can access their **GSTR-2B** through: Login to GST Portal > Returns Dashboard > Select Return period >**GSTR-2B**.

❑

(36) जुलाई 2020 का 'जीएसटीआर–2बी' अब पोर्टल पर उपलब्ध

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

29 अगस्त, 2020, 5:11पीएम

जीएसटी परिषद ने 14 मार्च 2020 को आयोजित अपनी 39वीं बैठक में **जीएसटीआर-3बी** एवं **जीएसटीआर-1** दाखिल करने की वर्तमान प्रणाली को जोड़ने और अन्य महत्वपूर्ण बदलावों जैसे कि **जीएसटीआर-2ए** में संवर्धन एवं इसे **जीएसटीआर-3बी** से जोड़ने की वृद्धिशील अवधारणा को अपनाने और लागू करने की सिफारिश की थी। परिषद ने यह सिफारिश की थी कि एक स्वत:-तैयार इनपुट टैक्स क्रेडिट (आईटीसी) विवरण उपलब्ध कराया जाए, जो इनपुट टैक्स क्रेडिट की सुविधा देने/निर्धारण में मदद करेगा। यह हर करदाता के लिए उपलब्ध होगा ।

जीएसटीआर-2बी ही इस तरह का एक स्वत: तैयार आईटीसी विवरण होने जा रहा है, जिसे हर पंजीकृत व्यक्ति के लिए सृजित किया जाएगा जो उसके आपूर्तिकर्ताओं द्वारा अपने संबंधित जीएसटीआर-1, 5 (अनिवासी कर योग्य व्यक्ति) और 6 (इनपुट सर्विस वितरक) में दी गई जानकारियों पर आधारित होगा। यह एक अपरिवर्ती विवरण है और इसे प्रत्येक माह के लिए उपलब्ध कराया जाएगा। इसे ठीक अगले महीने के 12वें दिन उपलब्ध कराया जाएगा। यह उम्मीद की जाती है कि **जीएसटीआर-2बी** रिटर्न तैयार करने में लगने वाले समय को कम करने, त्रुटियों को कम करने, सुलह में सहायता करने और रिटर्न दाखिल करने से संबंधित अनुपालन को सरल बनाने में मदद करेगा ।

जीएसटीआर-2बी में ऐसी मुख्य विशेषताएं जो रिटर्न दाखिल करने में करदाताओं की सहायता करेंगी, वे निम्नानुसार हैं:

(i) इसमें विशेष आर्थिक जोन की इकाइयों/डेवलपरों से प्राप्त वस्तुओं की आंतरिक आपूर्ति सहित 'आइसगेट' सिस्टम से वस्तुओं के आयात की जानकारी उपलब्ध होती है । यह जुलाई माह के लिए जारी जीएसटीआर-2बी में उपलब्ध नहीं है और इसे जल्द ही उपलब्ध कराया जाएगा ।

(ii) इसमें एक संक्षिप्त विवरण होता है जो प्रत्येक अनुभाग के तहत उपलब्ध और गैर-उपलब्ध

आईटीसी को दर्शाता है। प्रत्येक अनुभाग के सापेक्ष दी गई सलाह **जीएसटीआर-3बी** के अपने संबंधित अनुभाग में करदाताओं द्वारा दी जाने वाली जानकारी को स्पष्ट करती है;

(iii) सभी इन्वॉयस, क्रेडिट नोट, डेबिट नोट इत्यादि के दस्तावेज स्तर का विवरण भी इसमें प्रदान किया जाता है, ताकि इन्हें देखने के साथ-साथ डाउनलोड भी किया जा सके।

- जुलाई 2020 के जीएसटीआर-2बी को प्रायोगिक आधार पर आम या सामान्य पोर्टल पर उपलब्ध कराया गया है।
- चूंकि पहली बार विवरण प्रस्तुत किया जा रहा है, इसलिए करदाताओं को सलाह दी जाती है कि वे केवल फीडबैक के उद्देश्य से जुलाई, 2020 के जीएसटीआर-2बी का संदर्भ लें।
- सभी करदाताओं से अनुरोध है कि वे जुलाई 2020 के अपने जीएसटीआर-2बी को गौर से पढ़ें और जुलाई 2020 में अपने द्वारा लिए गए क्रेडिट के साथ इसकी तुलना करने के बाद स्वयं-सेवा पोर्टल (https://selfservice.gstsystem.in/) पर स्वयं ही पहल करके जीएसटीआर-2बी के किसी भी पहलू पर फीडबैक (यदि कोई हो) प्रदान करें।
- सभी करदाताओं को सलाह दी जाती है कि वे विवरण का उपयोग करने से पहले आम या सामान्य पोर्टल पर जीएसटीआर-2बी से संबंधित विस्तृत सलाह (एडवाइजरी) को ध्यान से पढ़ें।

करदाता अपने जीएसटीआर-2बी को इस माध्यम से प्राप्त कर सकते हैं : जीएसटी पोर्टल पर लॉग-इन करें > रिटर्न्स डैशबोर्ड > रिटर्न अवधि को चुनें > **जीएसटीआर-2बी**।

❑

(37) Import data in GSTR-2A

Press Information Bureau
Government of India, Ministry of Finance

29-August-2020, 5:12 PM

Two new tables have been inserted in GSTR-2A for displaying details of import of goods from overseas and inward supplies made from SEZ units / SEZ developers. Taxpayers can now view their bill of entries data which is received by the GST System (GSTN) from ICEGATE System (Customs). The present data upload has been done on a trial basis to give a feel of the functionality and to get feedback from the taxpayers on the same.

Currently, the system is displaying data up to 6th August, 2020. Further, taxpayers may note that system is currently does not contain import information for bill of entries filed at non-computerized ports (non-EDI ports) and imports made through courier services/post office. This will be made available shortly.

It may also be noted that amendment information made in the details of bill of entries will also be provided soon.

Taxpayers are requested that they share their feedback through raising a ticket on the self-service portal (https://selfservice.gstsystem.in/)

❑

(38) 'जीएसटीआर–2ए' में आयात डेटा

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

29 अगस्त, 2020, 5:12 पीएम

विदेश से वस्तुओं के आयात और एसईजेड इकाइयों/एसईजेड डेवलपरों से की गई आंतरिक आपूर्ति का विवरण दर्शाने के लिए 'जीएसटीआर-2ए' में दो नई तालिकाएं सम्मिलित की गई हैं। करदाता अब अपने उस 'बिल ऑफ एंट्री डेटा' को देख सकते हैं जो जीएसटी सिस्टम (जीएसटीएन) द्वारा आइसगेट सिस्टम (कस्टम) से प्राप्त किया जाता है। वर्तमान डेटा अपलोड परीक्षण आधार पर किया गया है, ताकि इसकी कार्यक्षमता या व्यावहारिकता का सही ढंग से अनुभव हो सके और इस संबंध में करदाताओं से आवश्यक प्रतिक्रिया (फीडबैक) प्राप्त हो सके।

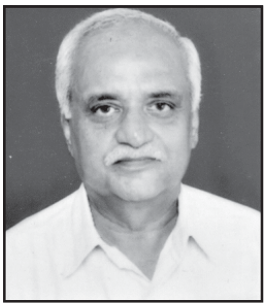
वर्तमान में यह सिस्टम 6 अगस्त, 2020 तक के आंकड़ों (डेटा) को दर्शा रहा है। इसके अलावा, करदाता इस तथ्य को नोट कर सकते हैं कि वर्तमान में इस सिस्टम में गैर-कम्प्यूटरीकृत बंदरगाहों (गैर-ईडीआई बंदरगाह) पर दाखिल किए गए 'बिल ऑफ एंट्री' के लिए आयात संबंधी जानकारी के साथ-साथ कूरियर सेवाओं/डाकघर के जरिए किए गए आयात से जुड़ी जानकारी उपलब्ध नहीं है। इसे शीघ्र ही उपलब्ध कराया जाएगा।

यह भी उल्लेखनीय है कि 'बिल ऑफ एंट्री' के विवरण में किए गए संशोधन की जानकारी भी शीघ्र ही उपलब्ध कराई जाएगी।

करदाताओं से अनुरोध किया जाता है कि वे स्वयं-सेवा पोर्टल (https://selfservice.gstsystem.in/) पर स्वयं ही पहल करके अपने फीडबैक को साझा करें।

❑

(39) साक्षात्कार श्री जी.पी. तिवारी साहब पूर्व उपायुक्त विक्रय कर / अपर आयुक्त वाणिज्यिक कर



प्र.1:आपकी गिनती विभाग के सफलतम अधिकारियों में की जाती रही है। ऐसे अधिकारी की पृष्ठभूमि जानने की स्वाभाविक आकांक्षा सभी में होती है। अतः हम आपके बचपन एवं शिक्षा दीक्षा के बारे में जानना चाहते हैं। इस विभाग में आने के पूर्व आप क्या किसी अन्य सेवा में भी रहे हैं ?

तिवारी सा.: मेरा जन्म स्थान एवं गृह नगर खंडवा (म.प्र.) है। मेरी समस्त शिक्षा भी यहीं पूर्ण हुई है। वर्ष 1960 में मैंने शासकीय उच्चतर माध्यमिक शाला से हायर सेकेंडरी (11वीं) परीक्षा मेरिट में उत्तीर्ण की। वर्ष 1963 में शासकीय महाविद्यालय से बी.एससी. की उपाधि ली। मेरे दादा ने मुझसे कहा कि अभी सर्विस कर लो जिससे परिवार को सहारा हो सके। हम आठ भाई-बहन थे और पिताजी की आय सीमित थी। मेरे बड़े भाई का कोई सहारा नहीं था। अतः मैं अपनी उसी शाला में शिक्षक बन गया। उस समय विज्ञान शिक्षक की कमी रहती थी। फिर एक वर्ष बी.टी.आई. खंडवा में प्रशिक्षक रहा। वहां से शासकीय विद्यालय बलड़ी (हरसूद) भेजा गया।

अगले वर्ष कॉलेज ऑफ एजुकेशन में चयन हुआ और मैंने बी.एड. किया। अगले वर्षों में एम.ए. (अंग्रेजी) की उपाधि शासकीय महाविद्यालय खंडवा से प्राप्त की। तदनंतर मेरी पदस्थापना शासकीय विद्यालय सिवनी, तेंदूखेड़ा और हंडिया में रही। वर्ष 1970 में पुनः खंडवा स्थानांतरण हुआ और विभाग में आने तक वहीं कार्यरत रहा।

इस तरह शिक्षकीय कार्य के साथ-साथ मेरा अध्ययन निरंतर चलता रहा और संक्षेप्तः मैंने बी.एससी. (मैथ्स) एम.ए. (अंग्रेजी) एवं बी.एड. उपाधियां प्राप्त की।

प्रेरणा

सीए. सुधीर हालाखंडी

सहयोग- **श्री राघवेन्द्र दुबे**

से.नि. अपर आयुक्त, वाणिज्यिक कर एवं से.नि. लेखापाल सदस्य, म.प्र. वाणिज्यिक कर अपील बोर्ड

आदर सहित, **नीलेश गंगराड़े**

प्रारंभ से ही मैं प्रातः पांच बजे के पूर्व उठने का अभ्यासी रहा हूं और इसलिए विविध अध्ययन हेतु पर्याप्त समय मिलता रहा। हॉकी एवं फुटबाल टीम का खिलाड़ी होने और एन.सी.सी. कैडेट होने से अनुशासन एवं समयबद्धता के गुण अर्जित किये। आज भी ये जीवन के आधार हैं।

प्र.2:आप इस विभाग में कैसे आए ? अपनी पी.एस.सी. परीक्षा में सफलता के विषय में कुछ बताईये।

तिवारी सा.: यह एक रोचक कहानी है। अगस्त 1971 में एक ज्योतिषी घर पर आए। अन्य भाईयों के साथ मेरी पत्रिका भी उन्हें दिखाई गई। कुंडली हस्तरेखा एवं मस्तक रेखा देखकर गणना करने के उपरांत उन्होंने पूछा क्या करते हैं ? मैंने कहा शिक्षक हूं तो कहने लगे आपको प्रशासनिक सेवा में होना चाहिए और इसका क्या उपाय है। मैंने बताया कि पी.एस.सी. में उत्तीर्ण होने पर ही यह संभव है जो असंभव सा है क्योंकि इस वर्ष बहुत कम राजपत्रित पद विज्ञापित हुए हैं। उन्होंने पत्रिका बंद कर दी और मुझसे कहा परीक्षा में बैठ जाओ, योग उपस्थित है, भाग्य भी प्रबल है। शेष चर्चा बाद में करुंगा, कहकर चले गए। अब स्थिति यह थी कि उस वर्ष डिप्टी कलेक्टर का कोई पद नहीं था; एस.टी.ओ. का एक पद, डी.एस.पी. के 2 पद, एक्साइज ऑफिसर के 3 पद, असिस्टेंट रजिस्ट्रार को-ऑपरेटिव के 3 पद तथा एम्प्लॉयमेंट ऑफिसर के 4 पद विज्ञापित थे। कुछ दिन बाद 6 सितंबर 1971 फार्म प्रस्तुतीकरण की तिथि थी और दिसम्बर 71 में परीक्षा थी। शिक्षण कार्य के साथ-साथ पढ़ाई हेतु समय कम था, विज्ञान विषय एवं अंग्रेजी में स्कोर करना कठिन था। किंतु परिजनों के स्नेहपूर्ण आग्रह एवं स्वविवेक से निर्णय लिया।

विचारोप्रांत मैंने लॉ और ब्रिटिश हिस्ट्री के पेपर्स चुने। यद्यपि मैंने एल.एल.बी. नहीं किया था और हिस्ट्री भी मेरा विषय नहीं रहा था। जब मेरे बड़े भाई एल.एल.बी. कर रहे थे तब रुचि के कारण उनकी लॉ बुक्स का अध्ययन करता रहता था।

बहरहाल, लिखित परीक्षा में उत्तीर्ण हुआ। सितम्बर 1972 में इंटरव्यू हुआ। विलंब से रिजल्ट नवम्बर 1973 में आया तब तक मेरी आशा क्षीण हो चुकी थी और रोल नंबर भी विस्मृत सा हो गया था। रिजल्ट में जब सारे पदों हेतु प्रथम क्रमांक पर रोल नंबर 272 देखा तो सहसा विश्वास नहीं हुआ। प्रवेश पत्र ढूंढकर देखकर ही संतुष्टि हुई की अप्रत्याशित सफलता प्राप्त करते हुए मैंने पी.एस.सी. में टॉप किया है।

मैं यह मानता हूं कि विविध विषयों का निरंतर अध्ययन करते रहने से मुझे सफलता प्राप्त हो सकी।

प्र.3:विभाग में आने के बाद आपकी यात्रा कैसी रही ? आप कहां-कहां किस-किस पद पर रहे ?

तिवारी सा.: मैंने विभाग में दिनांक 22-11-1973 को इंदौर वृत्त-1 में पदभार ग्रहण किया। निर्धारित प्रशिक्षण पूर्ण करने के उपरांत नियमित कार्य प्रारंभ किया। विभिन्न कक्षों में स्वयं बैठकर लिपिक वर्ग के साथ कार्य किया और सीखा। कर निर्धारण कार्य में वृत्त में पदस्थ अनुभवी सहायक विक्रय कर अधिकारियों तथा कतिपय वरिष्ठ कर सलाहकारों से भी समय-समय पर बिना संकोच चर्चा करता रहा। प्रभारी विक्रय कर अधिकारी श्री आर.एल. श्रीवास्तव कहते थे सब कुछ अधिनियम में है, अध्ययन करो, अपना निर्णय लो, फिर चर्चा करो। यह सब भविष्य में बहुत उपयोगी सिद्ध हुआ।

जून 1978 में मेरा स्थानांतरण नीमच हुआ और वहां से जून 1979 में विक्रय कर अधिकारी मंदसौर वृत्त में पदस्थ हुआ। उसके बाद वृत्तों का पुनर्गठन हुआ और मैं वहीं वृत्त-1 का प्रभारी बना। नवम्बर 1983 में पदोन्नति उपरांत इंदौर संभाग में सहायक आयुक्त का पदभार ग्रहण किया जहां संभागीय उपायुक्त आदरणीय एस.के. शर्मा साहब मार्गदर्शक रहे। आठ माह पश्चात मेरा स्थानांतरण मुख्यालय इंदौर में हो गया और वहां 6 वर्ष तक पदस्थ रहा। मैंने विभिन्न महत्वपूर्ण कक्षों में अपनी क्षमताओं का समुचित उपयोग करते हुए कार्य किया और स्वयं की दक्षता विकसित करने का प्रयास किया।

जून 1990 में मेरा स्थानांतरण भोपाल हुआ जहां मार्गदर्शक आदरणीय श्री एस.एम. पंत संभागीय उपायुक्त थे। वहां से पदोन्नति उपरांत जून 1991 में संभागीय उपायुक्त ग्वालियर संभाग पदस्थ हुआ और वहां 5 वर्ष रहा। अत्यंत विपरीत परिस्थितियों में वहां गया किंतु विभागीय वरिष्ठ अधिकारियों एवं आयुक्त महोदय से सीधे संपर्क एवं मार्गदर्शन तथा मुख्यालय में प्राप्त अनुभव के आधार पर मेरा कार्यकाल सफल एवं स्मरणीय बन गया। जब वहां से स्थानांतरण हुआ तो मुझे बिदाई देने रेलवे स्टेशन पर अधिकांश अधिकारी एवं कर्मचारीगण उपस्थित थे।

जुलाई 1996 में मेरा स्थानांतरण संभागीय उपायुक्त इंदौर संभाग के पद पर हुआ। यहां मैं म.प्र. विक्रय कर राजपत्रित अधिकारी संघ का अध्यक्ष निर्वाचित हुआ। तदनंतर इंदौर संभाग को तीन संभागों में विभक्त किया गया। कुछ वर्ष उपरांत छत्तीसगढ़ राज्य भी बना।

वर्ष 2001 में पदोन्नत होकर अपर आयुक्त मुख्यालय इंदौर पदस्थ हुआ। यहीं से दिनांक 31-3-2003 को सेवानिवृत्त हुआ।

प्र.4:आपने विभाग की कर अपवंचन रोकथाम संबंधी विंग केंद्रीय उड़नदस्ता में काफी समय तक अत्यंत सफलतापूर्वक कार्य किया है। इस दौरान के अनुभवों तथा कठिनाइयों एवं विशेष स्मरणीय घटनाओं के बारे में बताईये।

मैं केंद्रीय उड़नदस्ता इंदौर में जनवरी 1988 से जून 1990 तक कार्यरत रहा। आयुक्त महोदय द्वारा मुझे स्पष्टतः कहा गया कि ऐसा कार्य कीजिए जो दिखे, विशिष्ट कर अपवंचकों की जांच हो तथा उड़नदस्ते की साख बने। मेरी इच्छानुसार अधिकारी मुझे दिये गये जिन्होंने

मेरा विश्वास कायम रखा। हर प्रकरण में योजनाबद्ध जानकारी जुटाई जाकर जांच की गई और सफलता मिली। टीम को भी जानकारी नहीं रहती थी कि कहां जाना है, मैं निर्देशित करता रहता था। दो शासकीय वाहन थे और उसी में जाते थे।

इस कार्य में कठिनाइयां तो आती रहीं पर ऐसा कभी नहीं हुआ कि जांच नहीं हो पाई हो। जबलपुर में जांच के समय व्यवसायी ने विरोध किया था और दबाव डलवाने का प्रयास किया था। छिंदवाड़ा में जांच के लिए हम रायपुर से रातभर चलकर पहुंचे थे और सौंसर डाक बंगले में रुके थे। दिन में जांच के समय व्यवसायी ने काफी व्यवधान उत्पन्न किया। हमें वहां नाइट हॉल्ट करना था, किंतु स्थिति पर विचारोपरांत पुनः रात भर चलकर भोपाल आ गए थे जप्त रिकॉर्ड सहित। सियागंज इंदौर में भी एक बार जांच के समय कुछ व्यवसायी वहां बाहर एकत्रित हो गए थे। उनके अध्यक्ष आए और जब देखा कि केंद्रीय उड़नदस्ता जांच कर रहा है तो वह सब वापस लौट गए। यह साख हम लोगों ने बना ली थी। मैं हर जांच एवं घटना की जानकारी उसी समय अपर आयुक्त प्रवर्तन को देता रहता था। ऐसे अनेक प्रकरण रहे।

