

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 - 6

December 2020

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RENEWAL SUBSCRIPTION - 2021

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पुराने के अंत और नए के आरंभ पर

2020 समाप्ति की राह पर है। 2021 में भी वैसे ही दिन होगा वैसे ही रात होगी फिर भी उम्मीद पर दुनिया जीती है। हमें आशा बनी रहती है कि नए साल में नया कुछ होगा। वास्तव में नया साल है क्या ? यथार्थ में देखिए तो कुछ नहीं। समय तो जल की धारा की तरह सतत प्रवाहित होता रहता है। भूत, भविष्य, वर्तमान, सदी, दशक, वर्ष, महिना यह सब समय के विभाजन तो हमने हमारी सुविधा के लिए रखे हैं। मैंने कहीं पढ़ा है कि हमारी सामाजिक संरचना का वैचारिक केंद्र विभाजन है। धर्म, जाति, उपजाति, गोत्र, रंग, आय अनगिनत विभाजन हैं।

हर मुट्ठी में उलझा रेशम डोरे भीतर डोरा है।

बाहर सौ गांठों के ताले, भीतर कागज कोरा है।

आने वाले वर्ष में हम अपने अंतर्मन की जितनी गांठें खोल सकते हैं खोलें और हर वर्ष की तरह बदलने का भरम ना रखते हुए वास्तव में बदलने की कोशिश करें। यह तो मनुष्य द्वारा रचे गए कृत्रिम समय विभाजन का एक औपचारिक अंत है। आपके अंदर का मैं तो शाश्वत है। अतः कहते रहिए —

अभी न होगा मेरा अंत अभी अभी ही तो आया है,

मेरे जीवन में मधुर बसंत।

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



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(98) मध्यप्रदेश कराधान अधिनियमों की पुरानी बकाया राशि का समाधान अध्यादेश, 2020 - FAQ

सुदीप गुप्ता

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प्र.1: किस दिनांक से 30, 60, 90 और 120 दिनों की गणना की जानी है और कटऑफ दिनांक क्या होगी?

उत्तर: यह योजना अध्यादेश के प्रभावशील होने की तारीख से 120 दिवस के लिए लाई गई है। अध्यादेश की प्रभावशीलता दिनांक 26-9-2020 है। अतः इस अध्यादेश की धारा 4(1) के संदर्भ में 60 दिवस दिनांक 24-11-2020, 90 दिवस दिनांक 24-12-2020 एवं 120 दिवस दिनांक 23-1-2021 मान्य होंगे।

प्र.2: आवेदन तथा अन्य सुसंगत प्रक्रियाएं जैसे अपील, भूलसुधार आवेदन, ऑनलाईन की जानी है या मैन्युअल ?

उत्तर: इस योजना के अंतर्गत आवेदन, अपील, भूलसुधार आवेदन समाधान हेतु आवेदन तथा अन्य सुसंगत प्रक्रियाएं जैसे - अपील, भूलसुधार आवेदन ऑफलाईन की जानी है। समस्त प्रक्रिया मैन्युअली होगी।

प्र.3: व्यवसायी के किसी आदेश के विरुद्ध, विभाग द्वारा प्रस्तुत अपील या रिफरेंस की जानकारी किस प्रकार प्राप्त होगी?

उत्तर: आवेदनकर्ता, व्यवसायी के किसी आदेश के विरुद्ध अपील या रिफरेंस के संबंध में जानकारी या तो, अपीलेट फोरम द्वारा जारी नोटिस से या सक्षम अधिकारी के माध्यम से प्राप्त हो सकेगी, यदि दिनांक 26-9-2020 को या उसके पूर्व नोटिस लंबित है।

प्र-4: पुरानी बकाया हेतु दिनांक 31-3-2016 की तारीख कटऑफ दिनांक के रूप में दी गई, क्या इसका अर्थ यह है कि 2015-16 तक की अवधि के कर निर्धारण प्रकरण योजना में शामिल होंगे ?

उत्तर: योजना में उन सभी आदेशों से निकाली गई अतिरिक्त मांग कर, ब्याज एवं शास्ति जो दिनांक 31-3-2016 की या इसके पूर्व की किसी अवधि से संबंधित है तथा जो आवेदन दिनांक को भुगतान हेतु लंबित है, सम्मिलित होगी।

प्र.5: क्या समाधान आदेश जारी होने के पश्चात् ऑडिट आपत्ति या अध्यादेश में उल्लेखित किसी अन्य कारणों से प्रकरण को पुनः खोला जा सकता है ? या कर, ब्याज या शास्ति के संबंध में कोई कार्यवाही की जा सकती है ?

उत्तर: अध्यादेश के माध्यम से पुरानी बकाया का समाधान किया जा रहा है। इस पुरानी बकाया

के संबंध में आगे कोई ब्याज या शास्ति आरोपित नहीं की जावेगी। कोई अन्य कार्यवाही करने हेतु विभाग प्रतिबंधित नहीं है।

प्र.6: योजना में बिन्दु क्रमांक-1 के कॉलम-3 में केन्द्रीय विधान के अंतर्गत मात्र ब्याज की कम्पाउंडिंग हेतु विकल्प है, परन्तु शास्ति के संबंध में कोई उल्लेख नहीं है ?

उत्तर: अध्यादेश की धारा-4(1) में दी गई सारणी में बिन्दु क्रमांक-1 के अनुसार आवेदक को ब्याज की 10 प्रतिशत राशि का भुगतान करना है, जिसका अर्थ है, शेष ब्याज की राशि तथा सम्पूर्ण शास्ति की राशि का अभित्यजन किया गया है।

प्र.7: यदि आवेदन गलत क्षेत्राधिकार में किया गया है तो, ऐसे आवेदन के संबंध में क्या प्रक्रिया अपनायी जाएगी?

उत्तर: क्षेत्रीय अधिकारी द्वारा अपने क्षेत्राधिकार के अतिरिक्त कोई आवेदन स्वीकार नहीं किया जाना है, जब तक इस हेतु अधिकृत नहीं किया जावे। यदि फिर भी आवेदन गलत क्षेत्राधिकार में प्राप्त कर लिया जाता है तो, सक्षम अधिकारी द्वारा आवेदन को सही क्षेत्राधिकार में उचित सक्षम अधिकारी को भेजते हुए, इसकी सूचना संबंधित संभागीय उपायुक्तों तथा आवेदक को दी जावेगी।

प्र.8: यदि किसी व्यवसायी की वर्ष 2004-05 से संबंधित बकाया राशि है, उस समय वह वृत्त-5 में पंजीयत था तथा बाद में उसका व्यवसाय स्थल वृत्त-9 में स्थानांतरित होने से पंजीयन वृत्त-9 के क्षेत्राधिकार में स्थानांतरित हो गया है तो, ऐसे आवेदन को प्रस्तुत करने का सही क्षेत्राधिकार क्या होगा ?

उत्तर: आवेदन देने का सही क्षेत्राधिकार वर्तमान या अंतिम क्षेत्राधिकार होगा। वर्तमान क्षेत्राधिकार के सक्षम अधिकारी द्वारा प्रकरण का निराकरण किया जावेगा।

प्र.9: यदि समाधान राशि का भुगतान वेट अधिनियम के अंतर्गत किया जाता है, जबकि पूर्व के भुगतान किसी अन्य सुसंगत अधिनियम में किए गए हैं तो, समाधान के राशि की गणना में उन्हें शामिल किया जावेगा या नहीं?

उत्तर: हाँ, आवेदन प्रस्तुत करते समय, शेष बकाया राशि का समाधान किया जाना है, अर्थात् किसी भी सुसंगत अधिनियम के अंतर्गत जमा की गई राशि को जमा राशि के रूप में माना जाएगा। समाधान राशि का भुगतान वेट या किसी सुसंगत अधिनियम के अंतर्गत चालान जमा कर किया जा सकता है।

प्र.10: किसी वर्ष में कर निर्धारण तथा शास्ति निर्धारण हेतु पृथक-पृथक प्रकरण संस्थापित किये गए हैं, तो क्या एक ही अधिनियम तथा एक ही अवधि के

संबंध में दो पृथक-पृथक आवेदन दिए जाने हैं या दोनों के लिए एक ही आवेदन प्रस्तुत किया जा सकता है ?

उत्तर: प्रत्येक आदेश जिसमें अतिरिक्त मांग निकाली गई हो, के लिए पृथक-पृथक आवेदन दिया जाना है। एक वर्ष हेतु पार्ट अवधि के लिए दो भिन्न-भिन्न आदेश होने पर प्रत्येक आदेश के संबंध में भिन्न-भिन्न आवेदन दिया जाना है।

प्र.11: क्या बकाया राशि के समाधान हेतु वापसी समायोजन आदेश (RAO) का उपयोग किया जा सकता है ?

उत्तर: हाँ, वापसी समायोजन आदेश (RAO) को चालान के समकक्ष ही भुगतान माना जावेगा।

प्र.12: आवेदन प्रस्तुत करने के पश्चात् भी प्रक्रिया में दिनों की संख्या का महत्व है, इसलिए यह आवश्यक है कि सक्षम अधिकारी द्वारा नोटिस, आदेश, भूलसुधार आदेश सही व्यक्ति (आवेदक) को तामील किया जावे ?

उत्तर: सक्षम अधिकारी द्वारा आवेदन प्रस्तुत होने के 75 दिवस के भीतर आदेश पारित किया जाना है तथा नोटिस, आदेश एवं भूलसुधार आदेश सही व्यक्ति अर्थात् आवेदक को ही तामील किए जावेंगे।

प्र.13: यदि किसी व्यवसायी द्वारा कर दर (अधिक) के आधार पर आरोपित कर राशि की बकाया के समाधान हेतु आवेदन प्रस्तुत किया है तो, क्या इसे व्यवसायी की (अधिक) कर दर के संबंध में स्वीकार्यता मानी जाकर, अन्य वर्षों के प्रकरणों को पुनः खोला जा सकता है ?

उत्तर: समाधान योजना, पुरानी बकाया राशि के संबंध में है, जो अंतिम तथा गणना आधारित है। समाधान योजना में आवेदन प्रस्तुत करने का, अन्य वर्षों के प्रकरणों में करारोपण तथा ब्याज एवं शास्ति आरोपण से कोई संबंध नहीं है।

प्र.14: यदि कोई समाधान आदेश, आवेदन प्रस्तुत करने के 75 दिवस में तामील नहीं किया गया है तो, क्या योजना के अंतर्गत आवेदन स्वीकार माना जाकर, पुरानी बकाया का समाधान माना जावेगा ?

उत्तर: सक्षम अधिकारी द्वारा समय-सीमा में आवेदन का निराकरण किया जावेगा।

प्र.15: यह सुनिश्चित किया जाना चाहिए कि यदि सक्षम अधिकारी द्वारा आवेदन की विषय वस्तु के संबंध में असहमति है, तो त्रुटि के संबंध में संबंधित व्यक्ति को सूचना पत्र जारी किया जावे। बिना सूचना पत्र के आवेदन को निरस्त नहीं किया जाना चाहिए ?

उत्तर: व्यक्तिगत सुनवाई का अधिकार, प्राकृतिक न्याय का सिद्धांत है। सक्षम अधिकारी द्वारा इसका पालन किया जाएगा।

प्र.16 यदि किसी व्यवसायी के किसी प्रकरण में प्रथम अपील आदेश दिनांक 15-9-2020 को तामील हुआ है तथा प्रथम अपील निरस्त कर दी गई है, इसके पश्चात् द्वितीय अपील प्रस्तुत करने हेतु 60 दिनों तक पात्रता है एवं अभी अपील प्रस्तुत करने हेतु समय शेष है। ऐसे प्रकरण में यदि व्यवसायी, योजना के तहत आवेदन प्रस्तुत करना चाहता है तो, बकाया राशि विवादित मानी जावेगी या अविवादित ?

उत्तर: अध्यादेश में 'विवादित राशि' की परिभाषा के अनुसार, अध्यादेश के राजपत्र में प्रकाशन की दिनांक अर्थात् 26-9-2020 को या उसके पूर्व, पुरानी बकाया राशि के संबंध में प्रथम अपील, द्वितीय अपील या अन्य न्यायाधीकरण में वाद प्रस्तुत किया जा चुका होना चाहिए, तभी बकाया राशि विवादित मानी जावेगी। अध्यादेश के राजपत्र में प्रकाशन की तिथि के पश्चात् प्रस्तुत अपील के आधार पर कोई बकाया राशि विवादित नहीं मानी जावेगी।

प्र.17: यदि किसी व्यवसायी के प्रकरण में द्वितीय अपील निरस्त कर दी गई है तथा प्रकरण में माननीय उच्च न्यायालय में अपील दायर करने हेतु समय शेष है तो, ऐसे प्रकरण में निहित पुरानी बकाया राशि विवादित मानी जावेगी या अविवादित ?

उत्तर: अध्यादेश के राजपत्र में प्रकाशन की तिथि के पश्चात्, माननीय उच्च न्यायालय में प्रस्तुत अपील के आधार पर कोई बकाया राशि विवादित नहीं मानी जावेगी।

प्र.18: वर्ष 2015-16 की अवधि के कर निर्धारण आदेश में व्यवसायी के विरुद्ध राशि रुपये 16,00,000/- की मांग निकाली गई। व्यवसायी द्वारा राशि रु. 4,50,000/- प्रथम तथा द्वितीय अपील के समय जमा की गई, प्रकरण, योजना के प्रकाशन की तिथि को द्वितीय अपील में लंबित है। यदि इस प्रकरण में समाधान हेतु आवेदन प्रस्तुत किया जाना है तो, सक्षम अधिकारी कौन होगा? राशि रुपये 16,00,000/- की अतिरिक्त मांग के आधार पर सहायक आयुक्त या शेष बकाया राशि रुपये 11,50,000/- के आधार पर वाणिज्यिक कर अधिकारी ?

उत्तर: सक्षम अधिकारी की वित्तीय अधिकारिता का निर्धारण, आवेदन प्रस्तुत करते समय शेष बकाया राशि के आधार पर किया जाना है।

प्र.19: यदि कोई प्रत्यावर्तित प्रकरण जो 31-3-2016 की अवधि से पूर्व की अवधि का है, परन्तु इसका निर्वतन, योजना के प्रकाशन की तिथि के पश्चात हुआ है तो, ऐसे प्रकरण में निहित बकाया राशि के संबंध में योजना के अंतर्गत आवेदन प्रस्तुत किया जा सकता है या नहीं?

उत्तर: यदि किसी प्रत्यावर्तित प्रकरण का निर्वतन, अध्यादेश के प्रकाशन की तिथि के पश्चात किया गया, परन्तु योजना के अंतर्गत आवेदन देने की समय-सीमा में किया जाता है तो, ऐसे आदेश में संनिहित बकाया राशि के समाधान हेतु योजना के अंतर्गत आवेदन प्रस्तुत कर किया जा सकता है।

प्र.20: प्रथम अपील या द्वितीय अपील में प्राप्त राहत को समाधान राशि की गणना करते समय अतिरिक्त मांग राशि से कम किया जा सकता है ?

उत्तर: हाँ, समाधान राशि की गणना करते समय मूल आदेश में निकाली गई अतिरिक्त मांग राशि में से प्रथम अपील या द्वितीय अपील में प्राप्त राहत राशि को कम किया जाना है। समाधान राशि की गणना, अंतिम वैधानिक आदेश, जिसमें कर, ब्याज या शास्ति की अतिरिक्त मांग निकाली गई, की अतिरिक्त मांग के आधार पर की जानी है।

प्र.21: वैधानिक घोषणा पत्रों/प्रमाण पत्रों को मूल कर निर्धारण के समय प्रस्तुत किया गया, परन्तु उन्हें संज्ञान में नहीं लिया गया या प्रस्तुत घोषणा पत्रों/प्रमाण पत्रों को किसी अन्य कारण से स्वीकार नहीं किया गया, क्या समाधान के समय ऐसे वैधानिक घोषणा पत्रों/प्रमाण पत्रों में निहित कर राशि की छूट प्रदान की जावेगी ?

उत्तर: समाधान आवेदन के साथ स्वीकार्य वैधानिक घोषणा पत्रों/प्रमाण पत्रों निहित कर राशि की छूट प्रदान की जावेगी।

प्र.22: प्रत्यावर्तित प्रकरणों तथा भूलसुधार आवेदन से संबंधित प्रकरणों जो अभी तक निर्वतित नहीं किये गए हैं, के निर्वतन से मूल आदेश में निकाली गई अतिरिक्त मांग कम हो सकती है तथा व्यवसायी शेष बकाया राशि के समाधान हेतु आवेदन प्रस्तुत कर सकेंगे। अतः ऐसे प्रकरणों का प्राथमिकता के आधार पर निर्वतन किए जाने हेतु निवेदन है ?

उत्तर: प्रत्यावर्तित प्रकरणों तथा भूलसुधार आवेदन से संबंधित प्रकरणों का निर्वतन प्राथमिकता के आधार पर किया जावेगा।

प्र.23: अध्यादेश में द्वितीय अपील के संबंध में कोई प्रावधान नहीं है, क्या समाधान से संबंधित प्रकरणों में द्वितीय अपील की जा सकती है ? कृपया स्पष्ट करें ?

उत्तर: समाधान से संबंधित प्रकरणों में प्रथम अपीलीय अधिकारी द्वारा पारित आदेश अंतिम होगा ।

प्र.24: माननीय उच्च न्यायालय में सम्पत्ति की कुर्की के संबंध में दायर वाद में निहित बकाया राशि को विवादित राशि माना जाएगा या अविवादित ?

उत्तर: विवादित राशि की परिभाषा के अनुसार किसी भी न्यायाधीकरण में वाद, अतिरिक्त मांग के संबंध में प्रस्तुत किया गया होना चाहिए । किसी अन्य मुद्दे पर प्रस्तुत वाद को बकाया राशि से संबंधित वाद नहीं माना जाएगा ।

प्र.25: आवेदक द्वारा पूर्व में ब्याज एवं शास्ति की राशि का भुगतान समाधान राशि हेतु संगणित ब्याज एवं शास्ति की राशि से अधिक किया गया है क्या अतिरिक्त जमा ब्याज एवं शास्ति का समायोजन कर की राशि के रूप में किया जा सकता है ?

उत्तर: पूर्व में अतिरिक्त जमा, ब्याज एवं शास्ति की राशि का समायोजन कर की राशि के रूप में नहीं किया जा सकता है ।

प्र.26: विवादित राशि के संबंध में समाधान राशि की गणना में अपील में प्राप्त राहत को 50 प्रतिशत राशि की गणना के पूर्व कम किया जाना है या पश्चात् ?

उत्तर: विवादित राशि के संबंध में समाधान राशि की गणना में अपील से प्राप्त राहत को 50 प्रतिशत राशि की गणना के पूर्व कम किया जाना है ।

प्र.27: अपील के समय जमा 10 या 20 प्रतिशत राशि को विवादित राशि के संबंध में समाधान राशि की गणना में 50 प्रतिशत राशि की गणना के पूर्व कम किया जाना है या पश्चात् ?

उत्तर: अपील के समय जमा 10 या 20 प्रतिशत राशि को, विवादित राशि के संबंध में समाधान राशि की गणना में 50 प्रतिशत राशि की गणना के पश्चात् कम किया जाना है ।

प्र.28: केन्द्रीय प्रकरण में घोषणा पत्र के अतिरिक्त विवादित राशि भी है तो क्या एक ही आवेदन करना होगा ।

उत्तर: समाधान आवेदन, वैधानिक आदेश, जिससे अतिरिक्त मांग निकाली गयी है, के संबंध में प्रस्तुत किया जाना है । यदि किसी केन्द्रीय प्रकरण में घोषणा पत्र के अतिरिक्त विवादित राशि भी है, तो घोषणा पत्रों से संबंधित बकाया राशि हेतु समाधान राशि की गणना, अध्यादेश की धारा-4(1) में दी गई सारणी में बिन्दु क्रमांक-1 के अनुसार की जानी है तथा अन्य विवादित राशि, से संबंधित बकाया राशि हेतु समाधान राशि की गणना, अध्यादेश की धारा-4(1) में दी गई सारणी में बिन्दु क्रमांक-3 के अनुसार की जानी

है तथा दोनों समाधान राशियों के लिए एक ही आवेदन प्रस्तुत किया जाना है।

प्र.29: प्रकरण में घोषणा पत्र बोगस पाए जाने के आधार पर धारा 52 की शास्ति आरोपित की गई है तो यह प्रकरण विवादित में आएगा या घोषणा पत्र में।

उत्तर: अध्यादेश के राजपत्र में प्रकाशन की दिनांक अर्थात् 26-9-2020 को या उसके पूर्व, पुरानी बकाया राशि के संबंध में प्रथम अपील, द्वितीय अपील या अन्य न्यायाधीकरण में वाद प्रस्तुत किया जा चुका होना चाहिए, तभी बकाया राशि विवादित मानी जावेगी। घोषणा पत्र बोगस पाए जाने के आधार पर आरोपित शास्ति के संबंध के किसी न्यायाधीकरण में वाद 26-9-2020 को या उसके पूर्व, प्रस्तुत किया जा चुका है तो प्रकरण में निहित बकाया राशि विवादित मानी जावेगी।

प्र.30: क्या धारा 34ए के प्रकरणों को इस योजना में शामिल किया जा सकता ?

उत्तर: हाँ, धारा 34ए के प्रकरणों में भी इस योजना के तहत आवेदन किया जा सकता है।

प्र.31: ऐसे प्रकरण जो कि वेट के पूर्व के हैं उनमें उपलब्ध पोर्टल पर चालान में किस हेड में राशि दर्शानी होगी ?

उत्तर: ऐसे प्रकरण जो कि वेट के पूर्व के हैं उनमें उपलब्ध पोर्टल पर मध्यप्रदेश ट्रेजरी कोड-वाल्सू II अपेंडिक्स-25 में दी गई प्रक्रिया के अनुसार चालान जमा कराया जा सकता है या किसी सुसंगत अधिनियम के अंतर्गत चालान जमा किया जा सकता है।

प्र.32: प्रांतीय प्रकरण में समस्त कर राशि जमा हो चुकी है। परंतु धारा 52 का आदेश पृथक् से है। ऐसे प्रकरणों में समाधान राशि का निर्धारण कैसे होगा ?

उत्तर: यदि किसी प्रकरण में मध्यप्रदेश वेट अधिनियम 2002 की धारा 55 या 57 के अंतर्गत की गई कार्यवाही के अनुक्रम में धारा 52 के तहत आदेश पारित किया गया है, तो उसमें निहित बकाया राशि के समाधान हेतु आवेदन प्रस्तुत नहीं किया जा सकता है। इसके अतिरिक्त धारा 52 के तहत पारित किसी वैधानिक आदेश में आरोपित शास्ति की समाधान राशि का निर्धारण अध्यादेश की धारा-4(1) में दी गई सारणी में कॉलम क्रमांक-4 के अनुसार किया जाना है (यदि समस्त कर राशि जमा हो चुकी है या उसका समाधान किया जा चुका है)।

प्र.33: प्रांतीय प्रकरण में एफ फार्म नहीं आने से केन्द्रीय प्रकरण में डिमांड निकाली गयी है, एफ फार्म केन्द्रीय प्रकरण में देने होंगे या वेट में ?

उत्तर: समाधान आवेदन, वैधानिक आदेश, जिससे अतिरिक्त मांग निकाली गयी है, के संबंध में प्रस्तुत किया जाना है।

□

(99) Notifying amendment carried out in sub-section (1), (2) and (7) of section 39 vide Finance (No. 2) Act, 2019 with effect from 10-11-2020

No. 81/2020-Central Tax

S.O. 4043(E). New Delhi, Dated 10th November, 2020 - In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 10th day of November, 2020, as the date on which the provisions of section 97 of the said Act shall come into force.

[Published in the Gazette of India dated 10-11-2020]



(100) Central Goods and Services Tax (Thirteenth Amendment) Rules, 2020

No. 82/2020-Central Tax

G.S.R. 698(E). New Delhi, Dated 10th November, 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 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 (Thirteenth Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, 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 (hereafter in this notification referred to as the said rules), for rule 59, the following rule shall be substituted with effect from the 1st day of January, 2021 namely: -

“59. Form and manner of furnishing details of outward supplies.- (1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in **FORM GSTR-1** for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

- (2) The registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months, - using invoice furnishing facility (hereafter in this notification referred to as the “IFF”) electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.
- (3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in **FORM GSTR-1** for the said quarter.
- (4) The details of outward supplies of goods or services or both furnished in **FORM GSTR-1** shall include the-
- (a) invoice wise details of all -
 - (i) inter-State and intra-State supplies made to the registered persons; and
 - (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;
 - (b) consolidated details of all -
 - (i) intra-State supplies made to unregistered persons for each rate of tax; and
 - (ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;
 - (c) debit and credit notes, if any, issued during the month for invoices issued previously.
- (5) The details of outward supplies of goods or services or both furnished using the IFF shall include the -
- (a) invoice wise details of inter-State and intra-State supplies made to the registered persons;
 - (b) debit and credit notes, if any, issued during the month for such invoices issued previously.”.
- 3.** In the said rules, for rule 60, the following rule shall be substituted with effect from the 1st day of January, 2021, namely: -

“60. Form and manner of ascertaining details of inward supplies.- (1)

The details of outward supplies furnished by the supplier in **FORM GSTR-1** or using the IFF shall be made available electronically to the concerned registered persons (recipients) in **Part A** of **FORM GSTR-2A**, in **FORM GSTR-4A** and in **FORM GSTR-6A** through the common portal, as the case may be.

(2) The details of invoices furnished by an non-resident taxable person in his return in **FORM GSTR-5** under rule 63 shall be made available to the recipient of credit in **Part A** of **FORM GSTR 2A** electronically through the common portal.

(3) The details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** under rule 65 shall be made available to the recipient of credit in **Part B** of **FORM GSTR 2A** electronically through the common portal.

(4) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in **FORM GSTR-7** shall be made available to the deductee in **Part C** of **FORM GSTR-2A** electronically through the common portal

(5) The details of tax collected at source furnished by an e-commerce operator under section 52 in **FORM GSTR-8** shall be made available to the concerned person in **Part C** of **FORM GSTR 2A** electronically through the common portal.

(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in **Part D** of **FORM GSTR-2A** electronically through the common portal.

(7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in **FORM GSTR-2B**, for every month, electronically through the common portal, and shall consist of -

- (i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in **FORM GSTR-1**, between the day immediately after the due date of furnishing of **FORM GSTR-1** for the previous month to the due date of furnishing of **FORM GSTR-1** for the month;

- (ii) the details of invoices furnished by a non-resident taxable person in **FORM GSTR-5** and details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in **FORM GSTR-1** or using the IFF, as the case may be,-
 - (a) for the first month of the quarter, between the day immediately after the due date of furnishing of **FORM GSTR-1** for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;
 - (b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;
 - (c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of **FORM GSTR-1** for the quarter;
- (iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.
- (8) The Statement in **FORM GSTR-2B** for every month shall be made available to the registered person,-
 - (i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in **FORM GSTR-1** by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;
 - (ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in **FORM GSTR-1** by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.”
- 4. In the said rules, in rule 61, after sub-rule (5), the following sub-rule

shall be inserted, namely: -

“(6) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the twentieth day of the month succeeding such tax period:

Provided that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in **FORM GSTR-3B** of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:

Provided further that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in **FORM GSTR-3B** of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month.”

5. In the said rules, for rule 61, the following rule shall be substituted with effect from the 1st day of January, 2021, namely: -

“61. Form and manner of furnishing of return.-(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either

directly or through a Facilitation Centre notified by the Commissioner, as specified under –

- (i) sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month:
- (ii) proviso to sub-section (1) of section 39, for each quarter, or part thereof, for the class of registered persons mentioned in column (2) of the Table given below, on or before the date mentioned in the corresponding entry in column (3) of the said Table, namely:-

Table

S. No.	Class of registered persons	Due Date
(1)	(2)	(3)
1.	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	twenty-second day of the month succeeding such quarter.
2.	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	twenty-fourth day of the month succeeding such quarter.

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in **FORM GSTR-3B**.

(3) Every registered person required to furnish return, every quarter, under clause (ii) of sub-rule (1) shall pay the tax due under proviso to sub-section (7) of section 39, for each of the first two months of the quarter, by depositing the said amount in **FORM GST PMT-06**, by the twenty fifth day of the

month succeeding such month:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in **FORM GST PMT-06**, for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner:

Provided also that while making a deposit in **FORM GST PMT-06**, such a registered person may—

- (a) for the first month of the quarter, take into account the balance in the electronic cash ledger.
- (b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.
- (4) The amount deposited by the registered persons under sub-rule (3) above, shall be debited while filing the return for the said quarter in **FORM GSTR-3B**, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been filed.”.

6. In the said rules, after rule 61, the following rule shall be inserted, namely:-

“61A. Manner of opting for furnishing quarterly return.- (1) Every registered person intending to furnish return on a quarterly basis under proviso to sub-section (1) of section 39, shall in accordance with the conditions and restrictions notified in this regard, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised:

Provided that where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless the said registered person,-

- (a) becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or

- (b) opts for furnishing of return on a monthly basis, electronically, on the common portal:

Provided further that a registered person shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.

- (2) A registered person, whose aggregate turnover exceeds 5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds 5 crore rupees.

7. In the said rules, in rule 62,

- (i) in sub-rule (1), the words, figures, letters and brackets “or paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019-Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be omitted;
- (ii) in sub-rule (4), the words, figures, letters and brackets “or by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019-Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be omitted;
- (iii) in the explanation to sub-rule (4), the words, figures, letters and brackets “or opting for paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7th March, 2019” shall be omitted;
- (iv) sub-rule (6) shall be omitted.