एक विशेष उल्लेखनीय कार्य यह किया था कि पहली बार ट्रांसपोर्टर्स के गोदामों पर रखे गए अघोषित एवं कर अपवंचनीय माल को जप्त करना और अज्ञात व्यवसायी के नाम पर कार्यवाही करना। भारी कर एवं शास्ति की राशियां जमा कराई गई थीं। इसके वैधानिक औचित्य के विषय में कर सलाहकार के रूप में आदरणीय श्री पंचोलिया साहब ने मुझसे चर्चा की तो मैंने निवेदन किया था कि समस्त जप्त माल कर अपवंचन हेतु रखा जाना प्रमाणित किया जाकर ही कार्यवाही की गई है, फिर भी न्यायालय का मार्ग उपलब्ध है। वे मुस्कुरा दिए थे। संक्षेप्तः इस कार्य की सफलता परफेक्ट टीम वर्क के कारण प्राप्त हुई थी और यह मेरे लिए एक स्मरणीय सेवाकाल रहा।

प्र.5:आप अन्य गतिविधियों में भी जुड़े रहे हैं। संभवतः आपकी साहित्यिक सांस्कृतिक अभिरुचि भी रही है। इस क्षेत्र के अनुभवों के बारे में बताईये।

तिवारी सा.: ऐसी अभिरुचियां प्रारंभ से रही अवश्य हैं किंतु कोई उल्लेखनीय उपलब्धि नहीं कह सकता। जब मैं खंडवा में शिक्षक था तब साहित्यिक गोष्ठियों में भाग लेता रहता था। श्रद्धेय दादा माखनलाल चतुर्वेदी एवं मेरे हिन्दी शिक्षक प्रोफेसर श्रीकांत जोशी से भी सम्पर्क होता रहता था।

खंडवा में बिम्ब फिल्म क्लब का फाउंडर मेम्बर एवं सचिव कई वर्ष रहा। सदस्यों को उच्च स्तरीय कलात्मक फिल्में तथा भारत स्थित विभिन्न दूतावासों से श्रेष्ठ फिल्में बुलाकर दिखाई जाती थीं।

छोटी–छोटी कविताएं लिखने का शौक रहा है जो अभी भी है। वर्ष 2017 में एक मैगजीन का संपादन प्रकाशन भी किया है। यह सब प्रमुखतः स्वांतः सुखाय ही रहा है।

एक गतिविधि भ्रमण करना भी रही है। कार ड्राइविंग मेरी हॉबी जैसी रही है। सेवाकाल में भी ग्वालियर से गुना, शिवपुरी तथा इंदौर से भोपाल स्वयं जिप्सी चलाकर गया हूं। सेवानिवृत्ति के उपरांत तो बहुत घूमा। सुबह इंदौर से निकलकर कार चलाते हुए शाम तक मुंबई, राजकोट, नागपुर, नासिक, जयपुर, शिरडी जाता रहा हूं। सेकंड ड्राइवर के रूप में पत्नी कई बार मददगार रही है। पंत साहब की सुपुत्री के विवाह में इसी तरह हम दोनों कार से नैनीताल होते हुए अल्मोड़ा गए थे।

किन्तु, वर्ष 2015 में बड़े सुपुत्र के स्वर्गवास के उपरांत गतिविधियों पर विराम सा लग गया।

प्र.6: हर सफल व्यक्ति की सफलता में पत्नी का भी योगदान होता है। आपकी पत्नी के बारे में भी लोग जानते हैं कि वे संगीत एवं संस्कृत में पारंगत हैं। अपनी पत्नी की विशेषताओं के बारे में भी कुछ जानकारी दें।

हाँ, यह सही है कि मेरी सफलता में श्रीमती रेखा तिवारी का महत्वपूर्ण योगदान रहा है। मेरी नियमितता, स्वास्थ्य, रुचि, मूड, घर-परिवार आदि का सदैव ध्यान रखा और मैं निश्चिंत होकर अपना कार्य करता रहा। सेवाकाल में अपनी व्यस्तता के कारण मैं परिवार को कम समय दे पाता था। इसलिए सेवानिवृत्ति उपरांत परिवार हेतु पूर्णतः समर्पित हूं।

केंद्रीय उड़नदस्ता में पदस्थापना के समय मेरी अतिव्यस्तता के कारण, उन्होंने आगे पढ़ने की इच्छा व्यक्त की। विवाह के 14 वर्ष उपरांत संस्कृत में गवर्नमेंट आर्ट्स एंड कॉमर्स कॉलेज इंदौर से एम.ए. किया और संस्कृत के साथ पूरे कला संकाय में विश्वविद्यालय में टॉप किया। दो गोल्ड मेडल प्राप्त किये। फिर संस्कृत में ही पी.एच.डी. उपाधि प्राप्त की जिस हेतु कई बार उन्हें ग्वालियर से इंदौर आना पड़ा। उस समय मेरी पदस्थापना ग्वालियर में थी। बी.ए. में संगीत उनका एक विषय था। मधुर गायन प्रतिभा सम्पन्न हैं। परिवार में समारोहों में इनका ढोलक वादन और गीत गायन सदैव रहे हैं। कपड़े पर हाथ से महीन कढ़ाई, पेंटिंग, बुनाई और पाक कला में दक्षता प्राप्त है। इंदौर में कई वर्षों तक रेसीडेंसी लेडीज क्लब और लायनेस क्लब की सचिव रही हैं। त्वरित उद्‌बोधन करने में सक्षम हैं। विभागीय अधिकारियों की पत्नियों को संगठित करते हुए, मंदसौर, नवलखा काम्प्लेक्स एवं स्कीम 71 स्थित कॉलोनी में क्लब बनाए थे जिससे सदैव पारिवारिक वातावरण बना रहा।

बस, आज इतना गुणगान पर्याप्त है।

प्र.7: विभाग में और कराधान प्रणाली में आपने कई उतार-चढ़ाव देखे हैं। पुरानी और नई कार्यप्रणाली के बारे में आपके क्या विचार हैं ?

तिवारी सा.: सेवानिवृत्ति उपरांत मैंने अपनी सारी टैक्स बुक्स चेतक चेम्बर स्थित कार्यालय

में भिजवा दीं। वाणिज्यिक कर अपील बोर्ड में पद स्वीकार नहीं किया। टैक्स विषय छोड़कर अन्य अध्ययन की ओर प्रवृत्त हुआ। इसलिए कराधान प्रणालियों का तुलनात्मक विवेचन अब नहीं करना चाहूंगा। नई प्रणाली के विषय में जो भी मेरी जानकारी है, उस आधार पर कहना चाहूंगा कि दीर्घ समय तक विस्तृत अध्ययन एवं देशव्यापी विवेचन के आधार पर यह लागू की गई है, अनावश्यक जांचों से मुक्त है और आवश्यकतानुसार संशोधन समय-समय पर किए जाते रहे हैं तथा किये जावेंगे। अब यह स्थिरीकरण की ओर है।

प्र.8:आज के अधिकारियों की नई पीढ़ी को आप क्या संदेश देना चाहेंगे।

तिवारी सा.: आज की पीढ़ी कई विषयों में हमसे अधिक ज्ञानवान है और त्वरित परिवर्तनशील समय में कार्यरत है। अतः अपेक्षित है कि जिस अधिनियम के अंतर्गत शक्तियां और कर्तव्य परिभाषित हैं उसमें दक्षता प्राप्त करें और अपनी सीमाओं में कार्य करें। वरिष्ठ एवं योग्य अधिकारियों से सम्मानपूर्वक मार्गदर्शन प्राप्त करते रहें और राजस्व हित को सदैव सम्मुख रखें, प्राथमिकता दें। मनसा वाचा कर्मणा दिखे कि आप वास्तव में योग्य अधिकारी हैं। ऐसा सेवाकाल व्यतीत करें कि सेवानिवृत्ति के उपरांत भी आत्मसंतोष, सुकून, सुखद स्मृतियां विद्यमान रहें।

❑

(40) Madhya Pradaesh Goods and Services Tax Rules, 2017 - Amendment in Rules

No. F-A-3-06-2020-1-V(46) Bhopal, the 31st August 2020 - In exercise of the powers conferred by section 164 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government, on the recommendations of the Council, hereby, makes the following further amendment in the Madhya Pradaesh Goods and Services Tax Rules, 2017, namely:-

AMENDMENT

In the said rules, in rule 31 A, for sub rule (2), the following sub-rule shall be substituted, namely :-

"(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

Explanation:- For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.".

2. This amendment shall be deemed to have come into force from 1st March, 2020.

[*Published in the M.P. Rajpatra dated 31-8-2020*]

❑

(41) Notification u/s 9(2) of M.P. VAT Act, 2002 notifying Reliance BP Mobility Limited w.e.f. 3-6-2020

No. F A3-17-2010-1-V(47) Bhopal the 5th September 2020 - In exercise of the powers conferred by sub-section (2) of Section 9 of the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002), the State Government, hereby, Notifies Reliance BP Mobility Limited as an Oil Company for the purpose of the said sub-section.

2. This notification shall be effective from 3-6-2020.

[*Published in the M.P. Rajpatra dated 5-9-2020*]

❑

(42) Notification u/s 2(99) of C.G. GST Act, 2017 appointing revisional authority w.e.f. 13-1-2020

Notification No. 05/2020- State Tax

No. F 10-64/2020/CT/V(98) Dated 7th August 2020 - In pursuance of the provisions of section 5 read with clause (99) of section 2 of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017) (hereinafter referred to as the said Act), hereby authorises–

(a) the Commissioner of State Tax or Special Commissioner of State Tax or Additional Commissioner of State Tax for decisions or orders passed by the Joint Commissioner of State Tax or Deputy Commissioner of State Tax; and

(b) the Joint Commissioner of State Tax for decisions or orders passed by the Assistant Commissioner of State Tax of State Tax Officer,

as the Revisional Authority under Section 108 of the said Act.

2. This notification shall deemed to have come in to force from 13th January 2020.

[*Published in the Chhattisgarh Rajpatra dated 26-8-2020*]

❑

.... continued from April-May 2020

Gist of Chhattisgarh Notifications - 2020

Noti. No.	Act	Particulars (Chhattisgarh)
(78) 25-06-20	VAT	Noti. u/s 21(8) of C.G. Vat Act extending time limit for Assessment for year 15-16 for such dealers whose turnover does not exceed Rs. 1 crore upto 31-12-2020
(79) 25-06-20	VAT	Noti. u/s **21(8)** of C.G. Vat Act, 2005 extending time limit for assessment for year 2015-16 for such dealers whose turnover exceeds Rs. 1 crore upto 31-12-2020
(80) 25-06-20	VAT	Noti. u/s **21(8)** of C.G. Vat Act, 2005 extending time limit for assessment for the year 2016-17 time barring ending on 31-12-2019 extended up to 30-06-2021
(81) 25-06-20	VAT	Notification u/s **15-B(1)(ii)** of C.G. Vat Act, 2005 extending time for filing Form-18 (Self Assessment) for FY 2016-17 upto 30-11-2020
(82) 25-06-20	VAT	Noti. u/s **15-B(1)(ii)** of C.G. Vat Act, 2005 amending Noti. No. (104) dt. 10-12-18 relating to exemption from Part C of Form 18 for FY 2016-17 date extended upto 30-11-2020
(83) 06-07-20	GST	Chhattisgarh Goods and Services Tax (Sixth Amendment) Rules, 2020
(84) 06-07-20	GST	Chhattisgarh Goods and Services Tax (Seventh Amendment) Rules, 2020
(85) 06-07-20	GST	Notification u/s **50(1)** r/w 148 of C.G. GST Act, 2017 amending Noti. No. 13/2017-State Tax (87) dt. 29-6-2017 providing relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020 w.e.f. 24-06-2020
(86) 06-07-20	GST	Notification u/s **128** r/w 148 of C.G. GST Act, 2017 amending Noti. No. 76/2018-State Tax (123) dt. 31-12-2018 providing one time amnesty by lowering/ waiving of late fees for non furnishing of FORM GSTR-3B from July, 2017 to January, 2020 and also providing

		relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to July, 2020 w.e.f. 24-06-2020
(87) 06-07-20	GST	Notification u/s **128** of C.G. GST Act, 2017 amending Noti. No. 4/2018-State Tax (3) dt. 24-1-2018 providing relief by waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods for months from March, 2020 to June, 2020 for monthly filers and for quarters from January, 2020 to June, 2020 for quarterly filers w.e.f. 24-06-2020
(88) 06-07-20	GST	Notification u/s **168** of C.G. GST Act, 2017 r/w Rule 61(5) amending Noti. No. 29/2020-State Tax (45) dt. 31-3-2020 extending due date for furnishing FORM GSTR-3B for supply made in the month of August, 2020 for taxpayers with annual turnover up to Rs. 5 crore w.e.f. 24-06-2020
(89) 06-07-20	GST	Chhattisgarh Goods and Services Tax (Removal of Difficulties) Order, 2020 effective from 25-6-2020
(92) 21-07-20	GST	Chhattisgarh Goods and Services Tax (Eighth Amendment) Rules, 2020 w.e.f. 1-7-2020
(95) 06-08-20	GST	Notification u/s **148** of C.G. GST Act, 2017 amending Noti. No. 21/2019-State Tax (46) dt. 23-4-2019 extending the due date for filing FORM GSTR-4 for financial year 2019-2020 w.e.f. 13-07-2020
(96) 06-08-20	GST	Chhattisgarh Goods and Services Tax (Ninth Amendment) Rules, 2020 effective from 30-7-2020
(97) 06-08-20	GST	Notification u/r **48(4)** of C.G. GST Act, 2017 amending Noti. No. 13/2020-State Tax (37) dated 31-3-2020 effective from 30-7-2020
(98) 06-08-20	GST	Notification u/s **2(99)** of C.G. GST Act, 2017 appointing revisional authority w.e.f. 13-1-2020.

❑

***See full Notifications on www.dineshgangrade.com [For TLD Subscribers only*]**

(2020) 65 TLD 177

In the High Court of Jharkhand
Hon'ble H.C. Mishra & Deepak Roshan, JJ.

Mahadeo Construction Co.

Vs.

The Union of India & Others

W.P. (T) No. : 3517 of 2019

April 21, 2020

Deposition : In favour of Petitioner

Interest - Section 50 of the CGST Act, 2017 - Interest can not be determined without initiating any adjudication process either u/s 73 or 74 of the CGST Act.

Recovery proceedings - Section 79 of the CGST Act, 2017 - Without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.

Writ Petition allowed

It is not a true that liability of interest under Section 50 of the CGST Act is automatic, but the said amount of interest is required to be calculated and intimated to an assesse. If an assesse disputes the liability of interest i.e. either disputes its calculation or even the leviability of interest, then the only option left for the Assessing Officer is to initiate proceedings either under Section 73 or 74 of the Act for adjudication of the liability of interest. [Para 21]

Cases referred :

* Commissioner of Central Excise Vs. International Auto Limited (2010) 2 SCC 672.
* Godavari Commodities Ltd. Vs. Union of India and ors., reported in 2019 SCC Online Jhar 1839.
* The Assistant Commissioner of CGST & Central Excise and others Vs. Daejung Moparts Pvt. Ltd. and ors.
* U.P. Cooperative Cane Unions Federations Vs. West U.P. Sugar Mills Association & ors. (2004) 5 SCC 472.

Mr. Sumeet Gadodia, Advocate, Mrs. Shilpi John, Advocate & Mr. Ranjeet Kushwaha, Advocate for the petitioner.

Mr. Ratnesh Kumar, Advocate & Mr. Amit Kumar, Advocate for the respondent.

:: JUDGEMENT ::

The Judgement of the Court was delivered by **DEEPAK ROSHAN, J. :**

The issues involved in the present writ application are of seminal importance, namely-

(i) Whether interest liability under Section 50 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') can be determined without initiating any adjudication process either u/s 73 or 74 of the CGST Act in the event of an assesse raising dispute towards liability of interest?

(ii) Whether recovery proceedings u/s 79 of the CGST Act can be initiated for recovery of interest u/s 50 of the said Act without initiation and completion of the adjudication proceedings under the Act?

2. The facts of the present writ application lie in a very narrow compass. The petitioner, being a partnership firm, was registered under the provisions of the CGST Act. Under Section 39 of the CGST Act, provisions have been incorporated for furnishing of monthly return by a registered person on or before 20th day of the month succeeding such calendar month in which returns were to be filed. Said returns are known as 'GSTR-3 Return'. However, it is an admitted fact that due to the Nationwide problem in GSTN Portal, said GSTR-3 Return, which is an auto populated return on the basis of details of inward and outward supply, is not being generated, due to which, by way of stop-gap arrangement, provisions have been incorporated for filing GSTR-3B Return in terms of Rule 61(5) read with Rule 61(6) of the Central Goods and Services Tax Rules, 2017 (for short 'CGST Rules').

3. Further, under Section 39(7) of the CGST Act, it is provided, *inter alia*, that a registered person, who is required to furnish his return under subsection (1) of Section 39, would be liable to pay to the Government the tax due as per such return not later than the last date on which the dealer is required to furnish such return. A conjoint reading of Section 39(1) read with Section 39(7) of the CGST Act would reveal that a dealer was liable to pay tax within 20th day of the succeeding month for which said dealer was liable to file GSTR-3 Return. However, since the very onset of implementation of GST regime, filing of monthly return u/s 39, being GSTR-3, was suspended and continues to be suspended till today, and, return in GSTR-3B is required to be filed by registered person.

4. From time to time, due date for filing such return in GSTR-3B has been extended by respondent-Authorities.

5. It is the case of the petitioner that in GSTN Portal, due date for filing of GSTR 3B Return for the month of February, 2018 and March, 2018 was reflecting as 31st March 2019 and the petitioner reasonably believed that due date of filing of GSTR-3B Return for the months of February and March, 2018 has been extended up to 31st March, 2019 and in the said background, the petitioner filed its monthly return for the month of February, 2018 and March, 2018 within the due date as reflected in GSTN Portal, as would be evident from Annexure-4 of the writ application. The petitioner was served with a letter dated 8th March, 2019 issued by Superintendent of Goods and Services Tax and Central Excise (Respondent No.3) directing the petitioner to make payment of interest amounting to Rs.19,59,721/- on the ground of delay in filing of GSTR-3B Return for the months of February and March, 2018. The said letter contained in Annexure-7 is impugned in the present writ application. The respondent-Authorities further exercised powers under Section 79 of the CGST Act by initiating garnishee proceedings for recovery of aforesaid amount of interest by issuing notice to the petitioner's Banker. Said initiation of garnishee proceedings under Section 79 of the CGST Act is also impugned in the present writ application.

6. Mr. Sumeet Gadodia, learned counsel appearing for the petitioner has vehemently submitted that the impugned letter dated 8-3-2019 issued by respondent No.3 demanding interest amount of Rs.19,59,721/- on the alleged ground of delay in submitting GSTR-3B Return for the months of February and March, 2018, is not sustainable in the eyes of law, as the said amount of interest has been determined without initiating any adjudication process under Sections 73 or 74 of the CGST Act. It is the specific case of the petitioner that the petitioner is not liable to pay interest as there has been no delay on its part in furnishing of GSTR-3B Return and, consequentially, there is no delay on its part in depositing the tax with the respondent-Authority, as in GSTN Portal, due date for furnishing of return for the months of February and March, 2018 was shown as 31st March, 2019.

7. It has been further argued by Mr. Gadodia that if the amount of interest is not admitted by an assesse, the same requires determination through an adjudication process to be initiated as per the detailed provisions contained under Section 73 of the CGST Act.