7. In **FORM GSTR-1**, in the Instructions, after serial number 17, the following instruction shall be inserted, namely:-

“18. It will be mandatory to specify the number of digits of HSN code for goods or services that a class of registered persons shall be required to

mention as may be specified in the notification issued from time to time under proviso to rule 46 of the said rules.

8. After FORM-2A, the following FORM shall be inserted, namely:-

“FORM-2B

[See rule 60(7)]

Auto-drafted ITC Statement

(From FORM GSTR-1, GSTR-5, GSTR-6 and Import data received from ICEGATE)

Year	YYYY-YY
Month	

1. GSTIN	
2(a). Legal name of the registered person	
2(b). Trade name, if any	
2(c). Date of generation	DD/MM/YYYY HH:MM

3. ITC Available Summary

(Amount in ₹ in all sections)

S.no.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
Credit which may be availed under FORM GSTR-3B							
Part A	ITC Available - Credit may be claimed in relevant headings in GSTR-3B						
I	All other ITC - Supplies from registered persons other than reverse charge	4(A)(5)					If this is positive , credit may be availed under Table 4(A)(5) of FORM GSTR-3B. If this is negative , credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.
Details	B2B - Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
II	Inward Supplies from ISD	4(A)(4)					If this is positive , credit may be availed under Table 4(A)(4) of FORM GSTR-3B. If this is negative , credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.
Details	ISD - Invoices						
	ISD - Invoices (Amendment)						
III	Inward Supplies liable for reverse charge	3.1(d) 4(A)(3)					These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. Credit may be availed under Table 4(A)(3) of FORM GSTR-3B on payment of tax.
Details	B2B - Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
IV	Import of Goods	4(A)(1)					If this is positive , credit may be availed under Table 4(A)(1) of FORM GSTR-3B. If this is negative , credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.

Details	IMPG - Import of goods from overseas						
	IMPG (Amendment)						
	IMGSEZ - Import of goods from SEZ						
	IMGSEZ (Amendment)						
Part B ITC Reversal - Credit shall be reversed in relevant headings in GSTR-3B							
I	Others	4(B)(2)					If this is positive , Credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. If this is negative , then credit may be reclaimed subject to reversal of the same on an earlier instance.
Details	B2B - Credit notes						
	B2B - Credit notes (Amendment)						
	B2B - Credit notes (Reverse charge)						
	B2B - Credit notes (Reverse charge) (Amendment)						
	ISD - Credit notes						
	ISD - Credit notes (Amendment)						

4. ITC Not Available Summary

(Amount in ₹ in all sections)

S.no.	Heading	GSTR-3B Table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
Credit which may not be availed under FORM GSTR-3B							
Part A ITC Not Available							
I	All other ITC - Supplies from registered persons other than reverse charge	NA					Such credit shall not be taken in FORM GSTR-3B
Details	B2B - Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
II	Inward Supplies from ISD	NA					Such credit shall not be taken in FORM GSTR-3B
Details	ISD - Invoices						
	ISD Amendment - Invoices						
III	Inward Supplies liable for reverse charge	3.1(d)					These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. However, credit will not be available on the same.
Details	B2B - Invoices						
	B2B - Debit notes						
	B2B - Invoices (Amendment)						
	B2B - Debit notes (Amendment)						
Part B ITC Reversal							
I	Others	4(B)(2)					Credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.
Details	B2B - Credit notes						
	B2B - Credit notes (Amendment)						
	B2B - Credit notes (Reverse charge)						
	B2B - Credit notes (Reverse charge) (Amendment)						
	ISD - Credit notes						
	ISD - Credit notes (Amendment)						

Instructions:

1. Terms Used :-
 - a. ITC – Input tax credit
 - b. B2B – Business to Business
 - c. ISD – Input service distributor
 - d. IMPG – Import of goods
 - e. IMPGSEZ – Import of goods from SEZ
2. **Important Advisory:**
 - a) **FORM GSTR-2B** is a statement which has been generated on the basis of the information furnished by your suppliers in their respective **FORMS GSTR-1, 5 and 6**. It is a static statement and will be made available once a month. The documents filed by the supplier in any **FORMS GSTR-1, 5 and 6** would reflect in the next open **FORM GSTR-2B** of the recipient irrespective of supplier's date of filing. Taxpayers are advised to refer **FORM GSTR-2B** for availing credit in **FORM GSTR-3B**. However, in case for additional details, they may refer to their respective **FORM GSTR-2A** (which is updated on near real time basis) for more details.
 - b) Input tax credit shall be indicated to be non-available in the following scenarios: -
 - i. Invoice or debit note for supply of goods or services or both where the recipient is not entitled to input tax credit as per the provisions of sub-section (4) of Section 16 of CGST Act, 2017.
 - ii. Invoice or debit note where the Supplier (GSTIN) and place of supply are in the same State while recipient is in another State.However, there may be other scenarios for which input tax credit may not be available to the taxpayers and the same has not been generated by the system. Taxpayers, should self-assess and reverse such credit in their **FORM GSTR-3B**.
3. It may be noted that **FORM GSTR-2B** will consist of all the **FORM GSTR-1s, 5s and 6s** being filed by your suppliers, generally between the due dates of filing of two consequent GSTR-1 or furnishing of IFFs, based on the filing option (monthly or quarterly) as chosen by the corresponding supplier. The dates for which the relevant data has been

extracted is specified in the CGST Rules and is also available under the View Advisory tab on the online portal. For example, **FORM GSTR-2B** for the month of February will consist of all the documents filed by suppliers who choose to file their **FORM GSTR-1** monthly from 00:00 hours on 12th February to 23:59 hours on 11th March.

4. It also contains information on imports of goods from the ICEGATE system including data on imports from Special Economic Zones Units / Developers.
5. It may be noted that reverse charge credit on import of services is not part of this statement and will be continued to be entered by taxpayers in Table 4(A)(2) of **FORM GSTR-3B**.
6. Table 3 captures the summary of ITC available as on the date of generation of **FORM GSTR-2B**. It is divided into following two parts:
 - A. Part A captures the summary of credit that may be availed in relevant tables of **FORM GSTR-3B**.
 - B. Part B captures the summary of credit that shall be reversed in relevant table of **FORM GSTR-3B**.
7. Table 4 captures the summary of ITC not available as on the date of generation of **FORM GSTR-2B**. Credit available in this table shall not be availed as credit in **FORM GSTR-3B**. However, the liability to pay tax on reverse charge basis and the liability to reverse credit on receipt of credit notes continues for such supplies.
8. Taxpayers are advised to ensure that the data generated in **FORM GSTR-2B** is reconciled with their own records and books of accounts. Tax payers shall ensure that
 - a. No credit shall be taken twice for any document under any circumstances.
 - b. Credit shall be reversed wherever necessary.
 - c. Tax on reverse charge basis shall be paid.
9. Details of invoices, credit notes, debit notes, ISD invoices, ISD credit and debit notes, bill of entries etc. will also be made available online and through download facility.
10. There may be scenarios where a percentage of the applicable rate of tax rate may be notified by the Government. A separate column will be

provided for invoices / documents where such rate is applicable.

11. Table wise instructions:

Table No. and Heading	Instructions
Table 3 Part A Section I All other ITC - Supplies from registered persons other than reverse charge	i. This section consists of the details of supplies (other than those on which tax is to be paid on reverse charge basis), which have been declared and filed by your suppliers in their FORM GSTR-1 and 5 . ii. This table displays only the supplies on which input tax credit is available. iii. Negative credit, if any may arise due to amendment in B2B– Invoices and B2B – Debit notes. Such credit shall be reversed in Table 4(B)(2) of FORM GSTR-3B .
Table 3 Part A Section II Inward Supplies from ISD	i. This section consists of the details of supplies, which have been declared and filed by an input service distributor in their FORM GSTR-6 . ii. This table displays only the supplies on which ITC is available. iii. Negative credit, if any, may arise due to amendment in ISD Amendments – Invoices. Such credit shall be reversed in table 4(B)(2) of FORM GSTR-3B .
Table 3 Part A Section III Inward Supplies liable for reverse charge	i. This section consists of the details of supplies on which tax is to be paid on reverse charge basis, which have been declared and filed by your suppliers in their FORM GSTR-1 . ii. This table provides only the supplies on which ITC is available. iii. These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. Credit may be availed under Table 4(A)(3) of FORM GSTR-3B on payment of tax.
Table 3 Part A Section IV Import of Goods	i. This section provides the details of IGST paid by you on import of goods from overseas and SEZ units / developers on bill of entry and amendment thereof. These details are updated

	<p>on near real time basis from the ICEGATE system.</p> <p>ii. This table shall consist of data on the imports made by you (GSTIN) in the month for which FORM GSTR-2B is being generated for.</p> <p>iii. The ICEGATE reference date is the date from which the recipient is eligible to take input tax credit.</p> <p>iv. The table also provides if the Bill of entry was amended.</p> <p>v. Information is provided in the tables based on data received from ICEGATE. Information on certain imports such as courier imports may not be available.</p>
Table 3 Part B Section I Others	<p>i. This section consists of the details of credit notes received and amendment thereof which have been declared and filed by your suppliers in their FORM GSTR-1 and 5.</p> <p>ii. Such credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. If this value is negative, then credit may be reclaimed subject to reversal of the same on an earlier instance.</p>
Table 4 Part A Section I All other ITC - Supplies from registered persons other than reverse charge	<p>i. This section consists of the details of supplies (other than those on which tax is to be paid on reverse charge basis), which have been declared and filed by your suppliers in their FORM GSTR-1 and 5.</p> <p>ii. This table provides only the supplies on which ITC is not available.</p> <p>iii. This is for information only and such credit shall not be taken in FORM GSTR-3B.</p>
Table 4 Part A Section II Inward Supplies from ISD	<p>i. This section consists of the details supplies, which have been declared and filed by an input service distributor in their FORM GSTR-6.</p> <p>ii. This table provides only the supplies on which ITC is not available.</p> <p>iii. This is for information only and such credit shall not be taken in FORM GSTR-3B.</p>

Table 4 Part A Section III Inward Supplies liable for reverse charge	<p>i. This section consists of the details of supplies liable for reverse charge, which have been declared and filed by your suppliers in their FORM GSTR-1.</p> <p>ii. This table provides only the supplies on which ITC is not available.</p> <p>iii. These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. However, credit will not be available on such supplies.</p>
Table 4 Part B Section I Others	<p>i. This section consists details the credit notes received and amendment thereof which have been declared and filed by your suppliers in their FORM GSTR-1 and 5.</p> <p>ii. This table provides only the credit notes on which ITC is not available.</p> <p>iii. Such credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.</p>

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), *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. 79/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), *vide* number G.S.R. 639(E), dated the 15th October, 2020].

[Published in the Gazette of India dated 10-11-2020]



(101) Corrigendum to No. 82/2020-Central Tax dated 10-11-2020

***CORRIGENDUM**

G.S.R. 711(E). New Delhi, Dated 13th November, 2020 - In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No. 82/2020-Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 698(E), dated the 10th November, 2020, :

* See corrigendum notification dated 13-11-2020

- at page 21, in lines 9,10, and 11, for the words, figures, letters and brackets “notification No. 72/2020-Central Tax, dated the 30th September, 2020, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 603(E), dated the 30th September, 2020.” read “notification No. 79/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 639(E), dated the 15th October, 2020”.

[Published in the Gazette of India dated 13-11-2020]



(102) Notification u/s 37(1) r/w 168 of CGST Act, 2017 extending the due date for FORM GSTR-1 effective from 1-1-2021

No. 83/2020-Central Tax

G.S.R. 699(E). New Delhi, Dated 10th November, 2020 - In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 74/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 634 (E), dated the 15th October, 2020, and notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 75/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 635 (E), dated the 15th October, 2020, except as respects things done or omitted to be done before such supersession, the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), for each of the tax periods, till the eleventh day of the month succeeding such tax period:

Provided that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the class of registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 of the said Act, shall be extended till the thirteenth day of the month succeeding such tax period.

2. This notification shall come into force with effect from the 1st day of January, 2021.

[Published in the Gazette of India dated 10-11-2020]



(103) Notification u/s 39(1) & (7) of CGST Act, 2017 notifying class of persons

No. 84/2020-Central Tax

G.S.R. 700(E). New Delhi, Dated 10th November, 2020 - In exercise of the powers conferred by proviso to sub-section (1) of section 39 read with proviso to sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies the registered persons, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), having an aggregate turnover of up to five crore rupees in the preceding financial year, and who have opted to furnish a return for every quarter, under subrule (1) of rule 61A of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules) as the class of persons who shall, subject to the following conditions and restrictions, furnish a return for every quarter from January, 2021 onwards, and pay the tax due every month in accordance with the proviso to sub-section (7) of section 39 of the said Act, namely:-

- (i) the return for the preceding month, as due on the date of exercising such option, has been furnished:
 - (ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.
- (2) A registered person whose aggregate turnover crosses five crore rupees during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.
- (3) For the registered person falling in the class specified in column (2) of the Table below, who have furnished the return for the tax period October, 2020 on or before 30th November, 2020, it shall be deemed that they have opted under sub-rule (1) of rule 61A of the said rules for the monthly or quarterly furnishing of return as mentioned in column (3) of the said Table:-

TABLE

Sl. No.	Class of registered person	Deemed Option
(1)	(2)	(3)
1.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR-1 on quarterly basis in the current financial year	Quarterly return
2.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR-1 on monthly basis in the current financial year	Monthly return
3.	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

(4) The registered persons referred to in column (2) of the said Table, may change the default option electronically, on the common portal, during the period from the 5th day of December, 2020 to the 31st day of January, 2021.

[Published in the Gazette of India dated 10-11-2020]



(104) Notification u/s 148 r/w 39(7) of CGST Act, 2017 notifying special procedure for making payment of 35% as tax liability in first two month w.e.f. 1-1-2021

No. 85/2020-Central Tax

G.S.R. 701(E). New Delhi, Dated 10th November, 2020 - In exercise of the powers conferred by section 148 read with sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons, notified under proviso to sub-section (1) of section 39 of the said Act, who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, follow the special procedure such that the said persons may pay the tax due under proviso to sub-section (7) of section 39 of the said Act, by way of making a deposit of an amount in the electronic cash ledger equivalent to, -

- (i) thirty five per cent. of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or
- (ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly:

Provided that no such amount may be required to be deposited-

- (a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability ;
- (b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability:

Provided further that registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.