8. It has been further submitted by the learned counsel for the petitioner that not only that respondent-Authorities, without initiating adjudication process, have straightaway demanded interest from the petitioner, but they have, in a most arbitrary and illegal manner, by adopting extra legal steps, initiated garnishee proceedings under Section 79 of the CGST Act for recovery of the amount of interest. It has been contended that provisions of Section 79 of the CGST Act can be adopted only when "any amount payable by a person to the Government under the provisions of the Act and the Rules is not paid". It has been submitted that the words "any amount payable" is to be interpreted in the context in which it has been used and the amount payable (unless admitted) can only be determined by initiating adjudication process as provided under Section 73 or 74 of the CGST Act. It is the specific case of the petitioner that since the petitioner has not admitted its liability of interest, the said interest liability to be classified as an amount payable under the Act and/or Rules, necessarily requires adjudication process and, in absence thereof, initiation of garnishee proceedings is not sustainable in the eyes of law and even amounts to taking extra legal steps for recovery of the amount from an assessee.

9. Per contra, Mr. Ratnesh Kumar, learned counsel for the respondent submitted that the present dispute pertains to recovery of interest not on the ground of delay in filing of GSTR-3B Return, but on the ground of delayed payment of tax beyond the stipulated date as prescribed under Section 39(1) read with Section 39(7) of the CGST Act. It is the case of the revenue that once there is a delay in payment of tax, the liability to pay interest on the same becomes automatic, for which no separate proceedings is required to be initiated for determining such interest liability.

10. It has been further submitted by learned counsel of the respondent that it is an admitted case of default in filing self-assessed monthly statement/ return within the statutory period and payment of admitted self-assessed tax, which consequentially attracts payment of interest under Section 50 of the CGST Act. In other words, it has been contended that payment of interest as envisaged under Section 50 of the Act is automatic and is to be paid by the defaulter at his own without initiating any adjudication process under Section 73 or 74 of the CGST Act. Further, while referring to Section 73 or 74 of the CGST Act, it has been contended that said Sections are not applicable in the instant case, as it relates only to demand and recovery of tax not paid or short paid either on account of fraud or willful misstatement or suppression

of facts, or otherwise. It has been further contended by the respondents that due date as reflected in GSTN Portal as "31st March, 2019" for furnishing of GSTR-3B monthly return for the months of February and March, 2018 was reflecting owning to the fact that Central Government, through Central Board of Indirect Taxes and Customs, vide Notification No. 76/2018-Central Tax dated 31st December, 2018 (Annexure -3 series) has waived the levy of late fee for furnishing returns for the months of July, 2017 to September, 2018, if the said returns were furnished between the period 22nd December, 2018 to 31st March, 2019, and the said Notification cannot be interpreted to mean that the last date of filing of GSTR-3B Return has been extended up to 31st March, 2019. Learned counsel for the revenue, in support of his contention that liability for payment of interest is automatic and does not require any adjudication process, has relied upon the following two decisions, namely;-

(1) **2004 (5) SCC 472** (U.P. Cooperative Cane Unions Federations Vs. West U.P. Sugar Mills Association & ors.)

(2) **2010 (2) SCC 672** (Commissioner of Central Excise Vs. International Auto Limited)

11. Mr. Ratnesh Kumar, learned counsel for the revenue further, while justifying the action of initiation of garnishee proceedings under Section 79 of the CGST Act, contended that since the liability for payment of interest is automatic on delayed payment of tax, the amount of interest is an amount payable under the Act or the Rules and since the assessee, despite notices being issued to it, has failed to discharge the said liability, it was well within the competence of the respondent-Authorities to initiate garnishee proceedings under Section 79 of the CGST Act by attaching Bank account of the petitioner.

12. We have heard the parties and have given our conscious consideration to the issue involved in the instant writ application, which according to us, is of seminal importance owing to the fact that CGST Act is a new enactment and the question raised herein will have bearing upon large number of assesses.

13. Before adverting to the issues involved in the instant writ application, we may like to refer an earlier order dated 24-7-2019 passed by this Court in the instant writ petition, wherein we have noted that the screen shots of the G.S.T.N Portal showing the due date for furnishing monthly returns for

February and March 2018, as 31st March 2019, as contained in Annexures 4 and 4/1 to the writ application, were not denied by learned counsel for C.G.S.T. It is an admitted position that on GSTN Portal for the months of February and March, 2018, due date for filing return was reflecting as 31st March, 2019. Although it was contended that said due date has been reflected on GSTN Portal only because a waiver of Late Fee was notified by the Central Government for delay in filing the Return for the said month up to 31st March,2019, and the due date for filing such return was not extended up to 31st March, 2019. Be that as it may, the fact remains that on GSTN Portal, due date for filing monthly return for February and March, 2018 was reflected as 31st March, 2019 and, admittedly, the Petitioner filed its returns for the said months much prior to the said date. After noticing the said fact, this Court, vide order dated 24-7-2019, stayed the operation of the garnishee notice contained in the Order dated 22-5-2019 (Annexure-10 of the Supplementary Affidavit) and directed the respondents to file their counter affidavit.

14. At this stage, we may indicate here that this Court is not expressing any opinion as to whether the petitioner was liable to pay interest or not, which, in the opinion of the Court, is required to be adjudicated first by the Revenue Authorities. However, the aforesaid facts are noted by us in our Judgment for the limited purpose to indicate that there was a dispute between the Assessee-Petitioner and the Revenue regarding liability of interest for alleged delayed filing of monthly return for the months of February and March, 2018 and, consequentially, alleged delay in payment of tax.

15. In the backdrop of the aforesaid fact, we proceed to decide the main issues involved for adjudication in the instant writ application, which have already been delineated hereinabove. For the purpose of adjudicating the said issues, it would be relevant to quote some of the provisions of the CGST Act, which are as under:-

Section -39

"39. Furnishing of returns

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form, manner and within such time as may be prescribed, a return, electronically, of

inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed:

PROVIDED that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein."

Section 39(7)

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

PROVIDED that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein."

Section 50

"50. Interest on delayed payment of tax :

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (1) of section 43,

shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent, as may be notified by the Government on the recommendations of the Council."

Section 73

"**73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts :**

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

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

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

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

(5) The person chargeable with tax may, before service of notice under

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

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

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

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

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

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund.

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

(Emphasis Supplied)

16. A bare reading of the provisions of Section 39(1) read with Section 39(7) of the CGST Act would reveal that a dealer is liable to pay tax within 20th day of the succeeding month for which the dealer was liable to file his monthly return.

17. Further, Section 50 of the Act contains provisions relating to Levy of Interest on delayed payment of tax. A reading of sub-section (2) of Section 50 itself would reveal that interest payable under sub-section (1) of Section 50 is required to be calculated in such manner, as may be prescribed.

18. However, the important issue for consideration in the instant writ application is the interpretation of the provisions of Section 73 of the Act. A bare reading of Section 73(1) of the Act reveals that where it appears to the Proper Officer that any tax has not been paid or short paid" the Proper Officer shall serve notice on the person chargeable with tax, "which has not been so paid" or "which has been short paid" requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 of the Act and a penalty leviable under the provisions of the Act and Rules. Thus, a bare reading of Section 73(1) would reveal that if tax has not been paid or has been short paid, a notice is required to be served by the Proper Officer on the assesse not only requiring him to show cause as to why tax be not recovered from it, but also specifying in the notice the interest payable under Section 50 also to be recovered along with penalty. Thus, if there is a short payment of tax or nonpayment of tax, a notice is required to be issued even for recovery of interest under Section 50 of the CGST Act.

19. The question would, therefore, arise that if an assesse, who has already paid tax, but has paid the same after some delay, would fall within the expression **"tax not being paid or short paid"**. The aforesaid issue has already been answered by this Court in the case of **Godavari Commodities Ltd. Vs. Union of India and ors.**, reported in *2019 SCC Online Jhar 1839,* as under:-

> "8. A plain reading of this provision shows that this provision shall be fully applicable in cases where the tax was not paid for any reason other than fraud. In the present case, though it is submitted by learned counsel for CGST that since the tax was paid, fact remains that the tax was not paid by the petitioner Company in the Government account within the due date, and accordingly, it is a case of tax not being paid,

within the period prescribed, or when due. In that view of the matter, we are unable to accept the contention of learned counsel for CGST that no show-cause notice was required to be given in this case. Even otherwise, if any penal action is taken against the petitioner, irrespective of the fact whether there is provision under the Act or not, the minimum requirement is that the principles of natural justice must be followed. In the present case admittedly, prior to the issuance of letter dated 6-2-2019, no show-cause notice or an opportunity of being heard was given to the petitioner and no adjudication order was passed."

20. This Court, while interpreting the term "tax not paid" has held that if a tax has not been paid within the prescribed period, the same would fall with the expression "tax not paid" as mentioned under Section 73 of the CGST Act. The aforesaid interpretation further finds support from other subsections of Section 73, particularly sub-sections (5), (6) and (7) of Section 73. A bare reading of the aforesaid sub-sections (5), (6) and (7) of Section 73 would reveal that a person chargeable with tax, if before service of notice pays the amount of tax along with interest payable thereon under Section 50 of the Act on the basis of his own ascertainment, then the Assessing Officer, if satisfied that correct tax along with interest has been paid by the said assesse, shall not issue any notice under Section 73(1) of the Act. However, Section 73(7) of the Act provides that if an assesse, who has itself on his own ascertainment, deposited the tax along with interest, but if in the opinion of the Proper Officer, the amount paid on own ascertainment falls short of the amount actually payable, then a notice would be issued by the said Proper Officer under Section 73 (1) of the Act for recovery of the actual amount payable. Thus, from a conjoint reading of the aforesaid provisions, it would be evident that even in a case where an assesse files his return as per his own ascertainment, pays the tax and even pays interest, but if the said amount paid by the assesse is falling short of the amount actually payable, the Proper Officer is required to initiate proceedings under Section 73(1) for recovery of the said amount of tax and interest. The natural corollary of the above interpretation is that if an assesse has allegedly delayed in filing his return, but discharges the liability of only tax on his own ascertainment and does not discharge the liability of interest, the only recourse available to the Proper Officer would be to initiate proceedings under Section 73(1) of the CGST Act for recovery of the amount of "short paid" or "not paid" interest on the tax amount.

21. It is not a true that liability of interest under Section 50 of the CGST Act is automatic, but the said amount of interest is required to be calculated and intimated to an assesse. If an assesse disputes the liability of interest i.e. either disputes its calculation or even the leviability of interest, then the only option left for the Assessing Officer is to initiate proceedings either under Section 73 or 74 of the Act for adjudication of the liability of interest. Recently, the Hon'ble Madras High Court, in its decision dated 19th December, 2019 rendered in Writ Appeals in the case of ***The Assistant* Commissioner of CGST & Central Excise and others Vs. Daejung *Moparts Pvt. Ltd. and ors***, has taken similar view. The said Writ Appeals were initially decided by a Two Judges Bench of the Hon'ble Madras High Court and divergent views were taken by the Hon'ble Judges on the issue of initiation of adjudication proceedings before imposing liability of interest under Section 50 of the Act. The matter was, thus, referred to learned Third Judge, which was decided vide Judgment dated 19th December 2019 in the following terms:-

> "27. A careful perusal of the above said provision would show that every person who is liable to pay tax, but fails to pay the same or any part thereof within the period prescribed shall, on his own, pay interest at such rate not exceeding 18% for the period for which the tax or any part thereof remains unpaid. Thus, sub clause (1) of Section 50 clearly mandates the assesse to pay the interest on his own for the period for which the tax or any part thereof remains unpaid. The liability to pay interest is evidently fastened on the assesse and the same has to be discharged on his own. Thus, there cannot be any two view on the liability to pay interest under Section 50(1) of the said Act. In other words, such liability is undoubtedly an automatic liability fastened on the assesse to pay on his own for the period for which tax or any part thereof remains unpaid.
>
> 28. Sub-section (2) of Section 50 contemplates that the interest under Sub-section (1) shall be calculated in such manner as prescribed from the day succeeding the day on which such tax was due to be paid. Sub-section (3) of Section 50 further contemplates that a taxable person who makes an undue or excess claim of input tax credit under Section 42(10) or undue or excess reduction in output tax liability under Section 43 (10) shall have to pay interest on undue or excess claim or such undue or excess reduction, at the rate not exceeding 24

percent.

29. A careful perusal of sub Sections (2) and (3) of Section 50 thus would show that though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assesse disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid. Likewise, whether an undue or excess claim of input tax credit or reduction in output tax liability was made, is also a question of fact which needs to be considered and decided after hearing the objections of the assesse, if any. Therefore, in my considered view, though the liability fastened on the assesse to pay interest is an automatic liability, quantification of such liability certainly needs an arithmetic exercise after considering the objections if any, raised by the assesse. It is to be noted that the term "automatic" does not mean or to be construed as excluding "the arithmetic exercise". In other words, though liability to pay interest arises under Section 50 of the said Act, it does not mean that fixing the quantum of such liability can be unilateral, especially, when the assesse disputes the quantum as well as the period of liability. Therefore, in my considered view, though the liability of interest under section 50 is automatic, quantification of such liability shall have to be made by doing the arithmetic exercise, after considering the objections of the assessee. Thus I answer the first issue accordingly.

Xxx xxx xxx

31. It is to be noted at this juncture that in both the writ petitions, the respective writ petitioners are not disputing their liability to pay the interest on the delayed payment of tax. On the other hand, they are disputing the quantum of interest claimed by the Revenue by contending that the interest liability was worked out on the entire tax liability instead of restricting the liability to the extent of tax unpaid. It is further seen that the writ petitioners have placed some worksheets, wherein they have claimed some ITC credit for every month as well. Their grievance before the Writ Court was that the impugned bank attachment ought not to have been resorted to without determining the actual quantum of liability.

32. Therefore, it is evident that the dispute between the parties to

the litigation is not with regard to the very liability to pay interest itself but only on the quantum of such liability. In order to decide and determine such quantum, the objections raised by each petitioners shall have to be, certainly, considered. Undoubtedly unilateral quantification of interest liability cannot be justified especially when the assesse has something to say on such quantum. The Writ Court, thus, in the above line, has disposed the writ petitions, that too, on a condition that the petitioner in each case should pay the admitted liability of interest.

33. A careful perusal of the direction issued by the Writ Court does not indicate anywhere as to how the Revenue is prejudiced by the said order, especially when the Revenue is given liberty to pass an order in a manner known to law and communicate the same to the petitioners, after considering their objections. Thus, I find that the Writ Appeals preferred against the said orders of the Writ Court, as observed by Dr. Vineet Kothari, J, are wholly unnecessary. Therefore, I am in agreement with the view expressed by Dr. Vineet Kothari, J., as I find that entertaining the writ appeal is not warranted, since the Writ Court has not determined the interest liability of each petitioners against the interest of the Revenue in any manner and on the other hand, it only remitted the matter back to the concerned Officer to determine the quantum of such liability. Thus, the second question with regard to the maintainability of the writ appeals is answered accordingly."

22. The next issue for adjudication in the instant writ application is as to whether garnishee proceedings under Section 79 of the CGST Act can be initiated for recovery of interest without adjudicating the liability of interest, when the same is admittedly disputed by the assessee. Section 79 of the CGST Act empowers the authorities to initiate garnishee proceedings for recovery of tax where "any amount payable by a person to the Government under any of the provisions of the Act and Rules made thereunder is not paid". Since in the preceding paragraphs of our Judgment, we have already held that though the liability of interest is automatic, but the same is required to be adjudicated in the event an assesse disputes the computation or very leviability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act, in our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules. Thus, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be

initiated for recovery of the interest amount.

23. Accordingly, the impugned order dated 8-3-2019 issued by Respondent No.3 (Superintendent, Daltonganj Range) (as contained in Annexure-7) is hereby quashed/set aside and, further, garnishee notice contained in the Order dated 22-5-2019 (Annexure-10 of the Supplementary Affidavit) issued under Section 79 of the CGST Act to the Banker of the petitioner for recovery of interest amount of Rs.19,59,721/- is also, hereby, quashed/set aside.

24. It shall be open for the respondent Authorities to initiate appropriate adjudication proceeding either under Section 73 or 74 of the CGST Act (as the case may be) against the petitioner-assessee and determine the liability of interest, if any, in accordance with law after giving due opportunity of hearing to the petitioner.

25. Accordingly, the writ application is allowed. However, no order as to costs.

❑

(2020) 65 TLD 191

In the High Court of Gujarat
Hon'ble J.B. Pardiwala & Bhargav D. Karia, JJ.

Siddhi Developers

Vs.

Union of India

R/Special Civil Application No. 17167 of 2019
March 11, 2020

Deposition : In favour of Petitioner

Tran-1 - Technical difficulties - The High Court directed the respondents to complete the exercise of verification and permit the petitioner to upload the form GST TRAN-1.

Petition disposed of

Cases referred :

* Siddharth Enterprises Vs. The Nodal Officer (2020) 64 TLD 236 (Guj) Civil Application No. 5758 of 2019

Mr. Hasit Dave (1321) for the Petitioner(s) No. 1,2.
Mr. Ankit Shah (6371) for the Respondent(s) No. 1,2,3,4,5.

:: ORAL ORDER ::

The Order of the Court was made by **BHARGAV D. KARIA, J. :**

1. Rule returnable forthwith. Learned advocate Mr. Ankit Shah waives service of notice of rule for and on behalf of the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

> "A) Your Lordships be pleased to issue a writ of mandamus or any such appropriate writ order or direction directing the concerned respondents to immediately consider and allow the Transition credit to the petitioner, based on the manual TRAN 1 form, if so required, and transfer the entire Rs.1,15,35,563/- towards service tax credit, in terms of Section 140(3) of the Central Goods and Services Tax Act, 2017 and allow filing / uploading of Form GST-TRAN-1 now;
>
> B) Any other further relief that may be deemed fit in the facts and circumstances of the case may also please be granted."

3. The petitioner is registered under the provisions of the Central Goods and Services Act, 2017 [for short, 'the Act, 2017'].

4. It is the case of the petitioner that Section 140 of the Act, 2017 provides that the petitioner is entitled to carry forward credit of CENVAT as available / admissible on the day immediately preceding the appointed day i.e. 1st July 2017 read with Rule 117 of the Central Goods and Services Tax Rules, 2017 [for short, 'the Rule 2017']. According to the petitioner, the petitioner tried to upload form GST TRAN-1 to claim credit amounting to Rs.1,15,35,563/- for their firm towards service tax credit. However, due to technical glitches in the GST portal, the petitioner could not file / upload the form GST TRAN-1.

5. It is the case of the petitioner that time and again the petitioner approached the GST Department as well as jurisdictional Nodal Officer appointed by the GST Department for redressal of its grievances. In spite of the efforts made by the petitioner, the case of the petitioner was not considered by the competent authority so as to enable the petitioner to claim credit of CENVAT in view of transitional provisions of Section 140 of the Act, 2017 as on 1st July 2017. Learned advocate Mr. Mishra for the petitioner submitted that the petitioner is entitled to credit of CENVAT as well as service tax as on 30th June 2017 as per the provisions under Section

140(1) of the Act, 2017 read with Rule 117 of the Rules 2017.

6. Learned advocate for the petitioner relied upon the decision of a Coordinate Bench of this Court in the case of **M/s. Siddharth Enterprises Vs. The Nodal Officer (2020) 64 TLD 236 (Guj)** in Special Civil Application No.5758 of 2019 and allied matters decided on 6th September 2019, wherein it is held that the petitioner is entitled to transitional credit of CENVAT as well as service tax as it is the legitimate right of the petitioner to carry forward credit of CENVAT as well as service tax under the Act, 2017:

> "38 By not allowing the right to carry forward the CENVAT credit for not being able to file the form GST Tran-1 within the due date may severely dent the writ-applicants working capital and may diminish their ability to continue with the business.
>
> Such action violates the mandate of Article 19(1)(g) of the Constitution of India.
>
> 39 This High Court, in the case of Indsur Global Ltd. Vs. Union of India, reported in 2014 (310) E.L.T. 833 (Gujarat), has held as under:
>
> > "34. By no stretch of imagination, the restriction imposed under sub-rule (3A) of Rule 8 to the extend it requires a defaulter irrespective of its extent, nature and reason for the default to pay the excise duty without availing Cenvat credit to his account can be stated to be a reasonable restriction. It leads to a situation so harsh and a position so unenviable that it would be virtually impossible for an assessee who is trapped in the whirlpool to get out of his financial difficulties. This is quite apart from being wholly reasonable, being irrational and arbitrary and therefore, violative of Article 14 of the Constitution. It prevents him from availing credit of duty already paid by him. It also is a serious affront to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution. On both the counts, therefore, that portion of sub-rule (3A) of rule must fail."
>
> "40. The liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input tax credit would lead to double taxation on the same subject matter and, therefore, it is arbitrary and irrational.