Explanation- For the purpose of this notification, the expression “a complete tax period” means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

2. This notification shall come into force with effect from the 1st day of January, 2021.

[Published in the Gazette of India dated 10-11-2020]



(105) Notification u/s 168 of CGST Act, 2017 r/w Rule 61(5) rescinding No. 76/2020-Central tax dated 15-8-2020

No. 86/2020-Central Tax

G.S.R. 702(E). New Delhi, Dated 10th November, 2020 - In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017, the [Commissioner], on being satisfied that it is necessary in the public interest so to do, on the recommendations on the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue)

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No. 76/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 636(E), dated the 15th October, 2020, except as respects things done or omitted to be done before such rescission.

[Published in the Gazette of India dated 10-11-2020]



(106) Corrigendum to No. 86/2020-Central Tax dated 10-11-2020

CORRIGENDUM

G.S.R. 712(E). New Delhi, Dated 13th November, 2020 - In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No. 86/2020-Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 702(E), dated the 10th November, 2020, :

at page 25, in line 33, for the words “Central Government” read “Commissioner”.

[Published in the Gazette of India dated 13-11-2020]



(107) Notification u/s 168 of CGST Act, 2017 and Rule 45(3) extending the due date for furnishing of FORM ITC-04 for the period July-September 2020 till 30th November, 2020

No. 87/2020-Central Tax

G.S.R. 703(E). New Delhi, Dated 10th November, 2020 - In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017, the Commissioner, with the approval of the Board, hereby extends the time limit for furnishing the declaration in **FORM GST ITC-04**, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2020 to September, 2020 till the 30th day of November, 2020.

2. This notification shall be deemed to have come into force with effect from the 25th day of October, 2020.

[Published in the Gazette of India dated 10-11-2020]



(108) Notification u/r 48(4) of CGST Rules, 2017 implementing e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 100 Cr w.e.f. 1-1-2021

No. 88/2020-Central Tax

G.S.R. 704(E). New Delhi, Dated 10th November, 2020 - In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020-Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of January, 2021, for the words five hundred crore rupees, the words one hundred crore rupees shall be substituted.

Note : The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, vide number G.S.R. 196(E), dated 21st March, 2020 and was last amended vide notification No. 70/2020-Central Tax, dated the 30th September, 2020, published vide number G.S.R. 596(E), dated the 30th September, 2020.

[Published in the Gazette of India dated 10-11-2020]



(109) Quarterly Return Monthly Payment Scheme

Circular No. 143/13/2020-GST

CBEC-20/01/08/2020-GST

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

New Delhi, dated the 10th November, 2020

Subject: Quarterly Return Monthly Payment Scheme - Reg.

As a trade facilitation measure and in order to further ease the process of doing business, the GST Council in its 42nd meeting held on 5-10-2020, had recommended that registered person having aggregate turnover up to five (5) crore rupees may be allowed to furnish return on quarterly basis along

with monthly payment of tax, with effect from 1-1-2021. Government has issued following notifications to implement the Scheme of quarterly return filing along with monthly payment of taxes (hereinafter referred to as “QRMP Scheme/ Scheme”):

Sl. No.	Notification	Remarks
1.	Notification No. 81/2020-Central Tax, dated 10-11-2020.	Notifies amendment carried out in sub-section (1), (2) and (7) of section 39 of the CGST Act vide Finance (No.2) Act, 2019.
2.	Notification No. 82/2020-Central Tax, dated 10-11-2020.	Makes the Thirteenth amendment (2020) to the CGST Rules 2017.
4.	Notification No. 84/2020-Central Tax, dated 10-11-2020.	Notifies class of persons under proviso to section 39(1) of the CGST Act.
5.	Notification No. 85/2020-Central Tax dated 10-11-2020.	Notifies special procedure for making payment of tax liability in the first two months of a quarter

2. Various issues related to notifications issued to implement the QRMP Scheme have been examined. In order to explain the Scheme in simple terms and in order to ensure uniformity in implementation across field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies various issues in succeeding paragraphs.

3. Eligibility for the Scheme

In terms of notification No. 84/2020-Central Tax, dated 10-11-2020, a registered person who is required to furnish a return in **FORM GSTR-3B**, and who has **an aggregate turnover of up to 5 crore rupees in the preceding financial year**, is eligible for the QRMP Scheme. It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 1-1-2021. Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

4. Exercising option for QRMP Scheme

4.1 Facility to avail the Scheme on the common portal would be available throughout the year. In terms of rule 61A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as CGST Rules), a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

For example: A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July.

If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.

4.2 Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

4.3 For the first quarter of the Scheme i.e. for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, it has been decided that all the registered persons, whose aggregate turnover for the FY 2019-20 is up to 5 crore rupees and who have furnished the return in **FORM GSTR-3B** for the month of October, 2020 by 30th November, 2020, shall be migrated on the common portal as below. Therefore, taxpayers are advised to furnish the return of October, 2020 in time so as to be eligible for default migration. The taxpayers who have not filed their return for October, 2020 on or before 30th November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the **FORM GSTR-3B** as due on the date of exercising option has been filed.

Sl. No.	Class of registered person	Default Option
(1)	(2)	(3)
1.	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on quarterly basis in the current financial year	Quarterly return

2.	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on monthly basis in the current financial year	Monthly return
3.	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

Above default option has been provided for the convenience of registered persons based on their anticipated behaviour. However, such registered persons are free to change the option as above, if they so desire, from 5th of December, 2020 to 31st of January, 2021. It is re-iterated that any taxpayer whose aggregate turnover has exceeded 5 crore rupees in the financial year 2020-21, shall opt out of the Scheme.

4.4 Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

4.5 All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option as in para 4.1.

4.6 It is also clarified that such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

4.7 It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

5. Furnishing of details of outward supplies under section 37 of the CGST Act.

5.1 The registered persons opting for the Scheme would be required to furnish the details of outward supply in **FORM GSTR-1** quarterly as per the rule 59 of the CGST Rule.

5.2 For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward **supplies to a registered person**, as he may consider necessary, between ~~the~~ 1st day of the succeeding month till the 13th day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the **FORM GSTR-2A** and **FORM GSTR-2B** of the concerned recipient.

*For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself. Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in **FORM GSTR-1** of the said quarter. The two invoices furnished in IFF shall be reflected in **FORM GSTR-2B** of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in **FORM GSTR-1** shall be reflected in **FORM GSTR-2B** of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1st August till 13th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September.*

It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

5.3 The details of invoices furnished using the said facility in the first two months are not required to be furnished again in **FORM GSTR-1**.

Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in **FORM GSTR-1** for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in **FORM GSTR-1** only, without using the IFF.

6. Monthly Payment of Tax

6.1 The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month. While generating the challan, taxpayers should select “Monthly payment for quarterly taxpayer” as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months -

- (a) **Fixed Sum Method:** A facility is being made available on the portal for generating a pre-filled challan in **FORM GST PMT-06** for an amount equal to thirty five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

For easy understanding, the same is explained by way of illustration in table below:

- i. In case the last return filed was on quarterly basis for Quarter Ending March, 2021:

Tax paid in Cash in Quarter (January - March, 2021)		Tax required to be paid in each of the months – April and May, 2021	
CGST	100	CGST	35
SGST	100	SGST	35
IGST	500	IGST	175
Cess	50	Cess	17.5

- ii. In case the last return filed was monthly for tax period March, 2021:

Tax paid in Cash in March, 2021		Tax required to be paid in each of the months – April and May, 2021	
CGST	50	CGST	50
SGST	50	SGST	50
IGST	80	IGST	80
Cess	-	Cess	-

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

- (b) **Self-Assessment Method:** The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in **FORM GST PMT-06**. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in **FORM GSTR-2B**, for every month.

6.2 The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.

6.3 It is clarified that in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

6.4 Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

7. Quarterly filing of FORM GSTR-3B

Such registered persons would be required to furnish **FORM GSTR-**

3B, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In **FORM GSTR-3B**, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's **FORM GSTR-3B**. However, any amount left after filing of that quarter's **FORM GSTR-3B** may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in **FORM GSTR-3B** for the relevant tax period.

8. Applicability of Interest

8.1. For registered person making payment of tax by opting Fixed Sum Method

- i. No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as detailed in para 6.1(a) above by the due date. In other words, if while furnishing return in **FORM GSTR-3B**, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made /received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.
- ii. In case such payment of tax by depositing the system calculated amount in **FORM GST PMT-06** is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing **FORM GST PMT-06** till the date of making such payment.
- iii. Further, in case **FORM GSTR-3B** for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

Illustration 1 –

*A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under **fixed***

*sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was Rs. 40/- and for February it was Rs. 42/-. No interest would be payable for the lesser amount of tax (i.e. Rs. 5 and Rs. 7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.*

Illustration 2 –

A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was Rs. 125 but he files the return on 30th April. Interest would be payable at applicable rate on Rs. 55 [Rs. 125 – Rs. 70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly GSTR 3B and 30th April.

8.2 For registered person making payment of tax by opting Self-Assessment Method

Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter.

8.3 Interest payable, if any, shall be paid through FORM GSTR-3B.

9. Applicability of Late Fee - Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return / details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

10. It is requested that suitable trade notices may be issued to publicize the

contents of this Circular. Hindi version will follow.

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

(Yogendra Garg)

Principal Commissioner



(110) Notification u/s 128 of CGST Act, 2017 waiving penalty payable for noncompliance of the provisions of notification No. 14/2020-Central Tax, dated the 21st March, 2020

No. 89/2020-Central Tax

G.S.R. 745(E). New Delhi, Dated 29th November, 2020 - In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby waives the amount of penalty payable by any registered person under section 125 of the said Act for non-compliance of the provisions of notification No.14/2020–Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 197(E), dated the 21st March, 2020, between the period from the 01st day of December, 2020 to the 31st day of March, 2021, subject to the condition that the said person complies with the provisions of the said notification from the 01st day of April, 2021.

[Published in the Gazette of India dated 29-11-2020]



(111) Notification u/r 46 of CGST Rules, 2017 amending Notification No. 12/2017-Central Tax dated 28-6-2017

No. 90/2020-Central Tax

G.S.R. 747(E). New Delhi, Dated 1st December, 2020 - In exercise of the powers conferred by the first proviso to rule 46 of the Central Goods and Services Tax Rules, 2017, the Central Board of Indirect Taxes and Customs, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2017-Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary,

Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), dated the 28th June, 2017, namely:-

In the said notification, after the first proviso, the following proviso shall be inserted, namely, -

Provided further that for class of supply as specified in column (2) and whose HSN Code as specified in column (3) of the Table below, a registered person shall mention eight number of digits of HSN Codes in a tax invoice issued by him under the said rules -

S. No.	Chemical name	HSN Code
(1)	(2)	(3)
1.	Mixture of (5-ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate (CAS RN 41203-81-0) and Bis [(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate (CAS RN42595-45-9)	38249100
2.	Dimethyl propylphosphonate	29313200
3.	(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate	29313600
4.	Bis[(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate	29313700
5.	2,4,6-Tripropyl-1,3,5,2,4,6-trioxatriphosphinane 2,4,6-trioxide	29313500
6.	Dimethyl methylphosphonate	29313100
7.	Diethyl ethylphosphonate	29313300
8.	Methylphosphonic acid with (aminoiminomethyl) urea (1: 1)	29313800
9.	Sodium 3-(trihydroxysilyl) propyl methylphosphonate	29313400
10.	2,2-Diphenyl-2-hydroxyacetic acid	29181700
11.	2-(N,N-Diisopropylamino) ethylchloride hydrochloride	29211400

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12.	2-(N,N-Dimethylamino) ethylchloride hydrochloride	29211200
13.	2-(N,N-Diethylamino) ethylchloride hydrochloride	29211300
14.	2-(N,N-Diisopropylamino) ethanol	29221800
15.	2-(N,N-Diethylamino) ethanethiol	29306000
16.	Bis (2-hydroxyethyl) sulfide	29307000
17.	2-(N,N-Dimethylamino) ethanethiol	29309092
18.	Product from the reaction of Methylphosphonic acid and 1,3,5-Triazine-2,4,6-triamine	As applicable
19.	3-Quinuclidinol	29333930
20.	R-(-)-3-Quinuclidinol	29333930
21.	3,9-Dimethyl-2,4,8,10-tetraoxa-3,9-diphosphaspiro [5.5] undecane 3,9- dioxide	29313900
22.	Propylphosphonic dichloride	29313900
23.	Methylphosphonic dichloride	29313900
24.	Diphenyl methylphosphonate	29313900
25.	O-(3-chloropropyl)O-[4-nitro-3-(trifluoromethyl) phenyl] methylphosphonothionate	29313900
26.	Methylphosphonic acid	29313900
27.	Product from the reaction of methylphosphonic acid and 1,2-ethanediamine	As applicable
28.	Phosphonic acid,methyl-, polyglycol ester (Exolit OP 560 TP)	38249900
29.	Phosphonic acid,methyl-,polyglycol ester (Exolit OP 560)	38249900
30.	Bis (polyoxyethylene) methylphosphonate	39072090
31.	Poly(1,3-phenylene methyl phosphonate)	39119090
32.	Dimethylmethylphosphonate, polymer with oxirane	38249900

and phosphorus oxide

33. Carbonyl dichloride	28121100
34. Cyanogen chloride	28531000
35. Hydrogen cyanide	28111200
36. Trichloronitromethane	29049100
37. Phosphorus oxychloride	28121200
38. Phosphorus trichloride	28121300
39. Phosphorus pentachloride	28121400
40. Trimethyl phosphite	29202300
41. Triethyl phosphite	29202400
42. Dimethyl phosphite	29202100
43. Diethyl phosphite	29202200
44. Sulfur monochloride	28121500
45. Sulfur dichloride	28121600
46. Thionyl chloride	28121700
47. Ethyldiethanolamine	29221720
48. Methyldiethanolamine	29221710
49. Triethanolamine	29221500

Note : The principal notification number 12/2017-Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.660(E), dated the 28th June, 2017 and last amended vide notification No. 78/2020-Central Tax, dated the 15th October, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 638(E), dated the 15th October, 2020.

[Published in the Gazette of India dated 1-12-2020]

☆☆

2020) **SRF Ltd. Vs. State of M.P. (MP)** **369**

(2020) 65 TLD 369

In the High Court of M.P.
Hon'ble S.C. Sharma & Shailendra Shukla, JJ.

SRF Ltd.

Vs.

State of Madhya Pradesh and Others

Writ Petition No. : 9628/2020

October 16, 2020

Deposition : In favour of Petitioner

Entry Tax - Exemption certificate - Once exemption certificate was granted, the Department cannot take advantage of technicalities, especially when the certificate itself was granted in the year 2017 with retrospective effect - Section 51 of M.P. Vat Act, 2002.