41. C.B.E. & C. Flyer No.20, dated 1-1-2018 had clarified as under :

> "(c) Credit on duty paid stock : A registered taxable person. Other than manufacturer or service provider, may have a duty paid goods in his stock on 1st July 2017. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/tax paid earlier would be admissible as credit."

42. Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a constitutional right. CENVAT credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. It could have been appropriated by the government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in this regard.

43. In the result, all the four writa-pplications succeed and are hereby allowed. The respondents are directed to permit the writ-applicants to allow filing of declaration in form GST TRAN-1 and GST TRAN-2 so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day in terms of Section 140(3) of the Act. It is further declared that the due date contemplated under Rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision."

7. Learned advocate for the petitioner submitted that the respondents may be directed to consider the case of the petitioner after verification of credit of CENVAT as well as service tax available to the petitioner as on 1st July 2017 so as to enable the petitioner to upload form GST TRAN-1 on or before 31st March 2020 in view of the order No. 01/2020-GST dated 7th February, 2020 issued by Government of India, Ministry of Finance.

8. On the other hand, learned standing counsel Mr. Ankit Shah for the respondents submitted that as per the respondents, there are no technical

glitches found in the case of the petitioner and therefore, the petitioner was not allowed to upload the form GST TRAN-1. On a specific query put to the learned advocate for the respondents that whether the claim of transitional credit made by the petitioner is genuine or not, he submitted that on verification of such claim, if it is found to be genuine, the petitioner can file / upload GST TRAN-1. Learned standing counsel for the respondents as regards genuineness claim submitted that the same shall be looked into by the respondent No.4.

9. Having considered the submissions made by the respective parties and having through the materials on record, it appears that if the petitioner could not upload the form GST TRAN-1 due to technical glitches and in spite of various representations made by the petitioner, he was not allowed to upload the form GST TRAN-1.

10. In view of the settled legal position as stated hereinabove, the petitioner is entitled to claim credit of CENVAT as well as service tax as on 30th June 2017 as per the provisions under Section 140(1) of the Act, 2017 read with Rule 117 of the Rules 2017.

11. In such circumstances, respondent No.4, who is the jurisdictional officer, is directed to verify the claim of credit of CENVAT and service tax of the petitioner so as to enable the petitioner to carry forward by filing / uploading form GST TRAN-1 on GST portal.

12. Reliance placed by the petitioner on the order No. 01/2020-GST dated 7th February 2020 of the Central Board of Indirect Taxes and Customs reads as under:

"F. No.CBEC-20/06/17/2018-GST(pt. I)
Government of India, Ministry of Finance
(Department of Revenue)
(Central Board of Indirect Taxes and Customs)

New Delhi, the 7th February, 2020

Order No. 01/2020-GST

Subject : Extension of time limit for submitting the declaration in Form GST TRAN-1 under Rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases

In exercise of the powers conferred by sub-rule (1A) of Rule 117 of the Central Goods and Services Tax Rules, 2017 read with Section 168 of

the Central Goods and Services Tax Act, 2017, on the recommendations of the Council, and its supersession of Order No. 01/2019-GST dated 31-1-2019, except as respects things done or omitted to be done before such supersession, the Commissioner hereby extends the period for submitting the declaration in FORM GST TRAN-1 till 31st March, 2020, for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.

Sd/-
(Yogendra Garg)
Principal Commissioner (GST)"

13. In view of the above facts, respondent No.4 shall complete the exercise of verification and permit the petitioner to upload the form GST TRAN-1 within a period of two seeks from the date of receipt of the writ of this order so that the petitioner can upload the form GST TRAN-1 on or before 31st March 2020.

14. With the aforesaid directions, petition stands disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

❑

(2020) 65 TLD 196

In the High Court of Gujarat
Hon'ble J.B. Pardiwala & A.C. Rao, JJ.

Union of India

Vs.

Saraf Natural Stone

Misc. Civil Application (for review) No. 1 of 2019
In R/Special Civil Application no. 15925 of 2018
March 13, 2020

Deposition : In favour of Respondent

Interest on delayed refund - Section 56 of CGST Act, 2017 - Review - The High Court rejected the review application made by department and upheld its earlier order by which High Court directed to pay @ 9% per annuam interest on delay in grant of refund to exporters.

Review application rejected

Viral K. Shah for the Petitioner.
Mr. Vinay Shraff & Mr.Vishal J. Dave for the Respondent.

:: IA ORDER ::

The Order of the Court was made by **J.B.PARDIWALA, J. :**

Rule returnable forthwith. Mr. Vishal J. Dave, the learned standing counsel, waives service of notice of rule for and on behalf of the opponents.

This is an application at the instance of the original respondents of the Special Civil Application No.15925 of 2018 with the following prayers :

"a) This Hon'ble Court is pleased to admit and allow this petition.

b) This Hon'ble Court be pleased to recall or review order dated 10-7-2019 passed in Special Civil Application No.15925 of 2018 in the interest of justice;

c) Such other and further relief as this Hon'ble Court may deem just, fit and expedient be granted in favour of the petitioner."

While disposing of the main matter i.e. the Special Civil Application No.15925 of 2018 vide order dated 10-7-2019, this court observed in paragraphs 14 to 25 as under :

"14. Section-56 of the CGST Act provides that if any tax ordered to be refunded under sub-section (5) of Section 54 to any applicant is not refunded within sixty days from the date of receipt of the application under subsection (1) of that section, interest at such rate not exceeding 6% as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of the application under the sub-section till the date of refund of such tax. Section-56 of the CGST Act reproduced herein below:-

Section-56: Interest on Delayed Refunds:

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of

such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation: For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

15. Rule 94 of the CGST provides for the order sanctioning interest on delayed refunds. It reads as follows:-

Rule 94: Order Sanctioning Interest on Delayed Refunds:

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

16. We shall now look into few decisions of different High Courts including our High Court on the subject.

17. The Calcutta High Court in the case of **Shiv Kumar Jain Vs. Union of India reported in 2004 (168) E.L.T. 158 (Cal.)** held as under:"

4. In my view, the time taken for refund of the money in terms of the CEGAT's order is unreasonable. CEGAT's order was passed on 21st June, 2001 so one could expect either the matter to be taken to higher up, and for this, under law ninety days time is given and on expiry of this time the department was expected to refund this money, since it is a Government Department. So, unlike the ordinary citizen another three months of grace time may be given for taking action. So, the department should have released this amount within the reasonable time of six months, namely by 31st December, 2001. Unfortunately, this has not been done. So, I think after expiry of 31st December, 2001 the Government has no justification for withholding this money, and I hold this is an negligent inaction on the part of the Government. The Government cannot deprive the enjoyment of the property without due recourse to law and this withholding cannot be termed to be a lawful one nor an established procedure under the law. Therefore, this inaction is wholly unjustified and this has really caused the deprivation of the petitioner's enjoyment of the property namely the aforesaid amount. Therefore, this is positively violative of the provision of Article 300A in Chapter IV under Part XII of the Constitution of India. When there is breach of constitutional right either by omission or by commission by the State such breach can be remedied under Article 226 of the Constitution of India. The petitioner could have earned interest during this period but because of the withholding this could not be done. I find in support of my observation from the judgment cited by Mr. Chowdhury as above. In that case a pre deposit amount was directed to be refunded with interest at the rate of 15% per annum. Of course at that point of time the rate of interest of Bank might be higher, but having regard to the present facts and circumstances of this case the rate of interest as allowable now admittedly by the Reserve Bank of India in case of its bond not exceeding 8% per annum, will be appropriate. Therefore, I direct the respondents to pay interest at the rate of 8% on the aforesaid amount of Rs.10 lacs to be calculated from January 2002 till 3rd April, 2003 when the payment of principal amount was effected. This payment of interest shall be

made within a period of three months from the date of communication of this order. However, there will be no interest for this period."

18. A Five Judge Bench of the Supreme Court in the matter of **K.T. Plantation Pvt. Ltd. & Anr. Vs. State of Karnataka reported at (2011) 9 SCC 1** in para 143 held that:

…....

(e) Public purpose is a pre-condition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that Article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

…....

19. A Division Bench of this Court in the matter of **State of Gujarat Vs. Doshi Printing Press reported at MANU/GJ/0420/2015** held that:-

16. From the conjoint reading of the decision of the Apex Court in the case of Sandvik Asia Limited Vs. Commissioner of Income Tax & Others (supra) and the latter decision of the Larger Bench in the case of Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals (supra) it appears that the liability to pay interest on interest by the Revenue is not approved and to that extent the contention of the Revenue can be maintained. But the further contention of the Revenue that no interest whatsoever would be payable if the refund of the amount of tax or refund of the amount deposited towards tax is to be made, no interest whatsoever would be available by way of compensatory measure.

17. In our view, the general principles for awarding compensation to the Assessee for the delay in receiving monies properly due to it is not disapproved by the Larger Bench of the Apex Court in the case of Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals (supra)."

13. In our view, the above-referred observation made by this Court in the above-referred decision in case of Gujarat Fluoro Chemicals (supra) is a complete answer to the contention of the learned A.G.P. that the interest can be awarded even if not expressly barred by the statute or that the taxing statute is silent about the same".

20. The word 'Compensation' has been defined in **P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918** as follows:

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if

such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

21. We may now reproduce the Chart indicating the delay in days:-

Delay in refund for SARAF NATURAL STONE

Mon-th	Invoice Date	Refund Amount	Date of filing of GSTR 3	7 days from Return Filing	Date of Refund	Delay in days
July'	06/07/17	12018	25/08/2017	01/09/17	18/06/2018	290

17	10/07/17	16380	25/04/2018	236
	10/07/17	12763	25/04/2018	236
	11/07/17	2,33,103	04/12/17	94
	12/07/17	2,77,949	04/12/17	94
	13/07/2017	9183	25/04/2018	236
	13/07/2017	2,17,718	04/12/17	94
	13/07/2017	12534	25/04/2018	236
	14/07/2017	1,97,712	04/12/17	94
	14/07/2017	2,26,655	04/12/17	94
	14/07/2017	19720	25/04/2018	236
	15/07/2017	16274	04/12/17	94
	15/07/2017	25464	25/04/2018	236
	15/07/2017	12333	25/04/2018	236
	15/07/2017	14917	25/04/2018	236

22. The position of law appears to be well-settled. The provisions relating to an interest of delayed payment of refund have been consistently held as beneficial and nondiscriminatory. It is true that in the taxing statute the principles of equity may have little role to play, but at the same time, any statute in taxation matter should also meet with the test of constitutional provision.

23. The respondents have not explained in any manner the issue of delay as raised by the writ-applicants by filing any reply.

24. The chart indicating the delay referred to above speaks for itself.

25. In the overall view of the matter, we are inclined to hold the respondents liable to pay simple interest on the delayed payment at the rate of 9% per annum. The authority concerned shall look into the chart provided by the writ-applicants, which is at Page-30, Annexure-D to the writ-application and calculate the aggregate amount of refund. On the aggregate amount of refund, the writ-applicants are entitled to

9% per annum interest from the date of filing of the GSTR-03. The respondents shall undertake this exercise at the earliest and calculate the requisite amount towards the interest. Let this exercise be undertaken and completed within a period of two months from the date of receipt of the writ of this order. The requisite amount towards the interest shall be paid to the writ-applicants within a period of two months from the date of receipt of the writ of this order."

Thus, this Court directed the applicants herein to pay simple interest on the delayed payment @ 9% per annum. This Court also directed the applicants to look into the chart provided by the writ applicants Annexure-D page-30 of the main matter.

By this application, the applicants seek review of our order to the limited extent that the directions could not have been for making payment @ 9% per annum but, in fact, it should have been @ 6% per annum as provided under Section 56 of the CGST Act.

"Section-56: Interest on Delayed Refunds:

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation: For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court

against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said subsection (5)."

Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that no case is made out for review of the order passed by this Court dated 10-7-2019. Having regard to the peculiar facts and circumstances of the case, this Court thought fit to award interest @ 9% per annum.

In view of the above, this application fails and is hereby rejected. Rule is discharged.

❑

(2020) 65 TLD 204 In the High Court of Bombay
Hon'ble S.J. Kathawalla & Madhav J. Jamdar, JJ.

Saha Hospitality Ltd.

Vs.

The State of Maharashtra & Ors.

WP-LD-VC- No. : 112 of 2020

August 14, 2020

Deposition : In favour of petitioner

Show cause notice - Email sent to the petitioner was merely an intimation of payment of interest U/s. 50 of CGST Act and not the final order.

Writ petition disposed of

Mr. Gautam Ankhad, Mr. Ishaan Patkar i/b. Mr. Aditya Chopra, and Mr. Adesh Agarkar on behalf of Victoriam Legalis, for the Petitioner.
Ms. Jyoti Chavan, AGP for the Respondent/State.

:: ORDER ::

(THROUGH VIDEO CONFERENCING)

P.C:-

1. The Petitioner has fled the above Writ Petition challenging the orders dated 17th February, 2020 and 19th June, 2020 issued by Respondent No.2 - The Deputy Commissioner of State Tax, D.C. E-634, L.T.U.-3 (impugned orders).

2. According to the Petitioner, by the impugned orders, Respondent No. 2 seeks to directly recover interest under Section 50 of the GST Act through coercive recovery provisions of Section 79. This is clearly in contravention of Section 78 of the GST Act, which provides for a three-month breathing period after the passing of any order, before the coercive recovery provisions of Section 79 can be invoked.

3. It is further submitted by the Petitioner that the impugned orders are passed without issuing any show cause notice and without giving a hearing to the Petitioner. The Petitioner is not aware of how the interest calculation has been arrived at.

4. The Petitioner has also submitted that Respondent No.2 is threatening to initiate coercive recovery proceedings under Section 79 of the GST Act if the amount is not paid within a period of 7 days.

5. The Respondent No.2 has fled its Affidavit in Reply dated 27th July, 2020. Paragraph 18 of which reads thus :

> *"18. With respect of paragraph No. 5 of the above Petition, I deny the conclusion arrived at by the Petitioner. It is humbly submitted that the email was sent to the Petitioner on 17th February, 2020 and 19th June, 2020 was merely an intimation of payment of interest under section 50 of CGST Act / MGST Act, 2017. The payment of interest is on account of late fling of Return-GSTR 3B from July, 2017.* ***This office is conscious of the procedure required to be followed by it to recover and will initiate the recovery proceeding with issuance of show case notice, working of interest calculation and further actions as per provisions of law. There is no intention of this office to directly recover interest under Section 50 of the CGST/MGST Act, 2017. I therefore say that the above Writ Petition is not only without merits but premature and hence liable to be dismissed."***
>
> *(emphasis supplied)*

6. In view of the above statements made in paragraph 18 of the Afdavit in Reply dated 27th July, 2020 fled by Respondent No.2, the Learned Advocate appearing for the Petitioner is not pressing for reliefs sought in the Writ Petition. The Writ Petition is accordingly disposed of.

7. This order will be digitally signed by the Private Secretary of this Court.

All concerned will act on production by fax or email of a digitally signed copy of this order.

❑

(2020) 65 TLD 206

In the High Court of Madras
Hon'ble K. Ravichandrabaabu, J.

Shree M. Revathi Printers

Vs.

The Deputy Commissioner, Chennai & Other

W.P. No. : 7811 of 2020 & W.M.P. Nos.: 9215 & 9216 of 2020

July 22, 2020

Deposition : In favour of petitioner

COVID-19 - Attachment of bank account for realizing tax dues - The High Court allowed 6 months time for payment of balance due and also directed the respondents to defreeze bank account.

Writ petition disposed of

Mr. S. Ilamvaludhi for the petitioner.
Mrs. R. Hemalatha standing counsel for R1 & Mr. C. Mohan for M/s. King & Patridge, for R2.

:: ORDER ::

This matter is taken up for hearing through Video Conferencing mode.

2. This writ petition is filed challenging the proceedings of the first respondent dated 28-2-2020, attaching the bank account of the petitioner maintained in the second respondent Bank for realising the tax dues amounting to a sum of Rs.83,58,962/-.

3. The grievance of the petitioner is that in view of the present lock down situation due to COVID-2019, the petitioner is not in a position to run the business and therefore, they are not in a position to settle the dues immediately.

4. Mr. S. Ilamvaludhi, learned counsel for the petitioner submitted that the petitioner is not disputing their liability to pay the amount due, but they only seek some time for making payment. He has also submitted that since the bank account is attached, the petitioner is not in a position to run the day-to-day life even to pay salary to the employees.

5. When the matter was taken up for hearing in the last occasion, the learned counsel for the petitioner submitted that the petitioner will pay the entire dues, if 6 months time is granted.

6. Accordingly, the petitioner also filed an affidavit dated 20-7-2020, giving an undertaking that if 6 months time is granted, the petitioner will be in a position to settle the dues, due to the first respondent. The operative portion of the affidavit at Paragraph Nos.5 & 6 reads as follows:

> "5. I respectfully submit that I have given an undertaking that if six months time has been granted to me that I will be in a position to settle the GST dues, due to the 1st respondent to that effect I was directed to file an affidavit.
>
> 6. I respectfully submit that and I solemnly affirm within six months from the date of the order of this Hon'ble High Court I will once for all settle the GST dues, due to the 1st respondent the calculation of arrears of GST dues payable by me to the 1st respondent narrated below:

GST Due	:	Rs.83,58,962/-
Deducted from the petitioner's Bank account	:	Rs.12,45,662/- (deducted on 15-4-2020)
Balance due amount	:	Rs.71,13,300/-"

7. Mrs. R. Hemalatha, learned standing counsel for the first respondent, on the other hand, submitted that payment of admitted dues of the petitioner cannot be delayed, as the impugned proceedings was issued only when the petitioner defaulted in paying the said admitted dues.

8. It is stated that after making attachment, the first respondent has deducted a sum of Rs.12,45,662/- from the bank account of the petitioner maintained in the second respondent Bank. Now, the petitioner wants to make the balance payment within 6 months as stated supra. Considering the present COVOID-2019 pandemic situation and the continuous lock down and that the loss of business is not only to the petitioner but to various people, this Court is of the view that some indulgence can be shown to the petitioner so that they can have a breathe by dealing with their account, more particularly, when they have given an undertaking to settle the dues within a period of 6 months. At this juncture, it is to be noted that the bank has already deducted a sum of Rs.12,45,662/- out of the petitioner's bank

account.

9. Considering all these facts and circumstances, this Court is of the view that the following order will protect the interest of both parties.

10. Accordingly, this Writ Petition is disposed of, with the following directions:

(a) The petitioner shall pay the balance due amount within 6 months from today to the first respondent.

(b) If the petitioner fails to make full payment within the above stipulated period, it is open to the first respondent to resort to the remedy available under law to recover the said amount.

(c) In view of the undertaking given by the petitioner as stated supra, the first respondent is directed to de-freeze the bank account maintained by the petitioner in the second respondent bank forthwith.

(d) Insofar as the interest claim if any, it is open to the first respondent to issue fresh proceedings to the petitioner and if any such proceedings is issued, it is open to the petitioner to agitate against the same in the manner known to law.

No costs. Consequently, connected miscellaneous petitions are closed.

❑

(2020) 65 TLD 208 In the High Court of Andhra Pradesh

Hon'ble M. Seetharama Murti & Ms. J. Uma Devi, JJ.

Sri Siddhi Kalko Bhagavan Stone Crusher

Vs.

The Assistant Commissioner ST & Others

Writ Petition No. : 9324 of 2019

April 18, 2020

Deposition : In favour of petitioner

Appeal - The High Court held when substantial justice is pitted against technical considerations, it is always necessary to prefer the ends of justice and directed the respondents to entertain manually filed appeal - Section 107 of APGST Act, 2017 and Rule 108.

Writ petition allowed

The appeal of the petitioner was rejected on the ground that the

appeal of the petitioner is not qualified for admission, as the petitioner did not adhere to the provisions in Section 107 of A.P.G.S.T. Act, 2017, and Rule 108 of APGST Rules, 2017.

C. Sanjeeva Rao for the petitioner.
GP for Commercial Tax AP for the respondent.

:: ORDER ::

The Order of the Court was made by **M. SEETHARAMA MURTI, J. :**

In this Writ Petition, under Article 226 of the Constitution of India, the challenge is to the rejection order, dated 22-9-2018, of the learned Appellate Joint Commissioner (ST), Vijayawada, whereby the appeal of the petitioner was rejected on the ground that the appeal of the petitioner is not qualified for admission, as the petitioner did not adhere to the provisions in Section 107 of A.P.G.S.T. Act, 2017, and Rule 108 of APGST Rules, 2017.

Learned counsel for the petitioner having drawn the attention of the Court to the said provisions aforementioned would contend as follows: 'As per the said Rule, an appeal to the appellate authority under sub section (1) of Section 107 shall be filed in the required form, along with the relevant documents either electronically or otherwise and hence, the petitioner is entitled to file the appeal either electronically or otherwise and that in the case on hand unless the order, which is being sought to be impugned, is uploaded in the web portal, it is not possible to prefer an appeal electronically and that in the instant case the said requirement of uploading the order is not fulfilled. In the light of the rule position obtaining, the appellate authority ought to have entertained the appeal or in the alternative ought to have given an opportunity to the appellate/petitioner to comply with the provisions aforementioned instead of rejecting the appeal by the impugned order.'

Learned Standing Counsel for the respondents would submit that no notification as envisaged under Rule 108 aforementioned was issued by the Commissioner. However, he would point out from the impugned order that it was noticed in the said order that the appeal is not filed electronically through G.S.T Web Portal in form GST APL-01, even after ample opportunity was given to the petitioner.

Having regard to the facts and submissions and as the case of the petitioner requires adjudication on merits and when substantial justice is pitted

against technical considerations, it is always necessary to prefer the ends of justice, we are of the considered view that the request of the petitioner merits consideration. Such course also would help the petitioner in having his cause decided on merits.

In the result, the writ petition is allowed and the impugned rejection order is set aside with a direction to the 2nd respondent to entertain the appeal of the petitioner and pass appropriate orders, in accordance with the procedure established by law, however, after giving an opportunity of personal hearing to the petitioner.

No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

❑

(2020) 65 TLD 210 Before the National Anti-Profiteering Authority
Shri B.N. Sharma, Chairman,
Shri J.C. Chauhan & Shri Amand Shah, Technical Member

Pushpak Chauhan & Other

Vs.

Harish Bakers & Confectioners Pvt. Ltd.

Case No. : 45/2020

August 18, 2020

Deposition : In favour of petitioner

NAA - Profiteering - Reduction in rate - Since, no penalty provisions were in existence between the period w.e.f. 15-11-2017 to 31-3-2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively.

None for the Applicant.
Ms. Monika Goel, Advocate for the Respondent.

:: ORDER ::

1. The brief facts of the present case are that the Applicant No. 2 (here-in-after referred to as the DGAP) vide his Report dated 18-6-2018, furnished to this Authority under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, had submitted that he had conducted an investigation on the complaint of the Applicant No. 1 and found that the

Respondent had not passed on the benefit of reduction in the rate of GST from 28% to 18% in respect of the two products viz. the Nestle Munch Nuts 32 Gm. Chocolate and the Cadbury Dairy Milk Chocolate with effect from 15-11-2017, as per the provisions of Section 171 (1) of the CGST Act, 2017. Vide his above Report the DGAP had also submitted that the Respondent had denied the benefit of GST rate reduction to his customers amounting to Rs. 15,958/-, pertaining to the period w.e.f. 15-11-2017 to 31-3-2018 and had thus indulged in profiteering and violation of the provisions of Section 171 (1) of the above Act.

2. This Authority after careful consideration of the Report dated 18-6-2018 had issued notice dated 25-6-2018 to the Respondent to show cause why the Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 (1) should not be fixed. After hearing both the parties at length this Authority vide its Order No. 17/2018 dated 7-12-2018 had determined the profiteered amount as Rs. 15,958/- as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 pertaining to the period from 15-11-2017 to 31-3-2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. During the course of the hearing therefore, it was held that the Respondent had not only collected extra amount on account of price of the above products from the consumers but he had also compelled them to pay more GST on the additional amount realised from them between the period from 15-11-2017 to 31-3-2018 and therefore, he had apparently committed an offence under Section 122 (1) (i) of the CGST Act, 2017 and hence, he was liable for imposition of penalty under the provisions of the above Section.

4. The Respondent was issued notice dated 1-1-2019 asking him to explain why the penalty mentioned in Section 122(1) read with Rule 133 (3) (d) should not be imposed on him.

5. The Respondent vide his submissions dated 9-1-2019 has stated that the penal provisions under Section 122 of the Act read with Rule 133(3)(d) of the CGST Rules, 2017 should not be invoked and penalty should not be imposed on him as he had accepted and paid the amount which had been determined by this Authority. He also submitted proof of payment of the profiteered amount to the Applicant No. 1 and Consumer Welfare Fund as

directed by the Authority vide Order No. 17/2018. He inter alia made a number of submissions for non imposition of penalty. The main submission he has made is that penalty should only be imposed when there is a mens rea and deliberate attempt to violate the provisions of law and as he has complied with this Authority's Order No. 17/2018 which depicted his bonafide intentions, penalty should not be imposed upon him.

6. We have carefully considered the submissions of the Respondent and all the material placed before us and it has been revealed that the Respondent has not passed on the benefit of reduction in GST rate from 28% to 18% on the above products w.e.f 15-11-2017 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.

7. It is also revealed from the perusal of the CGST Act and the Rules framed under it that no penalty had been prescribed for violation of the provisions of Section 171 (1) of the above Act, therefore, the Respondent was issued show cause notice to state why penalty should not be imposed on him for violation of the above provisions as per Section 122 (1) (i) of the above Act as he had apparently issued incorrect or false invoice while charging excess consideration and GST from the buyers. However, from the perusal of Section 122 (1) (i) it is clear that the violation of the provisions of Section 171 (1) is not covered under it as it does not provide penalty for not passing on the benefits of tax reduction and ITC and hence the above penalty cannot be imposed for violation of the anti-profiteering provisions made under Section 171 of the above Act.

8. It is further revealed that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 1-1-2020, by inserting Section 171 (3A).

9. Since, no penalty provisions were in existence between the period w.e.f. 15-11-2017 to 31-3-2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 1-1-2019 issued to the Respondent for imposition of penalty under Section 122 (1) (i) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

10. Copy of this order be supplied to both the parties. File be consigned after completion. ❑

(2020) 65 TLD 213 Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members

Vippy Industries Ltd., Dewas

Case No. : 17/2019

Rectification Order of Order No. 01/2020

February 28, 2020

AAR-MP - Rectification order - Bio Processed Meal - Preparation of a kind used in Animal Feeding 'Bio Processed Meal' is entitled to classify under HS Code 23099090.

Shri C.L. Dangi and Shri Ravi Shankar Raichoudhary, Advocate on bahalf of the applicant

:: PROCEEDINGS ::

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and Madhya Pradesh Goods & Service Tax Act, 2017)

(**Rectified Order** of No. 01/2020 dated 2-1-2020 under Section 102 Central Goods and Service Tax Act, 2017 and Madhya Pradesh Goods & Service Tax Act, 2017)

1. M/s. Vippy Industries Ltd. [Plot No. 112], Industrial Area A.B. Road, Dewas (hereinafter referred to as the Applicant) [will manufacture finished products viz. "Preparation of a kind used in Animal Feeding - Bio Processed Meal" which will be used for animal feeding only]. The Applicant is having a GST registration with **23AABCV1297N3ZY** effected from 30-3-2019.

2. The applicant has sought Advance Ruling on the confirmation of classification of the product "Preparation of a kind used in Animal Feeding - Bio Processed Meal" falling under HS Code 23099090. The applicant has provided the following process for manufacture of said product. The advance Ruling in this matter was pronounced on 2-1-2020. The order, however, suffers from certain errors, as pointed out by the applicant vide their application dated 28/29-1-2020 and dated 10-2-2020, that are apparent on the face of the records. They need to be rectified. The Authority therefore proceeds to examine the facts as pointed by the applicant.

3. Brief Facts of the Case:

3.1 Soybean meal (raw material) with 12% moisture is conveyed to buffer

tank after removal of metal impurities. All raw materials after measurement are sent into batch mixer for mixing, and then mix with liquid bacteria/Enzymes in the continuous mixer through a variable frequency screw conveyor which regulates its flow rate. Moisture content is adjusted to around 40% - 50% in the continuous mixer. Finally Soybean meal after inoculation and mixing is delivered to fermentation section.

3.2 After Inoculation Soybean meal through conveying equipment is transported to fermentation bed & kept there for 60-72 hours. The thickness of the material deck is designed to be within 75-150 mm range and may be adjusted according to actual circumstances. The processing capacity of fermentation bed will also be adjusted by changing the thickness of material layer. During the fermentation process agitation of material may be needed according to the process design. After the fermentation process the material is discharged and collected by a belt conveyor to the drying section. In the conveying process, some material may be fall off the conveyor and needs to be cleaned manually.

3.3 The fermented Soybean meal is then pre-dried by a tube bundle dryer to around 20-25% moisture content and then enters live drying tower for further drying at relatively low temperature. The retention time inside the drying tower can be adjusted by adjusting the thickness of the material deck in each tray of the drying tower. The hot air in the drying tower is utilized repeated in each layer and then achieves energy efficiency and maintains desirable colour of the finished product.

3.4 The dried meal is then transported through cold air transfer to pulveriser for grinding to 1 mm size and is finally transported through pneumatic transfer to finished product buffer tank and then for measurement and packing.

3.5 The end product will be sold for use as Aquatic feed including shrimp feed, poultry feed, Cattle feed & Pig feed in domestic and Export market. This product will be used for consumption of Aquatic feed including shrimp feed, poultry feed, Cattle feed & Pig feed etc.

3.6 Bacteria Enzymes are mixed in to soyabean meal & left for fermentation for 60 to 72 hours (approx.) During this time following changes takes place in the meal.

S. No.	Properties	Soya bean meal	Bio-Processed Soya Bean meal
1.	Anti nutritional factor.		
	a. Glycinin	4-6	<0.5
	b. B.Conglycinin	2-3	<0.2
2.	P.H.	6.5-7	4.5-5.0
3.	Lactic Acid	0.03-0.05	3-4

3.7. The applicant has provided the following points in support of his claim that the their end product will be used only Animal Feed:

(i) The raw material for the preparation of Bio-Processed meal is soya bean meal feed grade falling under HS code 23040030.

(ii) The protein content of the feed grade is less than 50% and not fit for human consumption. During the manufacturing process soya meal undergoes through fermentation process.

(iii) The process uses biotechnology to convert protein structure to smaller molecular weight to increase efficiency digestion and absorption.

(iv) It also breaks down and reduce antigens or anti-nutrient substance due to fermentation.

(v) It is a high quality soya protein source of animal such as young animals in Aquatic feed including shrimp feed, poultry feed, Cattle feed & Pig feed.

(vi) It focuses on the use of protein sources in animal feed by replacing fish meal, skim milk, milk replacer.

(vii) Fermented soya protein can be use in the various kinds of feeds, such as Poultry, Aqua, cattle, Pig feed etc.

3.8 The applicant has cited that Notification 02/2017-CT (Rate) dated 28-6-2017 where it is mentioned that Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake (other than rice bran) falling under heading number 2309 of GST Tariff attracts nil rate of GST.

3.9 The applicant has also cited that explanatory Note to Heading 23.09

applies, *mutatis mutandis*, to this heading.

23.09 - Preparations of a kind used in animal feeding.

2309.10 - Dog or cat food, put up for retail sale

2309.90 - Other

This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed :

(1) to provide the animal with a rational and balanced daily diet (*complete feed*);

(2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (*supplementary feed*); or

(3) for use in making complete or supplementary feeds.

As per The Explanatory Note the product "preparation of a kind used in animal feeding - bio processed meal (SOYPRO) is classifiable under sub heading 23099090.

3.10 The applicant has cited the following case laws in support of their case:

(a) As per decision of AAR in the case of **National Plastic Industries Ltd.** reported in **(2018) 16 GSTL 287** it has been decided that classification to be decided as per terms of headings, sub headings and tariff item and the relevant section / chapter notes / sub notes in terms of interpretative rules to the Customs Tariff.

(b) As per decision of AAR - GST in the case of **Maheshwari Stones Supplying Company** reported in **(2018) 13 GSTL 345** Heading which provide more specific description to be preferred over heading providing general description.

(c) As per decision of AAR - GST in the case of **C.P.R. Mill** reported in **(2018) 17 GSTL 146** cattle feed has been classified under 2309 of tariff and exempted vide Sr.No. 102 of Notification 02/2017 CT (Rate).

(d) As per decision of AAR - GST in the case of **SRIVET HATCHERIES** reported in **(2018) 19 GSTL 140 (AAR-GST)** and held that Biofos mono calcium phosphate/Di-calcium phosphate - Animal/ Poultry/Aqua feed supplement - Exemption under GST - Admissibility - Aforesaid product classifiable under Tariff Item 2309 90 90 of Customs Tariff Act, 1975, is a feed grade mono calcium phosphate and being marketed

accordingly - Thus it is fully covered under Entry 102 of Notification No. 2/2017-C.T. (Rate) - Exemption admissible.

4. Questions raised Before The Authority:-

The following questions have been posted before the Authority:-

Whether the product "Preparation of a kind used in Animal Feeding - Bio Processed Meal" will fall under HS Code 23099090 and applicable rate of GST on said product shall be NIL as per Notification 02/2017-CT (Rate) dated 28-6-2017?

5. Officer's View Point:

The Superintendent (Tech), CGST & Central Excise, Division Dewas vide his letter F.No. IV(16)100/Misc./Tech/CGST/17-18/Pt.II/1409 dated 7-11-2019, has forwarded department's view point in respect of the issue raised in the Application. It is submitted in the report that the statement of relevant facts mentioned in the application by the party appears to be correct.

6. Record of Personal Hearing: Shri C.L. Dangi, Advocate and Shri Ravi Shankar Choudhary Advocate of the applicant, has appeared for Personal Hearing and reiterated the points mentioned in their written submission dated 26-7-2019, 14-10-2019 and 18-11-2019.

7. Discussion and Findings portion in the order dated 2-1-2020 reads as under :-

7.1 We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing. We find that the issue raised in the application is squarely covered under Section 97(2)(a)/(b) of the GST Act 2017 being a matter related to classification of the product, being produced by the applicant and applicability of a cited Notification. The applicant have complied with the all the requirements for filing this application as laid down under the law. We therefore admit the application for consideration on merits.

7.2 Going through the application of the party, it is found that the applicant has sought confirmation of classification of their product to whom they term it "Preparation of a kind used in Animal Feeding - Bio Processed Meal" falling under HS Code 23099090. Further, it is noted that the main raw material for the said preparation is 'Meal of Soyabean'.

Further, the applicant has provided the following reasoning to establish that the said product is meant for Animal Feeding:

"The protein content of the feed grade is less than 50% and not fit for human consumption. During the manufacturing process soya meal undergoes through fermentation process. The process uses biotechnology to convert protein structure to smaller molecular weight to increase efficiency digestion and absorption. It also breaks down and reduce antigens or anti-nutrient substance due to fermentation".

7.3 We further notice that the applicant vide their letter dated 18-11-2019 has submitted an additional reply acknowledging a typographical error in para 15F of their advance reply application submitting therein the following:

"In continuation of our application dated 25-7-2019 and hearing on 14-10-2019 for classifying our products under heading 23099090 'Preparation of a kind used in animal feeding - bio processed meal' the applicant wish to further inform that in place of statement as mentioned in 15(f) of our advance Ruling Application "The Protein content of the feed grade is less than 50% and not fit for human consumption" should be read as "The Protein content of the feed grade is up to 52%".

7.4 It is noted that the applicant is renowned manufacturer of soya based products used for the consumption of general public namely Soya Flakes / Grits, Soya Flour, Soya lecithin, Soya Protein / TVP etc. They are also engaged in the manufacturing various products meant for animal feeding namely GMO Soyabean meal, non GMO Soya Grits etc. They are also manufacturing soya products for industrial use. The products meant for industrial use and for consumption of general public are leviable to various rates of GST whereas the applicant has claimed the chapter heading of 23099090 which is exclusively meant for animal feed and attracts nil rate of duty. In such a situation, a critical analysis is required to establish that the said product is meant only for animal feed.

7.5 The applicant has claimed the classification under HSN Code 23099090 which is exclusively meant for animal feed and attracts nil rate of GST. The chapter note 2309 reads as under:

"Note: Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristic of the original material, other than vegetable

waste, vegetable residues and by products of such processing. Further the tariff heading 23099090 is detailed as under:

23.09	Preparations of a kind used in animal feeding.
2309.10	Dog or cat food, put up for retail sale
2309.90	Other
23099010	Compounded animal feed
23099020	Concentrates for compound animal feed
	Feed for fish (prawn etc.)
23099031	Prawn and shrimps feed
23099032	Fish meal in powdered form
23099039	Others
23099090	Others

Further, the Notification 02/2017-CT(Rate) dated 28-6-2017 and corresponding notification issued under MPGST Act has exempted intra-State supplies of goods, the description of which is specified in column (3) of the Schedule appended to the said notification, falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry:

Sl. No.	**Chapter heading / sub heading/Tariff item**	**Description of goods**
102.	2302, 2304, 2305, 2306, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake.

7.6 From above it is derived that the Chapter heading 23099090 is exclusively meant for animal feed. It is noted that the applicant has not provided any evidence to prove that the said product "Bio Processed Meal" is meant for animal feed. We find that the applicant is renowned manufacturer of soya based products, both for general public, for animal feed as well as

for industrial use. In such a situation, a critical analysis is required to establish that the said product is meant only for animal feed.

We further noticed that in their Advance Ruling application, they have mentioned at point 15(f) that:

"The Protein content of the feed grade is less than 50% and not fit for human consumption".

We further noticed that vide their letter dated 18-11-2019, they have submitted fresh plea that above clause in their Advance Ruling application should be read as under:

"The Protein content is up to 52%".

From above, it is clear that they have also removed the line ***"and not fit for human consumption"***

7.7 From the above discussion, it is clear to us that there are not evidences in support of the applicant's claim that the said product falls under Chapter heading 23099090. The applicants withdrawn of the comment that "and not fit for human consumption", further substantiates our contention.

7.8 As the applicant has failed to submit any evidence to support their claim of Chapter heading 23099090 for their product, and therefore the applicant is not entitled to claim NIL rate of duty under as per Notification 2/2017-CT (Rate) dated 28-6-2017 and corresponding notification issued under MPGST Act. We hold accordingly.

8. RULING of earlier order dated 2-1-2020

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

1. The Product ***"Preparation of a kind used in Animal Feeding - Bio Processed Meal"*** is not entitled to classify under HS Code 23099090 and therefore not entitled for the benefit of Notification No. 02/2017-CT(Rate) dated 28-6-2017 and corresponding notification issued under MPGST Act.

2. This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act."

9. Submission of applicant under Section 102 of CGST Act, 2017 and Record of (personal hearing dated 27-2-2020.

The applicant submitted application dated 28/29-1-2020 & dated 10-2-2020 under Section 102 of CGST Act. 2017 pointing out the error apparent

on face of the record for amendment of the order No. 01/2020 dated 2-1-2020. Shri Ravi Shankar Raichoudhary Advocate of the applicant, has appeared for Personal Hearing on 27-2-2020 and reiterated the points mentioned in their further submission dated 28/29-1-2020 and 10-2-2020.