Writ petition allowed

Resultantly, the present Writ Petition is allowed. The respondents are directed to confer all benefits to the petitioner in terms of the Entry Tax Exemption Certificate dated 13-7-2017 (Annexure P/11 to P/13) and as a consequence the impugned assessment orders for four years ie., 2007-08, 2008-09, 2009-10 and 2010-11 are set aside. The Department shall refund the amount recovered from the petitioner within 90 days from the date of receipt of certified copy of this order by passing appropriate consequential orders. [Para 17]

Cases referred :

- * Assistant Collector of Central Excise Vs. Dullab India 1985 SC 330
- * Nitco Tiles Ltd. Vs. Gujarat Ceramic Floor Tiles Mfg. Association (2005) 12 SCC 454
- * Singh Enterprises Vs. Commissioner of Central Excise AIR 2008 SC 353
- * Union of India Vs. Kirloskar Pneumatic (1996) 4 SCC 453

:: ORDER ::

The Order of the Court was made by **S.C. SHARMA, J. :**

The petitioner before this Court, a Company registered under the Companies Act, 1956, has filed this present petition claiming exemption from payment of entry tax on account of the certificate granted to the petitioner under the Madhya Pradesh Udyog Nivesh Samvardhan Sahayta Yojna, 2004 and 2010. The contention of the petitioner is that the petitioner Company

is engaged in the manufacturing of technical textile, chemicals, engineering, plastics packaging films, refrigerant gases at various locations in India and overseas. It employs directly and indirectly 9000 employees and the Company has established an industrial unit at Indore, Special Economic Zone (Pithampur) M.P. The unit which was established at Indore is engaged in the manufacturing process of polyester film which started its operation in 2004 and was entitled for various benefits and tax exemption under the Special Economic Zone Scheme announced by the Central Government as well as the Government of India. The unit of the petitioner company which was established in 2004 is referred by the tax department as principal unit and in 2009 expansion was carried out and the unit was referred as expansion unit and in 2010 further expansion was carried out and the department referred the unit as diversified unit. The contention of the petitioner is that under the Madhya Pradesh Udyog Nivesh Samvardhan Sahayta Yojna, 2004 and 2010 vide notification dated 4-4-2005 and 13-12-2010, the State has made provisions for exemption from payment of entry tax to all the industries in the State subject to certain terms and conditions. As per the aforesaid notification the eligible Companies are entitled for 100% exemption in respect of payment of entry tax. The petitioner company submitted an application for grant of exemption of entry tax for its new principal unit, expansion unit and diversified unit as they are located in Special Economic Zone on 5-3-2013 and pursuant to the application submitted by the petitioner company, three exemption certificates were granted by the M.P. Trade and Investment Facilitation Corporation Ltd., granting exemption in respect of payment of entry tax from 23-7-2004 to 8-5-2015 in respect of all three industrial units keeping in the provisions as contained u/S. 10 of the Madhya Pradesh Sthaniya Kshetra Me Maal Ke Pravesh Par Kar Adhinyam, 1976. As already stated earlier, the certificate was granted on 13-2-2017 and on account of grant of certificate with retrospective effect all entry tax assessment orders also for the year 2004 to 2013 and subsequent assessment orders also upto 2015 became null and void because the exemption was granted for a period of 9 years that too with retrospective effect. The contention of the petitioner is that the Commercial Tax Department was under an obligation to grant 100% exemption of entry tax amount, interest and penalties for the entire period of 9 years in terms of the certificate issued. However, the respondent State has granted exemption only in respect of 5 assessment years i.e., 2004 – 2005 to 2006 – 2007 and 2011 – 2012 to 2012 – 2013. The

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petitioner as the re-assessment for four years was not done i.e., 2007 – 2008 upto 2010 – 2011 wrote letters to the authorities dated 16-2-2017 and 20-2-2017 along with the exemption certificate and again wrote letters on 29-8-2017, 9-10-2017, 2-8-2018, 25-10-2018, 14-12-2018, 8-1-2019, 8-7-2019 and 25-2-2020 for granting exemption for the remaining years. However, nothing was done in the matter. The petitioner has prayed for the following reliefs:

1. A direction or order may kindly be passed to give effect to the Entry Tax Exemption Certificate issued on 13-2-2017 (Annexure P/ 11 to P/13) and consequently the impugned assessment orders (Annexure P/7 to P/10) passed by the respondent department for 4 years of assessment i.e., 2007-08, 2008-09, 2009-10 and 2010-11 be set aside.
 2. Any other relief, as is deemed fit and proper by this Hon'ble Court.
2. A reply has been filed in the matter on behalf of the State of M.P. and the State Government in the reply has admitted that as per the Madhya Pradesh Udyog Nivesh Samvardhan Sahayta Yojna, 2004 and 2010, the petitioner did apply for grant of exemption before the State Government and keeping in view S.10 of the Entry Tax Act, 1976, the State Government has granted eligibility certificate to the petitioner in the year 2017 i.e., on 13-2-17. The respondent State has admitted that the Tax exemption was granted with retrospective effect i.e., 23-7-2004 to 22-7-2009, 24-11-2009 to 23-11-2014 and 9-5-2010 to 8-5-2015. The respondents in the return have stated that the petitioner is having an alternative remedy and the petitioner can very well prefer an appeal against the assessment orders passed from time to time in the matter levying entry tax. Reliance has been placed upon the judgment delivered in the case of **Assistant Collector of Central Excise Vs. Dullab India and others** reported in **(1985 SC 330)** and great emphasis has been laid upon the availability of alternative remedy. It has also been argued that the petition is hopelessly barred by delay and laches. The cause of action accrued to the petitioner on 13-2-2017 i.e., the date on which exemption was granted and, therefore, such a claim at a belated stage cannot be looked into. The respondent have stated that various assessment orders were passed on 19-5-2010, 27-4-2011, 30-4-2012 and 28-3-2013 under Section 13 of the Entry Tax Act read with Sec. 20 of the M.P. V.A.T. Act

and the petitioner has not preferred appeal in the matter nor has approached the appropriate Court after the exemption was granted.

3. The respondents have stated that the power of reopening of an assessment is provided u/S. 13 of the Entry Tax Act read with Sec. 21 (1) of the M.P. V.A.T. Act, 2002 and on account of the limitation provided u/S. 21, the question of reopening the assessment does not arise.

4. The respondent have further stated that for the year 2004-2005, the order of assessment dated 15-1-2008 was revised vide order dated 18-12-2015 by the revisional authority and the order of reassessment was passed. It has been further stated that the petitioner applied for exemption on 14-7-2017 before the assessing authority on which revision order was passed on 20-7-2017 as the assessing authority himself can not reassess the case without prior permission of the higher authority, so the reassessment order was passed on 31-7-2017 and, therefore, original order of reassessment was passed on 31-7-2017 and, therefore, the application of the petitioner for reassessment being within time limit prescribed by the statute was entertained and exemption was granted.

5. In respect of year 2005-2006 and 2006-2007 the reassessment orders were passed on 30-11-2015, the petitioner applied for reassessment of the Entry Tax and on 14-7-2017, the assessing authority forwarded the matter before the higher authority and the higher authority has passed a revised order on 20-7-2017 and remanded the matter back to the assessing authority. Thereafter, the assessing authority has passed an order on 31-7-2017 and granted exemption to the assessee.

6. In respect of the assessment year 2011-2012 to 2014-2015 the original assessment orders in respect of assessment years were passed on 17-4-2014, 20-1-2015, 23-11-2015 and 17-11-2016, respectively. It has been further contended that the application for reassessment for the year 2004-2005 and 2006-2007 was filed by the petitioner on 14-7-2017 was within the period of limitation. The same was processed and the exemption was granted accordingly. The respondents have stated that the petitioner is seeking exemption in view of notifications issued in the year 2004 and 2010. However, the petitioner himself applied for grant of exemption in the year 2013 i.e., on 5-10-2013 and the petitioner has not assigned any reason as to why he did not seek an exemption against various assessment years in respect of which the assessment orders have been finalised and crystalised.

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The respondent have also stated that reopening of assessment cannot be done after five years in the light of the absolute statutory bar as provided under Section 21. Reliance has been placed upon the judgment delivered in the case of **Singh Enterprises Vs. Commissioner of Central Excise** reported in (AIR 2008 SC 353); **M/s. Nitco Tiles Ltd. Vs. Gujarat Ceramic Floor Tiles Mfg. Association** reported in (2005) 12 SCC 454; **Union of India Vs. Kirloskar Pneumatic** reported in 1996 SCC (4) 453. The respondents have prayed for dismissal of the writ petition.

7. Heard learned Counsel for the parties at length and perused the record, the matter is being disposed of at the motion hearing stage itself with the consent of the parties, through Video Conferencing.

8. The undisputed facts of the case reveal that the petitioner before this Court is a Company registered under the Companies Act and is having a unit at Indore (Special Economic Zone), Pithampur. The petitioner Company started its production in 2004 and was entitled for various benefits and tax exemption. The unit which was established in the year 2004 is referred by the respondent – Department as Principal Unit. Thereafter, in 2009 expansion was carried out and the same is referred by the department as Expansion Unit and in 2010 further expansion was carried out and the unit is known as diversified unit. The State of M.P. in order to promote industrialisation and establishment of industries has granted various incentives from time to time under the Madhya Pradesh Udyog Nivesh Samvardhan Sahayta Yojna, 2004 and 2010. Two notifications were issued on 4-4-2010 and 13-10-2010. The petitioner applied for exemption and 100% exemption was granted towards payment of entry tax vide Notification dated 12-3-2017 and exemption certificates were issued in respect of all the three industrial units in pursuance to the provisions as contained under Section 10 of the Madhya Pradesh Sthanika Kshetra Me Maal Ke Pravesh Par Kar Adhiniyam, 1976.

9. The details of exemptions granted in the matter are reproduced as under:

S. No.	Date	Ref. No.	Period
1.	13-2-2017	19/Fiscal Incentives/ E.T./2015/107 for New Industrial Unit	23-7-2004 - 22-7-2009
2.	13-2-2017	20/Fiscal Incentives/ E.T./2015/108 for Expansion in Existing Industrial	24-11-2009 23-11-2014

Unit

3.	13-2-2017	21/Fiscal Incentives/ E.T./2015/109 for Diversified Unit	9-5-2010 - 8-5-2015
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10. The statutory provisions governing the field as contained under the M.P. Entry Tax Act, 1976 reads as under :

Section 3 of the M. P. Entry Act, 1976 reads as under :

3. Incidence of taxation. - (1) There shall be levied an entry tax,-

(a) on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein; and

(b) on the entry in the course of business of a dealer of goods specified in Schedule III into each local area for consumption or use of such goods but not for sale therein;

and such tax shall be paid by every dealer liable to tax under the [Madhya Pradesh VAT Act, 2002 (No. 20 of 2002)] who has effected entry of such goods;

Provided that no tax under this sub-section shall be levied,-

(i) in respect of goods specified in Schedule II other than the local goods, purchased from a registered dealer on which entry tax is payable or paid by the selling registered dealer;

(ii) in respect of goods specified in Schedule II which after entry into a local area are sold outside the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India;

(iii) in respect of goods specified in Schedule III imported from outside the State for consumption or use but which have been disposed of in any other manner;

(iv) in respect of goods exempted from entry tax under Section 10;

(v)

Section 10 of the M. P. Entry Act, 1976 reads as under :

10. Power to exempt. - The State Government may, by notification, and subject to such restrictions and conditions as may be specified

therein, exempt, whether prospectively or retrospectively, in whole or in part :

(i) any class of dealers or persons, or any goods or class of goods, from the payment of entry tax under this Act in respect of all or any of the local areas, for such period as may be specified in the notification;

(ii) any dealer or class of dealers, from any provision of the Act as may specified in the notification :

Provided that in respect to the period during which the Ordinance, repealed under Section 24 was in force, the retrospective effect may be given from the date of the commencement of the said Ordinance as if the liability to pay tax arose under this Act and for that purpose it shall and shall always be deemed that the provisions of this Act to the extent they correspond to the provisions of the said Ordinance were in force during the material times.]

11. The undisputed facts further reveal that the exemption certificate was granted on 13-2-2017. The undisputed facts also reveal that pursuant to issuance of exemption certificate, the petitioner certainly became entitled for exemption from payment of entry tax as it was granted with retrospective effect i.e., 23-7-2004 and the Commercial Tax Department was certainly under an obligation to grant 100% exemption of entry tax amount, interest and penalties for the entire duration of 9 years period i.e., w.e.f. 2004 – 2005 to 2012 -2013. The petitioner has made various applications immediately after grant of certificate which are on record dated 16-2-2017 and 20-2-2017 as well as on 29-8-2017, 9-10-2017, 2-8-2018, 25-10-2018, 14-12-2018, 8-1-2019, 8-7-2019 and 25-2-2020. However, exemption has not been granted in respect of entire period.

12. Mr. Vivek Dalal, learned Additional Advocate General has vehemently argued before this Court that the statute does not provide for grant of exemption as the matter has become time barred. In the present case, the exemption certificate itself was granted only in the year 2017 i.e., on 13-2-2017 and the cause of action arose for the first time in the year 2017 for grant of exemption as exemption certificate was granted with retrospective effect. Thus, there was a sufficient and reasonable cause in respect of condonation of the delay.

13. The respondents have stated that there is an alternative remedy under the M.P. VAT Act.

Section 51 of the M. P. V.A.T. Act, reads as under :

51- Extension of period of limitation in certain cases: The provisions of Section 5 of the Limitation Act, 1963 (36 of 1963), so far as may be, shall apply to appeals and applications for revision under this Act.

Section 5 of the Limitation Act, reads as under :

5 Extension of prescribed period in certain cases. - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

14. The Madhya Pradesh Value Added Tax Act became applicable w.e.f. 1-4-2006 and Section 51 of the VAT Act provides that provision of Sec. 5 of the Limitation Act are applicable in respect of appeals, applications and revisions. The petitioner was certainly having a sufficient cause for condonation of delay, as exemption certificate was granted in the year 2017 and, therefore, the stand taken by the Department in respect of the limitation has got no meaning. The State of Madhya Pradesh has granted eligibility certificates to the petitioner for 100% exemption in respect of payment of entry tax for total 9 assessment years ie., 2004-05 to 2012-13 with retrospective effect ie., w.e.f. 23-7-2004 and, therefore, the respondent Department is certainly under an obligation to abide by the exemption certificates and to provide exemption in letter and spirit of the eligibility certificate.

15. The respondents have carried out the reassessment only in respect of five assessment years ie., 2004-05, 2006- 07 and 2011-12 to 2012-13 and exemption has been granted only in respect of five assessment years. The respondents ought to have re-assessed the assessment years w.e.f. 2007-08 to 2010-11 also. The petitioner has submitted more than a dozen of

applications to the Commissioner for granting exemption in respect of the remaining years and the Commissioner does have the power u/S. 47 of the M. P. VAT Act. The Commissioner is having a power of suo-moto revision also and this power could have been exercised by the Commissioner keeping in view Sec.5 of the Limitation Act. Thus, it is wrong on the part of the State Government to state that the statute does not provide for reopening of cases which are time barred even though reasonable explanation is provided. In the present case, as the exemption certificate has been granted in the year 2017 only, the petitioner was justified in immediately approaching the Authorities for grant of exemption and his request could not have been turned in the manner and method it has been done by the respondents. The petitioner initially preferred Writ Petition ie., W.P.No. 6666/2010. However, at the relevant point of time, there was no exemption certificate granted in favour of the petitioner and the Writ Petition was withdrawn with liberty to file a fresh Writ Petition. The petitioner has later on preferred Writ Petition ie., W.P.No. 1421/2014, W.P.No. 1323/2015 and 8845/2015 and they were withdrawn only because exemption certificate was issued in favour of the petitioner and the reassessment in respect of 4 years (2007-08 to 2010-11) was pending at the relevant point of time. However, the same has not been done and, therefore, the inaction on the part of the Department is bad in law. The assessment orders passed by the Department for four years ie., 2007-08, 2008-09, 2009-10 and 2010-11 deserves to be set aside and are accordingly hereby set aside.