10. Error as apparent from the face of the record being pointed out by the applicant vide application dated 7-2-2019 under 102 of CGST Act, 2017 for amendment of the order number 01/2020 as referred above.

(i) The applicant wishes to draw attention of Section 102 (Rectification of advance ruling) of the CGST Act, 2017 which reads as under:

The Authority or the Appellate Authority [or the National Appellate Authority may amend any order passed by it under section 98 or section 101 [or section 101C, respectively], so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority [or the National Appellate Authority] on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant [appellant, the Authority or the Appellate Authority] within a period of six months from the date of the order:

***Provided** that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.*

(ii) The applicant in their forwarding letter dated 28/29-1-2020 also has drawn attention of the AAR that:

The Supreme Court in the case of **ASSTT. COMMR., INCOME TAX, RAJKOT Versus SAURASHTRA KUTCH STOCK EXCHANGE LTD. 2008 (230) E.L.T. 385 (S.C.)** has given direction regarding the matter of dealing with rectification of mistake. The relevant portion of the order reads as under:

Rectification of mistake - Scope of - A patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on face of record and can be corrected while exercising certiorari jurisdiction - An error cannot be said to be apparent on

face of record if one has to travel beyond record to see whether judgment is correct or not - An error apparent on face of record means an error which strikes on mere looking and does not need long drawn-out process of reasoning on points where there may conceivably be two opinions - ***Such error should not require any extraneous matter to show its incorrectness and it should he so manifest and clear that no court would permit it to remain on record*** - *Section 254(2) of Income Tax Act, 1961.*

Rectification of mistake - Non-consideration of a decision of Jurisdictional Court or of the Supreme Court can be said to be a mistake "apparent from record" which could be rectified under Section 254(2) of Income Tax Act, 1961.

10.1 In terms of the Section 102 of CGST Act, 2017, the applicant requests authority of advance ruling to amend the order passed under Section 98 of the CGST Act, 2017 as following error are apparent in the order delivered by authority of advance ruling.

(a) The authority has taken view that the applicant has replaced 52% in place of 50% and removed the part **"and not fit for human consumption"** in their additional submission on 18-11-2019 from the line **"The protein content of the feed grade is less than 50% and not fit for human consumption"** as mentioned in 15(f) of original application.

(b) In this regard the complete text of 15(1) as mentioned in **the original application** is reproduced below:

"Scientific base to prove the fact that the end product will be used only for PREPARATION OF A KIND USED IN ANIMAL FEEDING – BIOPROCESSED MEAL – *The raw material for the preparation of Bio-Processed meal is soya bean meal feed grade falling under HS code 23040030. The protein content of the feed grade is less than 50% and not fit for human consumption. During the manufacturing process soya meal undergoes through fermentation process. The process uses biotechnology to digest protein structure to smaller molecular weight, increase efficiency digestion and absorption. It also breaks down and reduce antigens or anti-nutrient substance due to fermentation. It is a high quality soya protein source of animal such*

as young animals in Aquatic feed including shrimp feed, poultry feed, Cattle feed & Pig feed. It focuses on the use of protein sources in animal feed by replacing fish meal, skim milk, milk replacer. Fermented soya protein can be use in the various kinds of feeds, such as Poultry, Aqua, cattle, Pig feed etc.

The product being manufactured will only be used for animal feeding and not for in other purpose"

(c) **The applicant wishes to bring to notice that the para 15(f) starts in original application as under:-**

"The raw material for the preparation of bio-processed meal is soya bean meal feed grade falling under HS code 23040030. The protein content of the feed grade is less than 50% and not fit for human consumption."

(d) Subsequently vide letter dated 18-11-2019 the applicant submitted that the words *'The protein content of the feed grade is less than 50% and not fit for human consumption' should be read as* ***'The protein content of the feed grade is less than 52%'***.

(e) Regarding changing of protein content from less than 50% to "up to 52%" is concerned, the applicant wishes to submit that sometimes it receives raw material with protein content more than 50% but not exceeding 52%. Hence, in order to give a true and correct picture before the authority of advance ruling, they made the necessary changes. Regarding removal of words **'and not fit for human consumption'** is concerned, the applicant wishes to submit that the said words pertain to the raw material of the product under consideration i.e. 'Bio Processed Meal'. It has got no bearing on the use of their finished product and classification of their final product. The final product will only be used for animal feeding and not for any other purpose. **The final product will not be suitable for human consumption because of presence of higher bacterial counts.**

(f) The aforesaid text [starting line of para 15(f) as mentioned above] is related to for the raw material to be used in the manufacture of finished products.

The authority for advance ruling **by mistake** took this plea that the words ***'the protein content of the feed grade is less than 52%'***

were meant for finished products whereas a continuous reading of Para 15(f) "The raw material for the preparation of bio-processed meal is soya bean meal feed grade falling under HS code 23040030. The protein content of the feed grade is less than 50% and not fit for human consumption" clearly indicates that this part of the submission relates to raw materials and not for the finished products as observed by the authority of advance ruling. Thus, it is amply clear that on the face of the order error has been occurred and so for rectification of error Section 102 of CGST Act, 2017 is rightly applicable.

(g) The authority of advance ruling also observed that there are no evidences in support of the applicant's claim that the said products under HS code 23099090 is far from the truth **as the process of fermentation of the raw materials etc. for manufacturing of the product has been discussed in detail to prove the fact that the end product will be used for preparation of a kind used in animal feeding.** Accordingly, the applicant has declared at the end of para 15(f) that **the product will only used for animal feeding and not for any other purpose.** This declaration by the applicant was meant for the finished product and by mistake cognizance of this fact was not taken by the authority of advance ruling.

(h) The aforesaid facts leave no doubt that the product soya meal being manufactured by the applicant through fermentation process will only be used for animal feeding and not for any other purpose. Accordingly, it should be classified under HS code 23099090.

(i) The various decisions and explanatory Note explanation quoted in the application on classification of animal feed was not discussed by the authority of advance ruling. This declaration **"the product being manufactured will only be used for animal feeding and not for in other purpose" along with technical details of manufacturing process as indicated above (in para 15(f) of original application)** confirms that the products being manufactured by the applicant will and will only be used for animal feeding and thus their products should correctly under heading 23099090 and should enjoy the exemption under GST as per Notification No. 2/2017-CT(Rate) dated 28-6-2017 and corresponding notification issued under MPGST Act. At this stage the applicant would like to add that they have cleared their product only

for animal feed and **as per the spirit and scheme of the Govt. they must get exemption on their product used exclusively for animal feed.**

10.2 The applicant also submitted application dated 10-2-2020 pointing out the following error as apparent from the face of the record:

(i) In para 1 of the proceedings of the ruling it has been mentioned that M/s. Vippy Industries Ltd., 2**8, Industrial Area, A.B. Road, Dewas** (hereinafter referred to as the applicant) is engaged in manufacturing and export of various soya processed food, used for human as well as animal consumption. The applicant is having GST registration with GSTIN 23AABCV1297N3ZY. However, fact remains that the final product of the applicant for which confirmation of classification has been sought will be produced in their new unit a **Plot Number 112, Industrial Area No. l, Dewas (MP) 455001**. Though the GST registration 23AABCV1297N3ZY has been mentioned correctly but incorrect address has been mentioned. Further it would be worth to mention that the new registration 23AABCV1297N3ZY obtained by the applicant for the new unit at **Plot Number 112, Industrial Area No. l, Dewas (MP) 455001** on 30-3-2019. This unit is not engaged in manufacturing and export of various soya processed food, used for human as well as animal consumption as mentioned in para 1 of the order.

(ii) The aforesaid apparent mistake has resulted to incorrect information regarding new unit of the applicant as mentioned in para 7.4 (discussion and finding portion) of the ruling referred above. **The new unit of the appellant will only manufacture the finished product which will only be used for animal feeding and the same will not be used for any other purpose.** The product viz. soya flakes / Grits, Soya Flour, Soya lecithin, Soya Protein / TVP, GMO Soyabean meal, non GMO Soya Grits etc. as mentioned in Para 7.4 of the order are manufactured by another unit of the applicant situated at 28, Industrial Area, A.B. Road, Dewas and having GST Number 23AABCV1297N2ZZ.

(iii) The discussion and findings in para 7.4 of the ruling was relevant for the authority to take decision on the facts as mentioned in the said para. This has also induced the authority to lake an incorrect decision.

(iv) As the aforesaid mistake are apparent in the order so the applicant

requested to amend the order as per Section 102 of the CGST Act, 2017 and pass an order to classify their finished product under heading 23099090 and to extend the benefit of Notification No. 2/2017-CT (Rate) dated 28-6-2017 for clearing the goods without payment of GST.

11. Discussion & Findings:

In this regard initially we have passed an order dated 2-1-2020. The applicant pointed out some error in the said order apparent on the face of the record. We find that the issue raised in the application is squarely covered under Section 102 under CGST Act, 2017. As the mistake is apparent on the face of the record so we admit the application for consideration on merits.

11.2 We observed that the applicant has taken new registration number 23AABCV1297N3ZY for their new factory at plot number 112, Industrial Area No.1, Dewas (MP) 455001 on 30-3-2019 and the order was passed for their old factory at Plot No. 28, Industrial Area, Dewas having GST No. 23AABCV1297N2ZZ. This has lead to the wrong observation at para 7.4 of the order. The applicant in their original application on 26-7-2019 and on 18-11-2019 before the AAR has submitted that they will manufacture only finished product which will be only used for animal feeding and not for any other purpose. The cognizance of this relevant fact along with manufacturing process as mentioned in the original application dated 26-7-2019 could not be taken as such error was occurred. Thus it appears that this mistake is apparent from the record and thus the order is being amended.

11.3 The applicant also pointed out that we have considered the amendment made by the applicant in their application dated 18-11-2019 is related to finished product whereas it should have been considered for raw materials which has got no bearing on the finished product.

11.4 We have gone through carefully the application filed by the applicant under Section 102 of the CGST Act, 2017 and observed that such mistake has occurred on face of the record of the order 01/2020 dated 2-1-2020 as such we proceed to amend the order due to following reason :

(a) The products being manufactured by the applicant by various processes like fermentation etc. will only be used for animal feeding and not for any other purpose. The manufacturing process also endorses that the finished product being manufactured from raw material having protein content the feed grade is less than 52% will only be used for animal

feeding and not for any other purpose as declared by the Applicant.

(b) The new unit is not engaged in manufacturing any product viz. soya flakes / Grits, Soya Flour, Soya lecithin, Soya Protein / TVP, GMO Soyabean meal, non GMO Soya Grits etc. as mentioned in para 7.4 of the earlier order dated 2-1-2020.

(c) The various judgements quoted by the applicant i.e. in the case of **National Plastic Industries Ltd.** reported in **2018 (16) GSTL 287 (A.A.R. - GST),** in the case of **Maheshwari Stones Supplying Company** reported in **2018 (13) GSTL 345 (A.A.R. - GST)**, in the case of **C.P.R. Mill** reported in **2018 (17) GSTL 146 (A.A.R. -GST)**, in the case of **SRIVT HATCHERIES** reported in **2018 (19) G.S.T.L. 140 (A.A.R. - GST)**] along with explanatory note to heading 23.09 also indicates that product being used for animal feeding will be classifiable under 23099090.

11.5 Going through the application of the party, it is found that the applicant has sought confirmation of classification of their product to whom they term it "Preparation of a kind used in Animal Feeding - Bio Processed Meal" falling under HS Code 23099090. Further it is noted that the main raw material for the said preparation is **'Meal of Soyabean'**.

Further, the applicant has provided a detailed process starting from procurement of the raw material to the manufacture of finished product. During the manufacturing process soya meal undergoes through fermentation process. The process uses biotechnology to convert protein structure to smaller molecular weight to increase efficiency digestion and absorption. It also breaks down and reduces antigens or anti-nutrient substance due to fermentation.

11.6 We further notice that the application dated 25-7-2019 read with amended application dated 18-11-2019 categorically indicates that the content of the protein content the feed grade is less than 52% exists in the raw material i.e. meal of soyabean.

11.7 The applicant has claimed the classification under HSN code 23099090 which is exclusively meant for animal feed and attracts nil rate of GST. The chapter note 2309 reads as under:

"Note: Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included obtained by processing

vegetable or animal materials to such an extent that they have lost the essential characteristic of the original material, other than vegetable waste, vegetable residues and by products of such processing." Further the tariff heading 23099090 is detailed as under:

23.09	Preparations of a kind used in animal feeding.
2309.10	Dog or cat food, put up for retail sale
2309.90	Other
23099010	Compounded animal feed
23099020	Concentrates for compound animal feed
	Feed for fish (prawn etc.)
23099031	Prawn and shrimps feed
23099032	Fish meal in powdered form
23099039	Others
23099090	Others

Further, the Notification 02/2017-CT(Rate) dated 28-6-2017 and corresponding notification issued under MPGST Act has exempted intra-State supplies of goods, the description of which is specified in column (3) of the Schedule appended to the said notification, falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry:

Sl. No.	**Chapter heading / sub heading/Tariff item**	**Description of goods**
102.	2302, 2304, 2305, 2306, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake.

11.8 From above it is derived that the Chapter heading 23099090 is exclusively meant for animal feed. We find that the applicant has started their new unit at 112, Industrial Area No. 1, Dewas for manufacture of the finished

product "Preparation of a kind used in Animal Feeding - Bio Processed Meal" which will be used for animal feeding only. The applicant also submitted a detailed process as how the raw material soyabean meal will undergoes various processes in various section like inoculation and missing section, bio-processing section / fermentation section, drying section, milling and packaging section to achieve the goal of manufacturing the finished product. The applicant submitted the basic quality addition made to the raw material to obtain the final product and the changes takes place in the raw material has also been categorically mentioned in para 15(c) of the application of the applicant which reads as under :

S. No.	Properties	Soya bean meal	Bio-Processed Soya Bean meal
1.	Anti nutritional factor.		
	a. Glycinin	4-6	<0.5
	b. B.Conglycinin	2-3	<0.2
2.	P.H.	6.5-7	4.5-5.0
3.	Lactic Acid	0.03-0.05	3-4

The applicant further in 15(f) of the application has categorically submitted the scientific base in detail to prove the fact that the end product will be used for Preparation of a kind used in Animal Feeding - bio processed meal. Basically the process uses bio technology to digest protein structure to smaller molecular weight, increase efficiency digestion and absorption. It also breaks down and reduces antigens and anti-nutrient substance due to fermentation. The applicant has also emphasised that the finished product is a high quality soya protein source of animal such as animals in Aquatic feed including shrimp feed, poultry feed, cattle feed and pig feed. It focuses on the use of protein sources in animal feed by replacing fish meal, skim milk, milk replacer. The applicant also declared that the fermented soya protein can be used in various kind of animal feed such as poultry, aqua, cattle, pig feed etc.

The applicant finally declared that the **product Preparation of a kind used in Animal Feeding – Bio Processed Meal will only be used for animal feeding and not for in other purpose.**

11.9 From the above discussion and as per declaration of the Applicant that the said product i.e. Bio Processed Meal is only for specific use of Animal Feed, it is clear to us that the finished product being manufactured by the applicant will only be used for animal feeding and not for any other purpose and thus it should fall under chapter heading 23099090. We hold it accordingly.

11.10 Serial No. 102 of Notification 2/2017 CT (Rate) dated 28-6-2017 and corresponding notification issued under MPGST Act speaks that the goods Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake falling under chapter heading 2302, 2304, 2305, 2306, 2308, 2309 are exempted from payment of GST.

11.11 In view of the aforesaid discussion the applicant is eligible to avail exemption on their finished products ***"Preparation of a kind used in Animal Feeding - Bio Processed Meal"*** **from payment of GST under** Notification 2/2017-CT (Rate) dated 28-6-2017 and corresponding notification issued under MPGST Act. We hold accordingly.

12. RULLING:-

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services fax Act, 2017 [amended under section 102 of the CGST Act, 2017])

1. The product ***"Preparation of a kind used in Animal Feeding - Bio Processed Meal"*** is entitled to classify under HS code 23099090 and therefore entitled to clear the said goods for specific use of Animal Feeding without payment of GST under serial no. 102 of the Notification No. 2/2017-CT(Rate) dated 28-6-2017 and corresponding notification issued under MPGST Act.

2. This order is valid for the applicant situated at Plot Number 112, Industrial Area No. 1, Dewas (MP) 455001 having GSTIN 23AABCV1297N3ZY.

3. This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

❑

(2020) 65 TLD 231 Authority for Advance Ruling, Madhya Pradesh
Virendra Kumar Jain & Manoj Kumar Choubey, Members

Agarwal Coal Corporation Pvt. Ltd., Indore

Case No. : 01/2020

Order No. : 11/2020

June 8, 2020

AAR-MP - Coal handling and distribution charges - Coal handling and distribution charges will be taxable @ 18% and not 5% wherever supply of such services only is intended to be expressly made to a customer.

Adv. Dr. Arvind Singh Chawla & CA. Pramod Shrivastava (Group CFO) on bahalf of the applicant.

:: PROCEEDINGS ::

1. BRIEF FACTS OF THE CASE:

1.1 M/s. Agarwal Coal Corporation Private Limited ("Applicant" for brevity) is engaged in business of trading of coal in India and for the same Applicant undertakes purchase of coal from domestic markets as well as imports from overseas.

1.2 On purchase of coal, the Applicant has submitted that GST is paid @ 5% (on intra-state and inter-state supply as the case may be) and on import of coal from overseas market, IGST is paid @ 5%.

1.3 After coal is imported, the coal is stockpiled at port itself at the designated place for subsequent sale to customers. Various services are availed by Applicant at the port during process of procurement of coal and for fulfilling obligations towards supply of coal.

1.4 The services so utilized by Applicant include the following but not limited to,

a. Stevedoring services

b. Unloading and Loading of coal

c. Security of coal

d. Insurance

e. Renting of the premises

Appropriate rate of GST is charged by respective service providers on above services so provided.

1.5 Above services will be utilized by Applicant at the following stages:

a. Procurement and keeping of coal at the port

b. Services provided to customer at port towards handling the coal on behalf of/for the customer.

1.6 Customers from all over India including traders and manufacturers place order(s) on Applicant which can be broadly classified as:

a. **Supply of coal simpliciter:-** Where the customer does not wish to avail any of the coal handling and distribution services and intends to purchase coal.

b. **Supply of coal and availment of coal handling and distribution:-** Where the customer not only wishes to purchase coal, but also intends to avail services of coal handling and distribution during the period of supply of coal.

1.7 Coal handling and distribution charges (per MT) includes a bouquet of services provided to customer towards handling the desired quantity of order placed by customer including but not limited to :

a. Loading, unloading of material at site

b. Storage charges of the quantity ordered

c. Coal safety and security

d. Adequate water sprinkling

e. Commitment charges towards fulfilling supply

f. Custom clearing services

g. Insurance

1.8 A customer is liable to pay coal handling and distribution charges for the full intended quantity of purchase even if the quantity lifted/purchased under a purchase order falls short of the impugned purchase order.

However, a customer is charged only for the actual quantity of the coal lifted/purchased and the amount is charged as and when a consignment is made.

1.9 In light of the above, separate purchase order/intent is to be placed on Applicant by the customers for:

a. Purchase of coal

b. Coal handling and distribution charges,

as the case may be

1.10 As per the terms agreed with customer, on placing the order for desired quantity of coal, separate invoices to be raised by the Applicant on a customer for:

a. Price of supply of coal

b. Coal handling and distribution charges

1.11 The Applicant intends to raise invoice on customer(s) for the following:

a. Supply of coal with 5% GST in addition

b. Coal handling and distribution services with 18% GST in addition

1.12 The Applicant is presently availing input tax credit and will continue to avail the same as follows:

a. 5% IGST on import of coal

b. 18% on various services availed at port

1.13 The input tax credit so availed is to be utilized for discharging liability of tax on sale of coal and coal and handling charges at the respective rates.

2. QUESTIONS RAISED BEFORE THE AUTHORITY

2.1 Whether the Applicant is liable to discharge tax liability @ 18% on coal handling and distribution charges wherever supply of such services is intended to be made expressly to a customer or will the Applicant be entitled to charge GST at the rate of 5% as applicable on supply of coal?

2.2 Will the applicant be entitled to utilize the input tax credit availed for discharging liability towards supply of coal and supply of coal handling and distribution charges?

3. DEPARTMENTS VIEW POINT

The Joint Commissioner (In-situ), CGST & Central Excise, Division-IV, Indore, vide his letter IV(16)30-50/T/D-IV/Adj/18-19/10227 dated 6-6-2020 has furnished the opinion of the department and it has been

categorically opined that

A. The issue has been examined and found that the applicant activities are trading of coal and supply of coal and the same shall be taxable at 5% (CGST 2.5%+SGST 2.5%) under heading 2701 of Notification no. 1/2017-Central Tax (Rate). They are also providing services named as coal handling and distribution services which shall be taxable at 18% (9% + 9%) under the heading 9997 of Notification no. 11/2017-Central Tax (Rate).

B. As per the present scenario also the applicant is paying GST 18% with availing benefit of ITC as per applicable rate which is correct as per CGST Act, 2017.

RECORD OF PERSONAL HEARING

3.1 Adv. Dr. Arvind Singh Chawla and CA. Pramod Shrivastava (Group CFO), appeared on behalf of the applicant and reiterated submissions already made in the application. They pleaded that pursuant to provisions of CGST Act, 2017 and Notification 1/2017- CT (Rate); Notification 11/2017-CT (Rate), supply of coal and coal handling & distribution services are taxable at 5% and 18% respectively. Further, input tax credit availed on inputs and input services are to be allowed for discharging aforesaid liability of tax.

4. DISCUSSIONS AND FINDINGS

4.1 We have carefully considered the submissions made by applicant in the application, pleadings on behalf of Applicant made during the course of personal hearing and Department's view provided by the Joint Commissioner, CGST & Central Excise, Division, Indore.

4.2 We find that the short question before us pertains to :

1. Taxability of supply of coal handling and distribution charges @ 18% in case of supply of such services is intended to be expressly made to a customer apart from sale of coal, and

2. Utilization of input tax credit availed for discharging liability towards supply of coal and supply of coal handling and distribution charges respectively.

It is necessary to examine the relevant provisions of CGST Act, 2017

and relevant notification.

4.3 Supply is defined u/s 7 (1) of the CGST Act, 2017 as:

7.(1) For the purposes of this Act, the expression "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business and;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

4.4 In order to examine the issue regarding rate of tax to be charged on supply, it is necessary to examine; Notification no. 1/2017-Central Tax (Rate) dated 28-Jun-2017 which provides for CGST tax rate of 2.5% on supply of coal with similar rate in SGST, hereby effective rate being 5% (2.5%+2.5%)

Schedule-I

Sl. No.	Chapter/Heading/Sub-heading/Tariff item	Description of Goods
(1)	(2)	(3)
158	**2701**	Coal; briquettes, ovoids and similar solid fuels manufactured from coal

Notification No. 11/2017-Central Tax (Rate) dated 28-Jun-2018 provides for CGST rate of tax on intra-supply CGST rate with similar rate in SGST, thereby effective rate being 18% (9%+ 9%).

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
30	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and	9	-

physical well-being services; and other miscellaneous services including services nowhere else classified).

4.5 Input Tax Credit definition is provided u/s 2 of CGST Act as under:

(62) **"input tax"** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

(63) **"input tax credit"** means the credit of input tax;

4.6 U/s 16(1) of CGST Act, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Sec 16 of CGST Act, 2017 provides for eligibility and conditions for taking input tax credit as under:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the

course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.-For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services -

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by

the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

4.7 U/s 49(4) of the Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

Sec 49 of CGST Act, 2017 provides for payment of tax, interest, penalty and other amounts as under:

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement

or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 or section 43A, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) to (8) - not reproduced as not relevant.

4.8 Having regard to discussions and findings detailed in foregoing paras, we now give our ruling.

RULING

The Advance Ruling on questions posed before the authority is answered as under:

5.1 In respect of Question 1, we hold that coal handling and distribution charges will be taxable @ 18% and not 5% wherever supply of such services only is intended to be expressly made to a customer.

5.2 In respect of Question No. 2, we have carefully considered the plea of the Applicant and in light of the referred provisions we are of the opinion that input credit availed as per the conditions specified in section 16 shall be allowed for discharging the liability towards supply of coal and supply of coal handling and distribution charges respectively.

5.3 This ruling is valid subject to the provisions under section 103 (2) until and unless declared void under section 104(1) of the GST Act.

❑

(2020) 65 TLD 240

In the High Court of Gujarat
Hon'ble Vikram Nath & J.B. Pardiwala, JJ.

Udaipur Cement Works Ltd.

Vs.

State of Gujarat & 2 Other(s)

R/Special Civil Application No. 8870 of 2020

July 31, 2020

Deposition : In favour of petitioner

C Form - The assessee of Rajasthan purchased diesel from Gujarat and on refusal of Rajasthan authorities to issue C Form the seller of Gujarat charged full tax @ 20% - The Rajasthan High Court directed the authorities to issue C Form and held that petitioner was entitled to refund from concerned authorities who collected the excess tax - Finally on writ petition to Gujarat High Court, the High Court directed the authorities of Gujarat to refund the excess tax collected from the petitioner.

Writ petition allowed

The Petitioner purchased diesel from the refinery of M/s Reliance Industries Ltd. (herein after referred to as "the seller") located in the State of Gujarat. Prior to introduction of the GST regime the authorities of the State of Rajasthan under the CST Act duly issued C form declarations to the Petitioner enabling the Petitioner to purchase diesel at concessional rate of tax from the seller.

The GST regime was introduced in our country w.e.f. 1-7-2017. The GST regime encompassed all goods except 6 commodities namely crude oil, petrol, diesel, aviation turbine fuel, natural gas and alcoholic liquor. These 6 commodities continued to be governed by the respective State value added tax laws for the transactions within the State as well as the CST Act in so far as inter-State transactions were concerned.

Despite the fact that diesel continued to come within the ambit of the CST Act, the authorities in the State of Rajasthan refused to issue C form declarations for purchase of diesel at concessional rate after 1-7-2017 on the ground that after introduction of the GST regime the registration certificates of the dealers such as the Petitioner automatically stood cancelled and they were not eligible for making purchases of diesel

against C form declarations.

In view of such stand taken by the authorities of the State of Rajasthan, the seller started raising invoice on the seller charging full tax at the rate of 20% on sales of diesel to the Petitioner.

Since the authorities of the State of Rajasthan were not heeding the request of the Petitioner as well as other similarly situated dealers, the Petitioner approached Hon. Rajasthan High Court by filing writ petition seeking a direction to the learned authorities of Rajasthan under the CST Act to issue C form declarations in respect of diesel and consequential relief for the tax deposited at higher rate in absence of C forms being issued by the learned authorities of the State of Rajasthan.

Gujarat High Court held : *In view of the aforesaid, this writ application succeeds and is hereby allowed. The respondents are directed to forthwith process the refund claim of the writ applicant and grant the refund of the tax amount collected from the writ applicant and deposited by the seller in accordance with law within a period of twelve weeks of the receipt of a copy of this judgment.*

Cases referred :

* J.KI. Cement Ltd. Vs. State of Gujarat, Special Civil Application No.15333 of 2019 decided on 18th December, 2019.

Uchit N. Sheth for the Petitioner.

:: ORAL JUDGMENT ::

The Judgment of the Court was delivered by **J.B.PARDIWALA, J.:**

1. By this writ application under Article 226 of the Constitution of India, the writ applicant, a Public Limited Company, having its place of business at Rajasthan, has prayed for the following reliefs;

"(A) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ or order directing the learned Respondents to forthwith grant refund of tax amount of Rs.33,85,782 collected from the Petitioner and deposited by the seller along with appropriate interest on such refund amount;

(B) Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the learned Respondents to forthwith grant refund of tax amount of Rs.33,85,782 collected from the Petitioner

and deposited by the seller along with appropriate interest on such refund amount;

(C) Ex parte ad interim relief in terms of prayer B may kindly be granted;

(D) Such further relief (s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioner shall forever pray."

2. The case put up by the writ applicant, in its own words, as pleaded in the memorandum of the writ application, reads thus;

"The Petitioner is a Public Limited Company having place of business at Shripatinagar, P.O. CFA 313 021, Near Dabok, District Udaipur, Rajasthan. The 1st Respondent is the State of Gujarat. The 2nd and 3rd Respondents are officers of the State of Gujarat entrusted with the task of collecting tax under the CST Act and thereby being a State within the meaning of Article 12 of the Constitution are amenable to the writ jurisdiction of this Hon. Court.

The Petitioner is engaged in the manufacture and sale of cement. The Petitioner is also inter-alia engaged in mining activity. The Petitioner is duly registered under the CST Act. In the registration certificate under the CST Act "High and Light Speed Diesel Oil" is duly incorporated. Copy of registration certificate of the Petitioner under the CST Act is annexed herewith and marked as **Annexure A**.

The Petitioner purchased diesel from the refinery of M/s Reliance Industries Ltd. (herein after referred to as "the seller") located in the State of Gujarat. Prior to introduction of the GST regime the authorities of the State of Rajasthan under the CST Act duly issued C form declarations to the Petitioner enabling the Petitioner to purchase diesel at concessional rate of tax from the seller.

The GST regime was introduced in our country w.e.f. 1-7-2017. The GST regime encompassed all goods except 6 commodities namely crude oil, petrol, diesel, aviation turbine fuel, natural gas and alcoholic liquor. These 6 commodities continued to be governed by the respective State value added tax laws for the transactions within the State as well as the CST Act in so far as inter-State transactions were concerned.

Despite the fact that diesel continued to come within the ambit of

the CST Act, the authorities in the State of Rajasthan refused to issue C form declarations for purchase of diesel at concessional rate after 1-7-2017 on the ground that after introduction of the GST regime the registration certificates of the dealers such as the Petitioner automatically stood cancelled and they were not eligible for making purchases of diesel against C form declarations.

In view of such stand taken by the authorities of the State of Rajasthan, the seller started raising invoice on the seller charging full tax at the rate of 20% on sales of diesel to the Petitioner. Copy of sample invoice of the seller in respect of sale of diesel to the Petitioner is annexed herewith and marked as **Annexure B**.

Since the authorities of the State of Rajasthan were not heeding the request of the Petitioner as well as other similarly situated dealers, the Petitioner approached Hon. Rajasthan High Court by filing writ petition seeking a direction to the learned authorities of Rajasthan under the CST Act to issue C form declarations in respect of diesel and consequential relief for the tax deposited at higher rate in absence of C forms being issued by the learned authorities of the State of Rajasthan.

In cognate matters of other dealers Hon. Rajasthan High Court held by order dated 18-5-2018 that the learned authorities under the CST Act had erred in refusing to issue C form declarations to dealers for purchase of high speed diesel. The authorities of the State of Rajasthan were directed to issue C form declarations to the concerned purchasing dealers. It was further directed that if in case the Petitioners in those cases had to pay any amount on account of wrongful refusal to issue C form declarations then such Petitioners were entitled to refund from the concerned authorities who collected the excess tax. The concerned authorities were directed to process the refund claims within 12 weeks from the date of refund claim. Copy of judgement of Hon. Rajasthan High Court dated 18-5-2018 in cognate matters to that of the Petitioner is annexed herewith and marked as **Annexure C**.

Such judgement was followed in the case of the Petitioner and the writ petition filed by the Petitioner was allowed by learned Single Judge of Hon. Rajasthan High Court by order dated 31-5-2018. Direction was given to the authorities to issue C form declarations. It was further

directed that if in case the Petitioner had to pay any amount on account of wrongful refusal to issue C form declarations then the Petitioner was entitled to refund from the concerned authorities who collected the excess tax. The concerned authorities were directed to process the refund claims within 12 weeks from the date of refund claim. Copy of order dated 31-5-2018 passed by the learned Single Judge of Hon. Rajasthan High Court is annexed herewith and marked as **Annexure D**.

After passing of such order the learned authorities of the State of Rajasthan started issuing C form declarations to the Petitioner as well as other such dealers who had approached the Hon. High Court. Consequently the seller started charging concessional rate of tax for the sales made to the Petitioner. The issue regarding refund of excess tax collected and deposited during the interregnum period however still survived.

On the basis of the judgement so passed by Hon. Rajasthan High Court the seller i.e. Reliance Industries Ltd. intimated the learned Respondent authorities of the State of Gujarat regarding the issue as well as the direction given by Hon. High Court to refund the excess amount collected by the concerned authorities. The seller informed that its various buyers of the State of Rajasthan would approach the authority for refund. Copy of letter dated 25-7-2018 by the seller to the learned Respondent authorities is annexed herewith and marked as **Annexure E**.

Pursuant to directions of Hon. Rajasthan High the learned authorities of the State of Rajasthan issued C form declarations to the Petitioner for purchases of diesel made from 1-10-2017 to 31-3-2018 on 28-1-2019. Copies of C form declarations issued by the Rajasthan authority are collectively annexed herewith and marked as **Annexure F**.

The Petitioner addressed email communications to the seller requesting him for obtaining refund from the Gujarat Value Added Tax department on the basis of order of Hon. Rajasthan High Court and the C form declarations. The seller informed the Petitioner that it had already informed its jurisdictional authority regarding the judgement of Hon. Rajasthan High Court requiring refund of excess tax collected by the

concerned authority and therefore the Petitioner may approach the concerned authority for refund in accordance with the direction of Hon. Rajasthan High Court. Copy of the correspondence between the seller and the Petitioner is annexed herewith and marked as **Annexure G**.

The Petitioner therefore addressed a letter on 28-3-2019 to the jurisdictional authority of the seller under the CST Act in the State of Gujarat requesting for refund of excess tax totaling to Rs. 33,85,782 collected from the Petitioner in accordance with the direction given by Hon. Rajasthan High Court. Copy of letter dated 28-3-2019 addressed by the Petitioner to the learned 2nd Respondent authority is annexed herewith and marked as **Annexure H**.

The Petitioner thereafter approached the higher authority being the 3rd Respondent authority with identical request. Copies of order of Hon. Rajasthan High Court as well as the C form declarations were produced before the 3rd Respondent authority. Copy of letter dated 11-4-2019 addressed to the 3rd Respondent authority is annexed herewith and marked as **Annexure I**.

The Petitioner gave written reminder to the 3rd Respondent authority on 21-8-2019. Copy of written reminder dated 21-8-2019 is annexed herewith and marked as **Annexure J**.

Thereafter despite repeated oral inquiry the learned Respondent authorities have neither responded nor refunded the amount of excess tax deposited in compliance with the direction of Hon. Rajasthan High Court.

The Petitioner may further point out that in the meantime the judgement of learned Single Judge of Hon. Rajasthan High Court passed in the case of the Petitioner as well as allied matters has been confirmed by the Division bench. Copy of order of Division bench dated 1-8-2019 is annexed herewith and marked as **Annexure K**.

In the respectful submission of the Petitioner the learned Respondent authorities have grievously erred in refusing to refund the amount of excess tax collected and deposited with them even though C form declarations in respect of the transactions have been duly furnished and Hon. Rajasthan High Court has specifically directed the concerned authorities to refund the excess tax within 12 weeks of the refund claim.

The Petitioner says that the entire situation arose because of the illegal stand taken by the learned authorities of the State of Rajasthan denying issuance of C form declarations to the Petitioner for purchase of diesel after introduction of the GST regime. Despite the fact that the Petitioner was legally entitled to purchase goods at concessional rate of tax against C form declarations, due to the illegal stand taken by the Rajasthan authorities the Petitioner was forced to make purchases by paying CST at the rate of 20% instead of 2%. Such tax was deposited by the seller with the learned Respondent authorities in the State of Gujarat. The Petitioner therefore approached Hon. Rajasthan High Court which was pleased to issue direction to the Rajasthan authorities to issue C form declarations and also a direction to the concerned authorities who had collected excess tax to refund such amount. Despite such specific direction given by Hon. Rajasthan High Court and despite the fact that the Petitioner was in fact not required to make payment of such tax in the first place and the payment was made only because of misinterpretation of law by the Rajasthan authorities, the learned Respondent authorities are not granting refund of such tax amount to the Petitioner which is arbitrary, bad and illegal.

In any case the fact is that after issuance of C form declarations the tax payable on sales made by the seller to the Petitioner is admittedly 2% as per Section 8(1) of the CST Act. Retention of tax deposited at the rate of 20% despite the fact that the applicable rate of tax on the transactions is 2% under the CST Act is without any authority of law."

3. Thus, it appears from the aforesaid that the writ applicant is seeking direction to the respondents to forthwith grant the refund of tax amount of Rs.33,85,782/- collected from the writ applicant by the seller of diesel and deposited with the respondent-authorities under the Central State Tax Act, 1956 (hereinafter referred to as the "CST Act").

4. It appears that despite the fact that diesel continued to come within the ambit of the CST Act, after 1-7-2017, the authorities in the State of Rajasthan refused to issue "C" Form declarations of purchase of diesel at concessional rate on the ground that after introduction of the GST regime, the registration certificates of the dealers such as the writ applicant, automatically stood cancelled and they were not eligible for making purchases of diesel against

C form declarations. In view of such stand taken by the authorities of the State of Rajasthan, the seller – Reliance Industries Limited started raising invoice charging full tax @ 20% on sales of diesel to the writ applicant. Since the authorities of the State of Rajasthan were not heeding to the request of the writ applicant as well as other similarly situated dealers, the writ applicant approached the Rajasthan High Court seeking a direction to the authorities of Rajasthan under the CST Act to issue C form declarations in respect of diesel required for use in mining activity and consequential relief for the tax deposited at higher rate in the absence of C form being issued by the authorities of the State of Rajasthan. The Rajasthan High Court passed appropriate orders directing the CST Authorities at Rajasthan to issue "C" Form declarations in respect of the transactions in question. The respondents herein do not dispute the fact that against the "C" Form declarations, the tax collected from the writ applicant herein and deposited by the Reliance Industries Ltd. is required to be refunded. However, the stance of the respondents herein is that such refund can be made to the seller, i.e. the Reliance Industries Ltd. after its assessment for the period in question is concluded and not to the writ applicant who is not registered as the dealer in the State of Gujarat.

5. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we take notice of the fact that the issue raised in the present litigation is squarely covered by a decision of a Coordinate Bench of this Court in the case of **J.KI. Cement Ltd. Vs. State of Gujarat,** Special Civil Application No.15333 of 2019 decided on 18th December, 2019. We quote the relevant observations made in the said judgment;

> "11. Mr. Uchit Sheth, learned advocate for the petitioners in both the petitions, submitted that the respondent authorities have erred in refusing to refund the amount of excess tax collected and deposited with them even though C form declarations in respect of such transactions have been duly furnished and the Rajasthan High Court has specifically directed the concerned authorities to refund the excess tax within twelve weeks of the refund claim. Reference was made to section 11B of the Central Excise Act, 1944 and more particularly to clause (e) of sub-section (2) thereof, which provides that the amount of duty of excise and interest, if any, shall instead of being credited to the fund be paid to the applicant if such amount is relatable to the

duty of excise and interest, if any, paid on such duty borne by the buyer, if he has not passed on the incidence of such duty and interest, if any, paid on such duty to any other person.

11.1 Reference was made to the decision of the Supreme Court in State of M.P. Vs. Vyankatlal & Another, (1985)2 SCC 544, wherein it has been held thus:

"14. The principles laid down in the aforesaid cases were based on the specific provisions in those Acts but the same principles can safely be applied to the facts of the present case inasmuch as in the present case also the respondents had not to pay the amount from their coffers. The burden of paying the amount in question was transferred by the respondents to the purchasers and, therefore, they were not entitled to get a refund. Only the persons on whom lay the ultimate burden to pay the amount would be entitled to get a refund of the same. The amount deposited towards the Fund was to be utilised for the development of sugarcane. If it is not possible to identify the persons on whom had the burden been placed for payment towards the Fund, the amount of the Fund can be utilised by the Government for the purpose for which the Fund Was created, namely, development of sugarcane. There is no question of refunding the amount to the respondents who had not eventually paid the amount towards the Fund. Doing so would virtually amount to allow the respondents unjust enrichment."