16. It is nobody's case that the exemption certificate has been withdrawn or was erroneously granted and the respondent State has admitted grant of exemption certificate and, therefore, once exemption certificate was granted, the Department cannot take advantage of technicalities, especially when the certificate itself was granted in the year 2017 with retrospective effect.

17. Resultantly, the present Writ Petition is allowed. The respondents are directed to confer all benefits to the petitioner in terms of the Entry Tax Exemption Certificate dated 13-7-2017 (Annexure P/11 to P/13) and as a consequence the impugned assessment orders for four years ie., 2007-08, 2008-09, 2009-10 and 2010-11 are set aside. The Department shall refund the amount recovered from the petitioner within 90 days from the date of receipt of certified copy of this order by passing appropriate consequential orders. No order as to costs.



(2020) 65 TLD 378

In the High Court of M.P.
Hon'ble Sheel Nagu & Rajeev Kumar Shrivastava, JJ.

Akash Garg

Vs.

State of M.P.

W.P. No. : 16117/2020

November 19, 2020

Deposition : In favour of Petitioner

Show Cause Notice - Rule 142 of CGST Act, 2017 - Only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue - Notice served on E-mail not adequate.

Writ petition allowed

Shri Pankaj Ghiya, learned counsel for the petitioner.

Shri Ankur Mody, learned AAG for the respondent No.3/State.

:: ORDER ::

Learned counsel for the rival parties are heard through video conferencing.

1. Instant petition invoking writ and supervisory jurisdiction of this Court under Articles 226 and 227 of Constitution prays for following reliefs:-

“(i) This Hon'ble Court may kindly be pleased to call for the record from the office of respondents for its kind perusal.

(ii) That, a writ of certiorari or any other writ or writs may kindly be issued quashing the impugned order in Form GST DRC-07 dated 18-9-2020 for the year 2018-19 and 2019-20 and orders as referred in the said order i.e. order under section 74 dated 10-6-2020 passed by the respondents.

(iii) That, a writ of mandamus or any other writ or writs may kindly be issued quashing the impugned order in Form GST DRC-07 dated 18-9-2020 and orders as referred in the said order i.e. order under section 74 dated 10-6-2020 passed by the respondents.

(iv) Direct the respondents to comply with the provisions of GST Act and upload notices and orders only on the GSTN Portal as mandated under law.

(v) Any other relief considered expedient and just under the facts of the case by the Hon'ble Court may kindly be allowed to the petitioner.”

2. Grievance of the petitioner is that while raising the demand of tax vide summary of order dated 18-9-2020 vide Annexures P/1 and P/2 (at page 17 and 18 of the writ petition), the foundational showcause notice/orders No.11 and 11a dated 10-6-2020 qua financial year 2018-2019 and 2019-2020 and tax period September, 2018 to March, 2019 and April, 2019 to May, 2019 respectively, was never communicated to the petitioner who is an individual registered under GST Act.

3. As such on the question of violation of principle of natural justice on the anvil of Rule 142 of Central Goods and Services Tax Act, 2017 (for brevity “CGST Act”), this Court requisitioned reply of the State.

4. State has filed reply on 11-11-2020 disclosing that show-cause notice/orders No.11 and 11a dated 10-6-2020 was communicated to petitioner on his E-mail address and despite receiving the same the petitioner failed to file any response. Copy of show-cause notice/orders No.11 and 11a dated 10-6-2020 is Annexure R/1 filed alongwith the reply.

5. Learned counsel for the petitioner has drawn the attention of this Court to the provision of Rule 142(1) of CGST Act to contend that the said provision statutorily obliges the revenue department to communicate show-cause notice/orders by uploading the same on the website of revenue so that the aggrieved person can have access to the same and be aware of reasons behind the demand to enable the aggrieved person to avail alternative remedy before the higher forum under CGST Act.

6. For ready reference and convenience, Rule 142 of CGST Act is reproduced below:-

“142. Notice and order for demand of amounts payable under the Act.-(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

(1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under subsection (1) of Section

73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.] 274;

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act [whether on his own ascertainment or, as communicated by the proper officer under subrule (1A),]275he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC- 01A.] 276

(3) Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section

2020)

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125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.]”

6.1 A bare perusal of the aforesaid provision reveals that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.

7. The State in its reply has provided no material to show that show-cause notice/orders No.11 and 11a dated 10-6-2020 were uploaded on website of revenue. In fact, learned AAG, Shri Mody, fairly concedes that the show-cause notice/orders were communicated to petitioner by E-mail and were not uploaded on website of the revenue.

8. It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed as is the case herein.

9. In view of above discussion, this Court has no manner of doubt that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the impugned demand dated 18-9-2020 vide Annexure P/1 and P/2 pertaining to financial year 2018-2019 and 2019-2020 and tax period September, 2018 to March, 2019 and April, 2019 to May, 2019 respectively, deserves to be and is struck down.

10. Accordingly, instant petition stands allowed with liberty to the revenue to follow the procedure prescribed under Rule 142 of CGST Act by communicating the show-cause notice to the petitioner by appropriate mode thereafter to proceed in accordance with law.

□

(2020) 65 TLD 382 Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members

Atriwal Amusement Park, Indore

Case No. : 29/2019

Order No. : 12/2020

June 09, 2020

AAR-MP - Input Tax - Eligibility of ITC in case of Input Tax paid on Purchase of Water Slides - Water Slides shall fall within the meaning of the term apparatus, equipment and machinery and therefore, shall be eligible for claim of ITC.

CA Ankit Khatri on behalf of the applicant.

:: PROCEEDINGS ::

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

1. M/s. Atriwal Amusement Park (hereinafter referred to as the Applicant) is engaged in construction of Water Park, for construction of the same various components & services will be used. All such components & services are taxable under GST. The Applicant is not registered. However the Applicant has declared that he is desirous of obtaining registration in GST.

2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MPGST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE -

3.1 Atriwal Amusement Park was incorporated on 13th March, 2018. With 5000000 Share Holders Holding 4970000 shares of Rs. 10/- each.

3.2 Applicant has a proposed activity of construction of Water Park, for construction of the same various components & services will be used. All such components & services are taxable under GST.

4. QUESTION RAISED BEFORE THE AUTHORITY -

2020) **Atriwal Amusement Park, Indore (AAR-MP)** **383**

4.1 Whether we are eligible to take credit on Input Tax paid on Purchase of Water Slides? Water Slides are made up of Strong PVC.

4.2 Water Slides are installed on Steel and Civil Structure. Credit of Tax paid on Input goods and services used in construction of this support structure will be available or not?

4.3 Input tax will be available or not on Goods and Services used for area development and preparation of land on which water slides are erected.

4.4 Whether applicant will be eligible to take credit of Input Goods and Services used for construction of Swimming Pool/Wave Pool as water slides directly run into pools'?

5. RECORD OF PERSONAL HEARING -

5.1 CA Ankit Khatri, appeared for personal hearing on and they reiterated the submission already made in the application and attached additional submission which goes as follows -

5.2 In Regards to question No. 1 -

In regards to point No. 1 it is hereby submitted that according to the nature of industry applicant is required to buy Plant & Machinery that are used in providing output services & it includes Water Slides, kids play slide, wave generation machine & other machinery to be used in water park. These are clearly covered under the definition of plant & machinery (plant and machinery means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports.) hence credit is allowable.

5.3 In regards to point No. 2 it is hereby submitted that for the installation of water slides applicant is required to construct support structure (Commonly known as Tower) on which water slides are installed as without those civil and steel structure water slides cannot be installed. The support structure is generally made up of steel, Iron & other civil work. Definition of plant & machinery specifically includes **foundation or structural support** hence its credit should be allowed.

Also for Installation of Machines (Machine generating waves in water pool) applicant is required to construct machine foundation and room for protection of this machine as without that protection machine cannot operate effectively. As per the explanation it is specifically covered under the definition

of plant & machinery in **foundation or structural support** hence its credit should be allowed.

5.4 In regards to point No. 3 it is hereby submitted that for installation of water slides applicant is required to create a strong base which involves area development, digging process & creation of base using concrete, iron, steel etc. As without creating base nor the structural support can be installed nor the water slides. It is the foundation for placing water slide as slides will be attached to base through screw. Hence Input and input service used in construction of base/foundation for laying slides directly covered under the definition of P & M under structural support and foundation.

5.5 In Regards to Point No. 4-

Swimming pool/Wave Pool is the integral part of water slides and should be considered as single unit as without Swimming pool/Wave Pool there is no use of water slides.

Hence this forms the support structure for water slides as slides are directly connected to swimming pool/Wave Pool.

6. DISCUSSIONS AND FINDINGS -

1. The explanation below Section 17(6), relating to the expression “plant and machinery” has included foundation and structural support in the term “plant and machinery”. It has also been stated that such foundation and structural support are used for fixing apparatus, equipment and machinery. Therefore, in the definition, foundation and structures are duly included. Further the definition has excluded land building and any other civil structure from the definition of the “plant and machinery”. Prima facie, there seems to be contradiction in the inclusion of “such foundation and structural supports” and exclusion of “....building or any other civil structures”.
2. Foundation:
 - 2.1 Foundation means a usually stone or concrete structure that supports a building or structure from underneath. Foundation Bolts are used to fasten machinery or structures to the foundations. Dictionary meaning of Foundation is as under:
 - the structures below the surface of the ground that support a building (<https://dictionary.cambridge.org/dictionary/english/foundation>)

- an underlying base or support
(<https://www.merriam-webster.com/dictionary/foundation>)
- 2.2 Further, in the SB Sarkar’s Words and Phrases of Excise, Customs & Service Tax, it has been stated as under:
- “The lowest load-bearing part of a building, typically below ground level”. It further states that Foundation is the construction below the ground that distributes the load of a building, wall etc.
- 2.3 Foundation thus is a civil structure, which forms the base of a structure. This structure can be that a building or a support structure. Therefore, it is not under any doubt that Foundation is a sub-specie of the genus Civil Structure.
3. This apparent contraction is however negated by the fact that the exclusion of the building or civil structure is for plant and machinery per se, while the inclusion is for foundation and structure is only to the extent that such foundation and structure is used to fasten the apparent, equipment or machinery to earth. Thus, if the plant and/or machinery is fixed/fastened to the earth by a foundation or civil structure then such foundation or civil structure shall be included in plant and machinery.
4. It is important to see why the exclusion to the term “building and civil structure” has been provided for in law. The term plant has a wide meaning and it changes with the context and purpose of the law under which the matter is being sought to be interpreted. The term plant is defined as under in Cambridge Dictionary:
- machines used in industry: a factory in which a particular product is made or power is produced: a large, heavy machine or vehicle used in industry, for building roads, etc.
(<https://dictionary.cambridge.org/dictionary/english/plant>)
5. Further in Merriam Webster, plant is defined as under:
- a. the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business
 - b. a factory or workshop for the manufacture of a particular product also : power plant
 - c. the total facilities available for production or service
 - d. the buildings and other physical equipment of an institution

(<https://www.merriam-webster.com/dictionary/plant>)

6. Again, in M.C. Graw Hill dictionary as below:
 - “Plant - The land, buildings and equipment used in an industry.”
7. Judicial pronouncements have also enlarged the definition of the term plant. Some of the pronouncements are as under:
 - 7.1 In the matter of SHANMUGARAJA SPINNING MILLS LTD. Vs. COMM. OF C. EX., COIMBATORE reported in 1998 (98) E.L.T. 702 (Tribunal) it has been stated as under by the Hon’ble CESTAT:
 2. “Plant” is a very wide term. Supreme Court observed that the word must be construed in its popular sense and that the very fact that even books and surgical instruments have been included showed the meaning to be given to “Plant” was wide. The Court referred to the decision in Jarrold’s case - 1982 (40) TC 681 (C.A.), assets such as heating, air-conditioning and water-softening installations were held to fall within the meaning of ‘plant’ in the English judgment, although they played a passive role. Supreme Court held that sanitary fittings in the bathroom in a hotel would be ‘plant’ within the ambit of Section 10(5) I.T. in CIT Vs. Tajmahal Hotel - (1971) 82 ITR 44 (SC). It was held by Allahabad High Court that “the word ‘plant’ in common parlance included within its meaning buildings and equipments used for manufacturing purposes” CIT Vs. Kanodia Cold Storage - (1975) UPTC 169, ‘plant’ has been defined as machinery, fixtures, etc. used in industrial process vide Words & Phrases of Central Excise & Customs - S.B. Sarkar p. 532.
 - 7.2 Again, in the matter of VIVEK ALLOYS LTD. Vs. COMMISSIONER OF C.EX., COIMBATORE, reported in 1998 (98) E.L.T. (Tribunal) the Hon’ble stated as under:

13. For the purpose of Income-tax Act, capital goods include appliances used for the purpose of trade or business. The definition of “capital goods” in the explanation to Rule 57Q of the Rules follows quite a different scheme. The sub-rule itself referred to capital goods used by the Manufacturer in his factory. Explanation 1(a) refers to Machines, Machinery, Plant, Equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products. Considering the

scheme of Rule 57Q, the definition in Explanation 1(a) of capital goods, as meaning machines, equipments, apparatus, tools, appliances used for producing or processing the goods etc., clearly indicate the intention of the rule making authority to give the wider meaning to the expression 'plant' but to give a narrower meaning which is suitable in the context. 'Plant', therefore, could be regarded as machine or group of machines fitted in such a manner as to serve the purpose of manufacturing any particular product, and the whole system of machine has to be regarded as Plant.

- 7.3 The Karnataka High Court in the matter of J.K. CEMENT WORKS Vs. STATE OF KARNATAKA reported in 2017 (7) G.S.T.L. 408 (Kar.) came to the conclusion that Cement although specified in Fifth Schedule, since it is used for laying foundation and erection of cement manufacturing plant and machinery, prior to commencement of commercial production, constitutes part and parcel of 'plant' and thus 'capital goods' used for manufacturing of cement later on. In the order, at para 11 and 12 the Honorable High Court stated as under:

11. We see no justification in the contention of the learned Additional Government Advocate appearing for the Revenue that a narrow meaning should be given to the word "Plant" and restrict it to the value or cost of purchase of plant itself. The plant and machinery for manufacturing of cement by itself would be nothing and would be useless, unless they are properly installed and erected with proper foundations and civil work for erection thereof and in that process, the use of cement would constitute an integral part of the overall cost of the plant and machinery itself. Such overall immovable asset in the form of plant and machinery purchased, installed and erected by the petitioner assessee, would only be fit for use for manufacturing of cement itself later on. But, the term 'Plant' is not defined in the KVAT Act and therefore, one can take a broad view and interpret the meaning of the word 'Plant' with the help of precedents or case laws, which we would shortly refer.

12. Once the Court comes to the conclusion that the cement, used for erection and setting up of the Plant and machinery, would constitute a "Plant" and therefore, is Capital Goods, as defined under section 2(7) of the KVAT Act, the recourse can also be made to Section 12 of the

KVAT Act quoted above and the input tax in respect of the purchase of capital goods, including the cost of “Plant and machinery” and cost of cement for erection thereof, would constitute jointly capital goods, which are used for manufacture and sale of the cement ultimately produced with such plant and machinery.

- 7.4 In the matter of Income Tax proceedings, in the case of Jayadev Oil Mill, Hubli Vs. The Additional Commissioner of Commercial Taxes, Belgaam, a Division Bench of Karnataka High Court in STA No. 23 of 1994 held as under:

10. In deciding whether a ‘building’ or a structure is a plant, the functional test has to be applied as indicated in the said decisions. If the ‘building’ is an apparatus or tool used by the Assessee for carrying on the business or manufacturing activity, then it would be part of the ‘plant’. If on the other hand, if a building or a part of a building has no connection with the business or manufacturing activity that is being carried on, then obviously such a building or portion of the building will not be part of the plant. These aspects of the matter have not been considered or dealt with by the Revisional Authority. He has merely proceeded on the basis that the decisions relied on by the appellant are not applicable as they were rendered with reference to Income-tax Act.

11. Therefore, the word ‘installed’ is used in connection with the words ‘plant and machinery’, can also refer to ‘installation’ of a factory building. After all, the intention of the Notification is to encourage setting up of new industries in Karnataka. There is nothing in the Act or the Notification to exclude the factory building from ‘plant’. We find no reason why the meaning attached to the said word, while examining the provisions of the Income-tax Act, cannot be applied while construing the meaning of the said word in the exemption Notification issued under the Karnataka Sales Tax Act. Therefore, the mere use of the word ‘installed’ with reference to ‘plant and Machinery’ is not sufficient to exclude the factory building, from the scope of the ‘plant and machinery’ used in the Notification dated 15-10-1981. Hence, we feel that the Revisional Authority ought to have examined these aspects with reference to the functional tests. In fact, none of the authorities have examined the matter with reference to the functional tests, repeatedly prescribed by the Supreme Court and this Court.

12. In the circumstances, we set aside the orders of the Revisional Authority, Appellate Authority and the Assessing Authority and remit the matter to the Assessing Authority for reconsideration of the matter.

7.5 Further, the Hon'ble Supreme Court in the case of Scientific Engineering House Pvt. Ltd.(supra) relied upon certain following foreign decisions while dealing with the explanation 'Plant' and gave it a wide meaning under the provisions of Income Tax law in the following manner:

The classic definition of 'plant' was given by Lindley, L.J. in *Yarmouth Vs. France* [1887] 19 Q.B.D. 647, a case in which it was decided that a cart-horse was plant within the meaning of section 1(1) of Employers' Liability Act, 1880. The relevant passage occurring at page 658 of the Report runs thus:-

"There is no definition of plant in the Act: but, in its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his business, - not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business."

In other words, plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant the article must have some degree of durability, as for instance, in *Hinton Vs. Maden & Ireland Ltd.*, 39 I.T.R. 357, knives and lasts having an average life of three years used in manufacturing shoes were held to be plant. In *C.I.T. Andhra Pradesh Vs. Taj Mahal Hotel*, 82 I.T.R. 44, the respondent, which ran a hotel, installed sanitary and pipeline fittings in one of its branches in respect whereof it claimed development rebate and the question was whether the sanitary and pipeline fittings installed fell within the definition of plant given in Sec. 10(5) of the 1922 Act which was similar to the definition given in Sec. 43(3) of the 1961 Act and this Court after approving the definition of plant given by Lindley L.J. in *Yarmouth Vs. France* as expounded in *Jarrold Vs. John Good and Sons Limited* [1962] 40 T.C. 681 C.A., held that sanitary and pipeline fittings fell within the definition of plant.

In *Inland Revenue Commissioner Vs. Burly Curie & Co. Ltd.*, 76 I.T.R. 62, the House of Lords held that a dry dock, since it fulfilled the function of a plant, must be held to be a plant. Lord Reid considered the part which a dry dock played in the assessee company's operations and observed :

“It seems to me that every part of this dry dock plays an essential part.... The whole of the dock is. I think, the means by which, or plant with which, the operation is performed.” Lord Guest indicated a functional test in these words :

“In order to decide whether a particular subject is an ‘apparatus’ it seems obvious that an enquiry has to be made as to what operation it performs. The functional test is, therefore, essential at any rate as a preliminary”.

7.6 Indian Courts as well as English Courts, depending upon the context of law, have treated even the assets like dry dock, silos built in the shipyard freezing chamber in the case of cold storage, cinema building, etc. as falling within the definition of ‘Plant’.

- “IRC Vs. Barclay Curie and Co. Ltd. [1970] 76 ITR 62 (HL). The question that arose for consideration was whether a dry dock could be construed as plant for the purposes of the trade of the company within section 279(1) of the English Act. In that case, the dry dock had been made, the walls and bottom of which had to be strong and impervious to water so that large vessels could get into it for the purposes of repairs. In the facts and circumstances of the said case, it was held that the entire dry dock together with the ancillary structures constituted plant.
- In *Schofield Vs. R. and H Hall Ltd.* [1974] 49 TC 538 (CA) concerning silos built in the shipyard. The company carried on a trade which consisted of storage of grain. The question was whether the silos is part of the setting in which such trade was carried on. It was found that considering the function of the silos in relation to the assessee's trade, the silos served as an essential part of the overall trading activity. Their function was to hold the grain in a position from which it could be conveniently discharged in varying quantities. Hence, it was held that the silos would rank for capital allowance.

- In CIT Vs. Kanodia Cold Storage, the question was whether the building with insulated walls used as a freezing chamber, though it is not machinery or part thereof, is part of the air-conditioning plant of the cold storage of the assessee, entitled to special depreciation on its written down value. In the specific facts of the case, the whole freezing chamber including walls and structure was held to be a plant with which the assessee was carrying on his business activity. On the analogy of the above cases. Sri Prasad, learned counsel for the assessee, contended that the whole theatre should be treated as plant with which the assessee carries on his show business.
 - In Benson Vs. Yard Arm Club Ltd. [1978] 2 All ER 958, 968; [1979] Tax LR 778, 785 (Ch.D), the subject-matter was a ship which was converted into a restaurant by the assessee. The whole ship was claimed as an apparatus for carrying on their business of a floating restaurant, and as such it was a plant to claim allowance. On a review of various earlier decisions, the Chancery Division has held that the vessel is the place or setting where the restaurant business was carried on and was not plant and hence, the expenditure on them did not qualify for capital allowance.”
8. To set to rest the disputes regarding the definition of the Plant, in light of the fact that input tax credit of works contract services, goods and services received as input for construction of immovable property on own account has been specifically put under the Blocked Credit list with the rider that it shall not apply to plant and machinery, it was incumbent that there should be clarity regarding classification of buildings and civil structures that were hitherto been classified as ‘Plant’.
9. Accordingly, in the explanation relating to Plant and Machinery, beneath sub-section (6) of Section 17, while providing the meaning of the term plant and machinery, it has been clearly stated that Buildings and Civil Structures shall not be covered under the term Plant. However, while so clarifying, it has been accepted and understood that plant and machinery many a times requires support structure and/or foundation for installation and cannot work otherwise. Thus, civil structures and foundation as supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery.”

7. Ruling

7.1 Regarding the eligibility of ITC in case of Input Tax paid on Purchase of Water Slides, we have to state that Water Slides shall fall within the meaning of the term apparatus, equipment and machinery and therefore, shall be eligible for claim of ITC.

7.2 Regarding the Steel and Civil Structure on which the Water Slides are installed, we have to state that foundation and support structures which are used to fasten plant and/or machinery to the Earth is classifiable as 'Plant and/or Machinery'. In the instant case, slides are fastened to the Steel and Civil Structure are affixed to the Earth through these Steel and Civil Structures. Therefore, these Steel and Civil Structures shall form part of the Plant and Machinery. Accordingly, the credit of Tax paid on Input goods and services used in construction of this support structure shall be available.

7.3 It has been stated that for Wave Pool, Machines have been installed. The foundation for these machines are eligible to be part of the Machines and the ITC shall be treated in a manner similar to that of the Machines. However, the Machine Room, which is a civil structure, erected for protecting machine is neither foundation nor civil structure for machine therefore, it is not relatable to the construction of the room for Housing the machine shall not be eligible for ITC.

7.4 Regarding the Input Tax on Goods and services used for area development and preparation of land on which water slides are placed, we have to state that area development and expenditure on preparation of land like site formation services are part of the cost of the land and thus are interminably bound with land. These expenses are liable to be capitalized under the head Land. Therefore, on account of the specific exclusion of Land from the meaning of 'plant and machinery'. ITC related to Land Development, subject to its capitalization as per accounting principles shall not be available.

7.5 Regarding eligibility of Input Tax Credit on Goods and Services used for construction of swimming pools/Wave Pool in which the water slides directly run into, we have to state that such Swimming Pools/Wave Pools are not support structure or foundation for a plant, but are independent items per se. Since they are not foundation or support structure on which slides are fastened for affixing them to earth and also on account they being Civil Structures, they are therefore excluded from the meaning of 'plant and machinery'. Thus, the ITC related to the construction of the Swimming Pools

2020) Atal Bihari Vajpayee Institute, Bhopal (AAR-MP) 393

and Wave Pools, subject to its capitalization shall not be available.

7.6 The provision of facilities like transformers, sewage treatment plant, Electrical Wiring and Fixtures. Surveillance systems, D.G. Sets, Lifts, Air Handling Units etc. are sine qua non for a commercial mall and hence cannot be considered separate from the building or civil structure. The provision of these are either statutory for a building or defines the nature of the building as a commercial mall. Hence the input tax credit on the inward supplies of goods or services involved in the construction of immovable property which is a civil structure or building is not available to the applicant and hence blocked.

7.7 The 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 393 Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members
**Atal Bihari Vajpayee Institute of Good Governance & Policy
Analysis (AIGGPA), Bhopal**

Case No. : 28/2019

Order No. : 07/2020

March 02, 2020

AAR-MP - Chargeability of GST on the amount recovered by the applicant from other government departments for doing research work and study, which help them make policies or understand its impact.

Whether the amount recovered by the applicant from other government departments for doing research work and study, which help them make policies or understand its impact, chargeable to GST?

Whether Services provided by the applicant to other government department are covered under the entry No. 8 of Exemption Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017?

The Word government has been defined under the GST laws and the definition government covers Central Government and State Governments only. Here it is pertinent to note that the application is a society registered under MP Societies Registrikaran Act, 1973 and has

its own governing body being presided over by Chief Minister of State of Madhya Pradesh. Hence the applicant does not fall within the definition of Government or local Authority. [Para 7.5.4]

Having carefully considered the Entry No. 8 of Notification No. 12/2017 CT(R), we hold that such Entry covers services provided by government or local authority only however the applicant does not cover within the definition of Government or Local Authority hence Services provided by the applicant to other government department are not covered under the entry No. 8 of Exemption Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017. [7.5.6]

We also find it necessary to mention here that the classification decided by this Ruling shall be effective prospectively and this ruling shall not entail any right of the Applicant to claim refund of any tax which they may have paid prior to this Ruling. [7.6]

The applicant does not qualify to be Central Government, State Government or local authority hence services provided by the Applicant to other government department are not covered under the entry No. 8 of Exemption Notification.

Shri Navneet Garg, CA & Shri Girish Trivedi, Chief Manager Finance on behalf of the applicant

:: PROCEEDINGS ::

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

- 1.** The present application has been filed u/s. 97 of the Central Goods and Services Act, 2017 and M.P. Goods and services Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. Atal Bihari Vajpayee Institute of Good Governance & Policy Analysis (AIGGPA) (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
- 2.** The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under

2020) Atal Bihari Vajpayee Institute, Bhopal (AAR-MP) 395

the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

3.1 Atal Bihari Vajpayee Institute of Good Governance & Policy Analysis (AIGGPA) is established as a Society, registered under MP Societies Registrikaran Act, 1973.

3.2 The Institute is registered under the MPGST/CGST Act, 2017 vide GSTIN-23AADAA2879H1ZU.

3.3 Atal Bihari Vajpayee Institute of Good Governance & Policy Analysis is part of Department of Public Service Management Department, Government of Madhya Pradesh.

3.4 The Institute's Governing Council is the apex body and is presided over by the Chief Minister of Madhya Pradesh. The Governing Body of the Institute comprises senior cabinet ministers from different departments of Government of MP, Chief Secretary and other Principle Secretaries. The Director General is the administrative and operational head. He is appointed by the Government of MP.

3.5 The Institute is registered u/s. 12AA of the Income Tax Act 1961 since 1-4-2013, that exempts the Institute from income tax levies.

3.6 The AIGGPA is to act as a knowledge resource hub for promotion of good governance with the aim to;

- (i) facilitate a multi-disciplinary network of governance,
- (ii) to recognize and promote research, good practices, and overall improvement in practices of governance globally, with focus on Madhya Pradesh with the help of professionals, organizations/associations in the relevant areas.

3.7 To achieve these, the AIGGPA shall have the following objectives:-

- (a) In the Global-Local context, to act as a 'Think Tank' in the field of good governance; to analyze the policies of government and to assess their impact on the target group.
- (b) To analyze key issues in good governance, identify problems and to suggest solutions for them, develop action plans and support implementation of these plans.

- (c) To create a bank of “Best practices”, methodologies and e-governance programmes and their dissemination.
- (d) To provide consultancy services towards improving the prevailing administrative system and required restructuring.
- (e) To identify those areas for change and reform that will make the most positive impact in improving administrative performance and achievement.
- (f) To provide institutional mechanisms to local, national and international institutions and stake-holders for people-centric administration.
- (g) To provide technical support and advisory services to local bodies, states, national and international institutions in the areas of programme structuring and implementation, action research, change management and administrative reform.
- (h) To conduct various courses related with Public Service Management.
- (i) Capacity Building of non-Government Organisations.
- (j) Any other work assigned by the Governing Body and not covered in above objectives.

3.8 For achieving above said objectives, Institute undertakes impact evaluation, research works and study for various government departments on the matter of good governance and policy analysis which helps such department to make, review and improve the policies and take the appropriate decisions leading to the utmost benefit of the target beneficiaries.