It was submitted that there is no bar that the petitioners cannot be granted the refund though the petitioners are the buyers. It was submitted that just like no statutory provisions are required for applying the principle of unjust enrichment, correspondingly no provision is required for refund to the person who has borne the tax. It was submitted that the Rajasthan High Court having given a direction to refund the amount to the petitioners, the respondent authorities are duty bound to comply with the same.

11.2 Reference was also made to the decision of the Supreme Court in the case of Mafatlal Industries Ltd. Vs. Union of India, 111 STC 467 (SC), wherein the court has held thus:

99.(xii) Section 11-B does provide for the purchaser making the claim for refund provided he is able to establish that he has not passed

on the burden to another person. It, therefore, cannot be said that section 11-B is a device to retain the illegally collected taxes by the State. This is equally true to section 27 of the Customs Act, 1962."

It was submitted that therefore, if the purchaser can show that he has borne the burden of the tax, he can still be given refund. It was submitted that the petitioners having borne the burden of the tax, they are entitled to refund thereof.

11.3 Reference was made to sub-section (3) of section 31 of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "the GVAT Act"), which provides that the tax collected and deposited under the provisions of the Act to which a dealer may be held not liable shall not be refunded to the dealer and the amount of such tax shall stand forfeited to the Government. Referring to section 36 of the GVAT Act, which deals with refund of excess payment and says that subject to the other provisions of the Act and the rules, the Commissioner may refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him, it was submitted that the sub-section specifically says "person" and does not use the expression "dealer". It was submitted that this is not a refund arising in an ordinary case and that the petitioners were forced to pay the tax on account of the action of the authorities at Rajasthan which was held to be illegal.

11.4 Reliance was placed upon the case of the Supreme Court in the case of Indian Aluminium Company Limited Vs. Thane Municipal Corporation, 1991 (55) ELT 454 (SC), wherein the court has held thus:-

"8. In any event the petitioner Company cannot claim concession at this distance as a matter of right. In Orissa Cement Ltd. Vs. State of Orissa & Ors, A I R 1991 SC 1676, it was observed thus:

"We are inclined to accept the view urged on behalf of the State that a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier. The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the Court has, and must be held to have, a certain amount of discretion. It is well-settled

proposition that it is open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice."

In the instant case the octroi duty paid by the petitioner Company would naturally have been passed on to the consumers. Therefore there is no justification to claim the same at this distance of time and the court in its discretion can reject the same. For the above reasons, this Special Leave Petition is dismissed with costs."

It was submitted that this court which is exercising writ jurisdiction may mould the relief in an appropriate manner, but should ensure that the order passed by the Rajasthan High Court is duly complied with. 11.5 Reference was also made to the decision of this High Court in the case of Ranjeet Singh Choudhary Vs. Union of India, [2019]60 GSTR 511 (Guj), wherein the court held thus:

"14. In the present case, it was therefore upto the CPWD to apply for refund of the service tax which was paid as per the law prevailing at the relevant time, but which became refundable on account of retrospective amendment in the law. The CPWD instead of applying for refund, itself insisted that the petitioner must apply and when the petitioner's application for refund was rejected by the Assistant Commissioner of Service Tax, Ajmer, CPWD found a novel way to recover the same from the petitioner by utilizing the petitioner's security deposit, unpaid amounts of final bill and the petitioner's running bills of other contracts. These are wholly impermissible means of recovery.

15. The petitioner as a service provider was basically not even required to bear the service tax burden, as duty was to be collected from the service recipient and to be deposited with the Government revenue, if the service tax was payable. If the amount was refunded by the Service-tax Department, it was the duty of the petitioner to ensure that the same reaches the service recipient. If, however for whatever reason, the refund is not granted, surely the petitioner cannot be asked to bear the burden thereof. Strangely, the service tax department holds that if the refund is granted, the petitioner would retain it and therefore benefit unjustly, and therefore, does not granted refund, citing it a case of unjust enrichment. The CPWD holds a belief that whatever be the reason for the petitioner not being able to retrieve

such amount from the service tax department, the CPWD must get it back; even if it is from the petitioner personally. In the process, if we allow this situation to prevail, the petitioner would end up losing the service tax component from his profit which in the first place was not the liability of the petitioner. Instead of a case of unjust enrichment, it would be a case of unjust impoverishment.

16.The respondent no. 4 was also not correct in his approach while dealing with the petitioner's refund application. In the communication dated 7th November 2016, the petitioner had made it abundantly clear that the service tax refund is being claimed for and on behalf of the CPWD and the petitioner would have no objection, if the amount is directly paid to the said organization. Ignoring such representation of the petitioner, the Assistant Commissioner of Service Tax, Ajmer held that this was a case of unjust enrichment. If he was of the opinion that the petitioner was not the correct person who can ask for refund, he could have stated so in the order. This would have enabled the petitioner to point out to the CPWD the correct reason for not being able to claim refund of the service tax. Instead, the Assistant Commissioner wrongly applied the principle of unjust enrichment and ordered that the service tax shall be deposited with the Consumer Welfare Fund."

It was submitted that in the facts of the present case, the seller viz. Reliance Industries Limited has informed the respondents that the buyers would claim the refund. 11.6 Reliance was also placed upon the decision of the Madhya Pradesh High Court in the case of **Hotline CPT Ltd. Vs. State of M.P. & Ors., (2014) 52 TLD 16 (MP);** [2013] 61 VST 367 (MP). In the facts of the said case, the petitioner had paid tax to the respondents No.5 and 6 on account of purchase of diesel for its in-house consumption and respondents No.5 and 6 had paid the said tax to the State Government. The tax was paid in accordance with the instructions issued by the Commercial Tax Department to respondents No.5 and 6. The court held that in such circumstances, the petitioner was entitled to refund of the amount from the State and accordingly, allowed the petition and directed the respondent authorities to refund the amount to the petitioner within the period stipulated therein. It was, accordingly, urged that it is always permissible for this court to direct the respondents to make the

payment to the petitioners.

11.7 It was submitted that in the present case, the enactment concerned is the CST Act and the petitioners are dealers under the CST Act, but registered in Rajasthan where they are doing business. It was submitted that it is, therefore, incorrect to say that the petitioners are not dealers. It was submitted that in this case, the petitioners are seeking refund under the CST Act and not under the GVAT Act and that the provisions of the GVAT Act are borrowed only for the procedural aspect. It was, accordingly, urged that the petitions deserve to be allowed by granting the reliefs as prayed for therein.

12. Opposing the petitions, Ms. Maithili Mehta, learned Assistant Government Pleader, submitted that while the respondents are not disputing the fact that the amount collected towards tax in the absence of C form declarations is required to be refunded if the C form declarations are furnished; however, such refund can be granted to the seller - Reliance Industries Limited and not to the petitioners. It was submitted that the transactions in question being interstate transactions, the Commercial Tax Department of Rajasthan was required to issue C forms to the petitioners, which were then required to be forwarded to Reliance Industries Limited, but as the Rajasthan Commercial Tax Department refused to grant C forms to the petitioners, they were liable to pay tax @ 20 % which was deposited with the Gujarat Commercial Tax Department. It was submitted that since the assessment proceedings qua Reliance Industries Limited are still pending for the assessment years in question, the respondent authorities are still to process the application for grant of refund. It was further submitted that the refund shall be paid to Reliance Industries Limited which in turn shall forward the amount to the petitioners. However, the respondent authorities would not be in a position to directly grant refund to the petitioners as it is Reliance Industries Limited who has deposited the tax qua the said transactions. It was submitted that the respondent authorities will process the refund in accordance with law on completion of the assessment proceedings of Reliance Industries Limited for the assessment years in question and grant refund thereafter, which may then be paid over to the petitioners. It was urged that at this stage no cause of action arises in favour of the petitioners and that the petition

being devoid of merits deserves to be dismissed.

13. In rejoinder, Mr. Uchit Sheth, learned advocate for the petitioners invited the attention to the provisions of subsection (3) of section 31 of the GVAT Act, to submit that the seller – Reliance Industries Limited would not be able to claim refund as it has not borne the incidence of tax. It was submitted that there is no statutory bar against giving the refund to the purchaser and that the stand adopted by the respondents flies on the face of the decision of the Rajasthan High Court. It was submitted that Reliance Industries Limited cannot claim refund as the burden has already been passed on to the petitioners; whereas, the petitioners have been disputing the liability to pay tax right from the inception. It was submitted that the petitioners being the users of the goods, the question of passing the duty burden does not arise and that in the light of the decision of the Rajasthan High Court, the court may issue appropriate directions to the respondent authorities to refund the amount to the petitioners.

14. In the backdrop of the facts and contentions noted hereinabove, it is an undisputed position that the petitioners have borne the burden of tax as the CST authorities at Rajasthan had refused to issue C forms after the coming into force of the GST regime. On account of non-issuance of C forms, the petitioners were not in a position to submit C form declarations in respect of the diesel purchased by them for their mining activity, as a result whereof, the petitioners could not purchase diesel at concessional rate of tax from the seller - Reliance Industries Limited, which collected tax at the rate of 20% from the petitioners and deposited the same with the respondent authorities. Now, on account of the directions issued by the Rajasthan High Court in the decisions referred to hereinabove, the CST authorities at Rajasthan have issued C form declarations in respect of the transactions in question. The respondent authorities do not dispute that against the C form declarations, the tax collected from the petitioners and deposited by Reliance Industries Limited is required to be refunded. The sole refrain of the respondent authorities is that such refund can be made to the seller – Reliance Industries Limited after its assessment for the period in question is concluded and not to the petitioners who are not registered as dealers in Gujarat.

15. In the opinion of this court, while adopting the above stand, the respondents have failed to take into consideration the fact that insofar as Reliance Industries Limited is concerned, it has already collected the tax from the petitioners, and hence, if Reliance Industries Limited seeks refund of the amount against the C form declarations, it would not be entitled to such refund as such claim would be hit by the principles of unjust enrichment. As held by the Supreme Court in State of Madhya Pradesh Vs. Vyankatlal (supra), only the persons on whom lay the ultimate burden to pay the amount would be entitled to get a refund of the same. The petitioners having borne the ultimate burden in this case, it is only they who would be entitled to refund of the same.

16. Besides the Rajasthan High Court in the petitioners' own case has held that the authorities at Rajasthan were liable to issue 'C' forms in respect of high speed diesel procured for mining purpose through interstate trade. The court has further held that in the event of the petitioners having had to pay any amount on account of the respondents' wrongful refusal to issue 'C' forms, the petitioners shall be entitled to refund and/or adjustment from the concerned authorities who had collected excess tax. The court further directed the concerned authorities to process such claim within twelve weeks of the same being made by the petitioners in writing and the petitioners furnishing the requisite documents/forms.

17. In the present case, in the absence of 'C' forms having been issued by the Rajasthan authorities, the respondent authorities have collected excess tax from the seller – Reliance Industries Limited, who in turn has collected the same from the petitioners. Therefore, in terms of the above order passed by the Rajasthan High Court, once the Rajasthan authorities issue C forms against the sales made by Reliance Industries Limited to the petitioners and the petitioners produce the requisite documents/forms before the respondent authorities, the respondent authorities are required to process such claim within twelve weeks of the same being made in writing by the petitioners.

18. Pursuant to the above order passed by the Rajasthan High Court, the petitioner in Special Civil Application No.15333 of 2019 has made an application dated 19-4-2019 to the second respondent for refund of Rs.2,12,09,162/- charged by Reliance Industries Limited. Along

with the application, the petitioner has furnished a copy of the order of the Rajasthan High Court, a statement showing the details of high speed diesel purchases, Form 'C' Quarter IIIrd and IVth (F.Y. 2017-18), copy of the letter from Reliance Industries Limited to the Deputy Commissioner of Gujarat Sales Tax and copy of sample invoice. The petitioner in Special Civil Application No.16288 of 2019 has made an application dated 31-8-2019 to the second respondent seeking refund of Rs.1,97,32,644/-. Along with such application, the said petitioner has furnished a statement showing details of purchases, tax charged and submission of 'C' forms against such purchases as well as copy of sample invoice, etc. Thus, the petitioners had duly complied with the direction issued by the Rajasthan High Court and in case the respondents required the petitioners to furnish any other details, it was always open for them to call upon the petitioners to furnish the same. However, the respondent authorities have taken a stand that since it is Reliance Industries Limited which has deposited the tax, such refund application has to be made by it and upon refund being made to Reliance Industries Limited, it can pay the same to the petitioner. However, as noted earlier, Reliance Industries Limited cannot make an application for refund inasmuch as such claim would be barred by the principle of unjust enrichment. Moreover, as stated by the respondents, in the case of Reliance Industries Limited, the refund claim would be processed during the course of its assessment for the period in question, which may take years together and in the meanwhile the petitioners would be deprived of such amount. Moreover, it may be that while processing the refund claim during the course of Reliance Industries Limited's assessment, the respondents may even adjust the refund amount against its dues. Thus, the stand of the respondents that Reliance Industries Limited should file the refund claim and then pay the amount so refunded to the petitioners is neither legally tenable nor is it practically workable.

19. In the opinion of this court, in the light of the clear directions issued by the Rajasthan High Court in the judgment and order referred to hereinabove, which the respondent authorities are bound to comply with, upon the petitioners making applications for refund along with the requisite documents, the respondents were duty bound to process such claim within a period of twelve weeks from the date of such

application. The stand adopted by the respondents that the refund can be made to only to Reliance Industries Limited flies in the face of the order passed by the Rajasthan High Court as well as the above-referred decisions on which reliance has been placed by the learned advocate for the petitioners and is nothing but a purely hyper technical stand adopted by them. Once Reliance Industries Limited has, in clear terms, written to the authorities that various buyers who have purchased HSD in the course of inter-state trade for use in mining activities will be approaching their office for refund of the differential tax amount and has enclosed therewith Customer-wise details of inter-state sales made to buyers in Rajasthan at full rate, it is evident that Reliance Industries Limited is not disputing the fact that it is the petitioners who are entitled to claim the refund. Under the circumstances, the respondent authorities are not justified in not processing the refund claims of the petitioners.

20. In case of the petitioners, it is an admitted position that the HSD has been purchased by them from Reliance Industries Limited in the course of inter-State trade for use in mining activities and they are, therefore, the ultimate consumers thereof and hence, the question of passing on the tax burden to anyone would not arise. Consequently, the question of unjust enrichment would also not arise.

21. For the foregoing reasons, the petitions succeed and are accordingly allowed. The respondents are directed to forthwith process the refund claims of the respective petitioners and grant refund of the tax amount collected from the petitioners and deposited by the seller in accordance with law within a period of twelve weeks of the receipt of a copy of this judgment. It is, however, clarified that once the refund claim of the petitioners is processed, Reliance Industries Limited would not be entitled to claim any such refund. Rule is made absolute accordingly, with no order as to costs."

6. In view of the aforesaid, this writ application succeeds and is hereby allowed. The respondents are directed to forthwith process the refund claim of the writ applicant and grant the refund of the tax amount collected from the writ applicant and deposited by the seller in accordance with law within a period of twelve weeks of the receipt of a copy of this judgment.

❑

मध्य प्रदेश शासन
वाणिज्यिक कर विभाग
मंत्रालय,
वल्लभ भवन, भोपाल–462 004

–: आदेश :–

भोपाल, दिनांक 31 /08/2020

क्रमांक एफ ए 6–18/2017/1/पांच : विभागीय समयंख्यक आदेश दिनांक 06.01.2020 को एतद्द्वारा तत्काल प्रभाव से निरस्त किया जाकर, वाणिज्यिक कर विभाग मे पदस्थ उप सचिव एवं विशेष कर्त्तव्यस्थ अधिकारी के मध्य निम्नानुसार नवीन कार्य विभाजन किया जाता है :–

क्र.	नाम एवं पद नाम	आवंटित कार्य	लिंक अधिकारी
1	श्री रत्नाकर झा, उप सचिव, वाणिज्यिक कर	मुख्यमंत्री हेल्पलाईन, महानिरीक्षक पंजीयन एवं अधीक्षक मुद्रांक, वाणिज्यिक कर एवं आबकारी से संबंधित समस्त स्थापना संबंधी कार्य। आबकारी विभाग से संबंधित समस्त कार्य। माननीय मुख्यमंत्री एवं मुख्य सचिव मॉनिट संबंधी समस्त कार्य। प्रमुख सचिव, वाणिज्यिक कर द्वारा समय–समय पर सौंपे गए विविध कार्य।	श्री आर.पी. श्रीवास्तव, विशेष कर्त्तव्यस्थ अधिकारी एवं उपायुक्त, वाणिज्यिक कर, भोपाल संभाग–1, भोपाल
2	श्री आर.पी. श्रीवास्तव, विशेष कर्त्तव्यस्थ अधिकारी एवं उपायुक्त, वाणिज्यिक कर, भोपाल संभाग–1, भोपाल	महानिरीक्षक पंजीयन एवं अधीक्षक मुद्रांक, वाणिज्यिक कर की स्थापना को छोड़कर समस्त कार्य एवं अपील बोर्ड से संबंधित समस्त कार्य। लोकसभा/राज्यसभा सदस्यों की जानकारी एवं विधान सभा संबंधी समस्त कार्य। RTI (PIO) एवं प्रमुख सचिव, वाणिज्यिक कर द्वारा समय–समय पर सौंपे गए विविध कार्य।	श्री रत्नाकर झा, उप सचिव, वाणिज्यिक कर

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार
(दीपाली रस्तोगी)
प्रमुख सचिव
मध्यप्रदेश शासन
वाणिज्यिक कर विभाग

पृ. क्रमांक एफ ए 6–18/2017/1/पांच भोपाल, दिनांक 31 /08/2020

प्रतिलिपि:–

1. आयुक्त, वाणिज्यिक कर, मुख्यालय, इंदौर
2. महानिरीक्षक पंजीयन एव अधीक्षक मुद्रांक, भोपाल
3. आयुक्त आबकारी, मध्यप्रदेश, ग्वालियर
4. रजिस्ट्रार, मध्यप्रदेश वाणिज्यिक कर अपील बोर्ड, भोपाल
5. विशेष सहायक, माननीय मंत्रीजी, वाणिज्यिक कर विभाग
6. श्री रत्नाकर झा, उप सचिव, वाणिज्यिक कर विभाग
7. श्री आर.पी. श्रीवास्तव, उपायुक्त, वाणिज्यिक कर, भोपाल संभाग–1, भोपाल
8. निज सचिव, प्रमुख सचिव, म.प्र. शासन, वाणिज्यिक कर विभाग
9. आदेश फोल्डर

उप सचिव
मध्यप्रदेश शासन
वाणिज्यिक कर विभाग

POSTAL REGN. NO. MP/IDC/412/2018-2020
REGN.NO. 47503/87/ OF REGISTRAR OF NEWS PAPER FOR INDIA.

Vol. 65 Part-3 Sept. 2020 Date of Publication & Posting 15-09-2020

Sudhir Halakhandi
1 min •

GST- Some Unique Types of Supply under GST - जल्द ही रिलीज होने वाले मेरे एक वीडियो के कुछ क्षण।

हालाखंडी जी के आर्टिकल आप लगातार तीन चार महीनों से पढ़ ही रहे हैं इसलिए इनका परिचय देने की अब आवश्यकता नहीं रह जाती.

RENEWAL SUBSCRIPTION 2020 RS. 2500/-

TAX LAW DECISIONS -Published and Printed by Smt. Jaishree Gangrade. F-312, Sewa Sardar Nagar, Indore-452001, Printed at Jai Shree Offset Printers Company, Indore. Guardian **:** R.P. Tripathi

Mobile : 898993-5075, 93295-84011**E-mail :** taxlawdecisions@gmail.com

Editor - Nilesh Gangrade