For carrying on such research work institute engages experts of different domains, provide them all the requisite resources, and facilitate them remuneration and entitlements as per government rules. Such experts are hired from IIM, IIT, subject matter specialist from different fields and experienced retired senior officers.

4. QUESTIONS RAISED BEFORE THE AUTHORITY :-

The below question have been formed in relation to the services being provided by applicant to the recipients:-

4.1 Whether the amount recovered by the applicant from other government departments for doing research work and study, which help them make policies or understand its impact, chargeable to GST?

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4.2 Whether Services provided by the applicant to other government department are covered under the entry No. 8 of Exemption Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017?

5. CONCERNED OFFICER'S VIEW POINT : The Joint Commissioner, CGST & Central Excise, Bhopal vide Letter No. F.No.IV(16)06/Advance Ruling/Tech/BPL/2020 dated 5-3-2020 forwarded FAQ dated 24-8-2017 issued by the CBIC, New Delhi; wherein the department clarify applicability of GST in case of one Government/Local Authority provided services to other Government/local Authority in response to views called by the Authority of advance ruling on the application submitted by the Applicant.

6. RECORD OF PERSONAL HEARING :

Shri Navneet Garg, CA & Shri Girish Trivedi, Chief Manager Finance appeared on behalf of the applicants for personal hearing on 5-2-2020 and they reiterated the submissions already made in the application and Annexure with the application and also submitted the written submission specifically mentioning the eligibility for exemption granted under Entry No. 3 of Notification No. 12/2017 CT (R) dated 28th June, 2017. They also sought to submit copies of certain documents and requested that the same maybe taken on record. Accordingly, the documents submitted have been taken on record for consideration.

7. DISCUSSIONS AND FINDINGS :

7.1 We have carefully considered the submissions made by the applicant in the application and also the documents submitted at the time of personal hearing. In view of above deliberations and on considering the various documents furnished by the applicant following are the findings. We proceed to examine the questions applied for by the applicant.

7.2 Coming to the first question; Whether the amount recovered by the applicant from other government departments for doing research work and study, which help them make policies or understand its impact, chargeable to GST? We need to dwell into the Exemption Notification No. 12/2017 CT(R) dated 28th June 2017.

7.3 Applicant claims that it is covered under Two Entries i.e. Entry No. 3 of Notification No. 12/2017 CT(R) dated 28th June, 2017. Let us now

examine this entry:-

7.4 Notification No. 12/2017 dated 28th June, 2017 contains Entry No. 3, which for the sake of convenience, is reproduced as under:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

7.4.1 For claiming exemption under the Entry No. 3 of Notification No. 12/2017 CT(R) followings are the key conditions to be satisfied:-

- Pure Service.
- Exclusion of works contract and composite supply.
- Provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity.
- Any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

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7.4.2 The Contracts are awarded to the applicant by various government departments, local authority or Government Entities and Governmental Agencies for impact evaluation, research works and study for various government departments on the matter of good governance and policy analysis is a **Pure Service Contract**.

7.4.3 Further the services provided by the applicant to other government departments, local authority or Government Entities and Governmental Agencies are **not covered in exclusion clause** pertaining to 'works contract service' or 'composite supplies involving supply of any goods'.

7.4.4 The applicant has submitted the list of total 63 projects being executed along with the name of the government department, local authority or Government Entities and Governmental Agencies for whom such project is being undertaken. It is evident from the above said list that the applicant is providing services to government departments, Local Authorities or Government Entities and Governmental Agencies only.

7.4.5 Another condition to be satisfied is the activity **must be in relation to any function entrusted** to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution hence to understand it better the article 243G & 243W are being reproduced as follows:-

Article 243G in the Constitution of India

243G. Powers, authority and responsibilities of Panchayats Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the **Eleventh Schedule**.

Article 243W in the Constitution of India

243W. Powers, authority and responsibilities of Municipalities, etc.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

- (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to
 - (i) the preparation of plans for economic development and social justice;
 - (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

7.4.6 In both the articles of constitution of India i.e. 243G & 243W, the reference has been given to Schedule Eleven & Schedule Twelve hence it is pertinent to go through the items covered under both the schedules. Hence the Schedule Eleven & Schedule Twelve are reproduced as follows:-

ELEVENTH SCHEDULE

(Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.

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10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

TWELFTH SCHEDULE

(Article 243W)

1. Regulation of land use and construction of land buildings.
2. Urban planning including the town planning.
3. Planning for economic and social development

4. Urban poverty alleviation
5. Water supply for domestic, industrial and commercial purposes
6. Fire services
7. Public health sanitation, conservancy and solid waste management
8. Slum improvement and up-gradation
9. Safeguarding the interests of the weaker sections of society, including the physically handicapped and mentally unsound
10. Urban forestry, protection of environment and promotion of ecological aspects
11. Construction of roads and bridges
12. Provision of urban amenities and facilities such as parks, gardens and playgrounds
13. Promotion of cultural, educational and aesthetic aspects
14. Burials and burials grounds, cremation and cremation grounds and electric crematoriums
15. Cattle ponds, prevention of cruelty to animals
16. Regulation of slaughter houses and tanneries
17. Public amenities including street lighting, parking spaces, bus stops and public conveniences
18. Vital statistics including registration of births and deaths

7.4.7 The applicant has attached the list of works undertaken by it, mentioning the item no of respective Schedule of Constitution of India against the each work being executed, in relation to which the pure services are being provided by the applicant to other government departments or local authority or a Governmental authority or a Government Entity.

7.4.8 Thus, works of pure services undertaken by applicant are covered in clauses of the Eleventh and Twelfth Schedule referred in articles 243G and 243W of the Constitution.

7.4.9 Accordingly, we hold that the of works being undertaken by the applicant is in relation to the functions entrusted to Municipalities under article 243W and to Panchayats under article 243G of the Constitution, and, therefore, **it is exempt from tax being covered in Sr. No. 3 of**

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Notification No. 12 of 2017-Central Tax (Rate), dated 28-6-2017 (as amended from time-to-time) issued under Central Goods and Services Tax Act, 2017 (CGST/Act), and corresponding notifications issued under Madhya Pradesh Goods and Services Tax Act, 2017 (MPGST Act).

Now let us examine the second question:-

7.5 Whether Services provided by the applicant to other government department are covered under the entry No. 8 of Exemption Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017?

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
8	Chapter 99	<p>Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority:</p> <p>Provided that nothing contained in this entry shall apply to services-</p> <p>(i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) of transport of goods or passengers.</p>	Nil	Nil

7.5.1 Entry No. 8 of notification No. 12/2017 CT(R) is being reproduced here:-

7.5.2 Entry No. 8 prescribe for Services provided by the **Central Government, State Government, Union territory or local authority** to another Central Government, State Government, Union territory or local authority.

7.5.3 This entry grants exemption to services provided **by** Central Government, State Government, Union territory or local authority only. Hence to qualify for the exemption granted under Entry No. 8 service provider must be government or local authority.

7.5.4 The Word government has been defined under the GST laws and the definition government covers Central Government and State Governments only. Here it is pertinent to note that the application is a society registered under MP Societies Registrikaran Act, 1973 and has its own governing body being presided over by Chief Minister of State of Madhya Pradesh. Hence the applicant does not fall within the definition of Government or local Authority.

7.5.5 However the applicant falls within the ambit of definition of Government Entity as defined under clause (zfa) of notification No. 12/2017, the same is being reproduced here-

(zfa) “Government Entity” means an authority or a board or any other body including a society, trust, corporation,

(i) set-up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority;]

7.5.6 Having carefully considered the Entry No. 8 of Notification No. 12/2017 CT(R), we hold that such Entry covers services provided **by** government or local authority only however the applicant does not cover within the definition of Government or Local Authority hence Services provided by the applicant to other government department are not covered under the entry No. 8 of Exemption Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017.

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7.6 We also find it necessary to mention here that the classification decided by this Ruling shall be effective prospectively and this ruling shall not entail any right of the Applicant to claim refund of any tax which they may have paid prior to this Ruling.

8. RULING

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

8.1 In respect of Question 1 and additional submission made during the hearing regarding the eligibility for exemption granted under Entry No. 3 of Notification No. 12/2017 CT (R) dated 28th June 2017, we hold that the amount recovered by the applicant from other government departments for doing research work and study, which help them make policies or understand its impact, shall be exempt subject to satisfaction of conditions laid down under Entry No. 3 of Notification No. 12/2017 CT (R) dated 28th June 2017. Meaning there by it has to be seen for each and every work, whether the Pure Services are provided to Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. Hence, if all the conditions laid down under entry No. 3 of notification No. 12/2017 CT (R) are satisfied then the amount recovered by the applicant from other government departments for doing research work and study, which help them make policies or understand its impact, shall be exempt.

8.2 In respect of Question No. 2, we hold that as the applicant does not qualify to be Central Government, State Government or local authority hence services provided by the Applicant to other government department are not covered under the entry No. 8 of Exemption Notification No. 12/2017 Central Tax (Rate) dated 28th June, 2017.

8.3 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 406 Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members

Methodex Systems Pvt. Ltd., Indore

Case No. : 03/2020

Order No. : 08/2020

March 05, 2020

AAR-MP - Supply, installation and fixing of customized furniture in a building is a composite supply merit classification under Chapter Head 9403 and not composit supply of works contract.

The supply, installation and fixing of furniture, customized or customized cannot be a works contract, as the items of furniture have been made or manufactured at the supplier's place which have been installed or fixed at the place of the recipient. Such installed or fixed items of furniture can be removed/moved to any place without damage to the furniture. Thus, supply, installation and fixing of furniture cannot be covered under works contract, as it does not result in immovable property or it is not going to be part of immovable property.

As per the view point and interpretation of law and facts of the case, the supply, installation and fixing of furniture, either customized or not customized, is not composite supply of works contract by way of construction etc. of civil structure or other original works to the Government and therefore, is not chargeable to concessional rate of 12% as per the Notification No.11/2017 dated, 28-6-2017.

Having regard to our observations and findings detailed in the foregoing paras, we conclude that the contract in questions i.e. work order relating to supply, installation and fixing of customized furniture in a building conform to the "COMPOSITE SUPPLY" as provided in section 2(30) of CGST Act, 2017. The supply made by the applicant to the Capital Project Administration consists of Two taxable supplies of Goods and Services, which are naturally bundled and supplied in conjunction with each others, where the supply of goods viz. Furniture is the principal supply. We thus hold that the work order in question shall merit classification under Chapter Head 9403 of GST Tariff and shall be liable to GST at the rate applicable at the time of supply.

CA. S. Krishnan on behalf of the Applicant

:: PROCEEDINGS ::

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

1. The present application has been filed u/s 97 of the Central Goods and Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. METHODEX SYSTEMS PRIVATE LIMITED (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE

3.1 The applicant is registered under the provisions of GST law in the State of Madhya Pradesh, vide GSTIN: 23AAACM1924E1Z3 and the principal place of business is in Indore with the production facility at Pithampur.

3.2 The Executive Engineer, Construction Division-2, Capital Production Administration (CPA), Bhopal - a Department of Government of Madhya Pradesh, floated a tender reference No. CPA/Tender No. 2402 for supply, installation and fixing of customized furniture, as detailed below for newly constructed Mantralaya, Vallabh Bhawan Extension, Bhopal.

- (a) Main Table + ERU
- (b) Back Runner for Minister
- (c) Minister Room Corner Table
- (d) Conference Room Table
- (e) Dining Table & Chair
- (f) Conference Room 3 seater sofa
- (g) Back Runner units
- (h) Meeting Room Table

(i) Meeting Hall table etc.

3.3 The Executive Engineer, CPA, Bhopal has issued to the applicant company the contract No. 12/DL 18-19/Work order No. 1941/SAC/C-II/18 dated, 2-5-2018.

3.4 The invoices were issued by the applicant charging therein tax @ 18% considering the supply of furniture as composite supply of furniture, where item-wise price of furniture was charged in the invoice.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:

4.1 Whether the work relating to “supply, installation and fixing of customized furniture in a building” is composite supply of goods or in the nature of works contract?

4.2 What is applicable rate of GST on the above Supply, if it is supply of goods or supply in the nature of works contract?

5. RECORD OF PERSONAL HEARING

5.1 Shri S. Krishnan, Chartered Accountant - Authorized Representative of the applicant appeared for personal hearing on behalf of the applicant and reiterated the submissions made in the application.

5.2 The applicant states that The contract placed by Capital Project Administration - a Department of Govt. of Madhya Pradesh, the awarding of contract is of the view that the same is of the nature of works contract as per section 2(119) of CGST Act and the concessional rate of tax of 12% (6% CGST & 6% SGST) is applicable as per Notification No.11/2017-Central Tax (Rate), dated 28-6-2017 and the Notification No. 20/2017-Central Tax (Rate), dated 22-8-2017.

5.3 As per Sl.No.1 of Heading 9954 (Construction Services) of Notification No. 11/2017-Central Tax (Rate), dated, 28-6-2017 amended from time to time, the rate of tax is as under:-

Sl. No.	Chapter, Section or Heading	Description of service	Rate (per cent)	Condition
2	Section 5	Construction services		

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3	Heading 9954 (Construction services)	(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority or Government Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of- (a) a civil structure or any other original works meant predominately for use other than for commerce, industry, or any other business or profession”. (b)	6%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
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Explanation - For the purposes of this item, the term “business” shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

The phrase “**original works**” has not been defined under the provisions of GST law. The said phrase “**original works**” has been frequently used with regard to construction services under head 9954 in the Notification No. 11/2017-Central Tax (Rate) dated, 28-6-2017 and Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, exempting specific construction services of heading 9954. The said term has been defined under Explanation 1 (zs) of Notification No. 12/2017-Central Tax (Rate), dated, 28-6-2017, which reads as under:-

“(zs) “**original works**” means - all new constructions;

- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable.
- (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise”.

5.4 Section 2(119) of CGST Act provides “**works contract**” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

5.5 As per Annexure - Scheme of Classification of services to Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, works contract services has been classified as “construction services” under heading 9954, which includes the following groups;

Group	Service description
99541	Construction services of buildings
99542	General construction services of civil engineering works
99543	Site preparation services
99544	Assembly and erection of prefabricated construction.
99545	Special trade construction services
99546	Installation services
99547	Building completion and finishing services

5.6 The claim as made by the CPA, Bhopal, which is a Department of the State Government, in their letter dated, 28-12-2019 that the supply, installation and fixing of customized furniture for newly constructed Mantralaya, Vallabh Bhawan Extension, Bhopal is covered under composite supply of works contract as defined u/s 2(119) of CGST Act and the rate of tax applicable to the said supply is 12% as per Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 is not legally tenable.

5.7 As per **Sl.No. 438** of **Schedule III** of CGST Act under **HSN 9403** “**other furniture** (other than furniture wholly made of bamboo, cane or

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rattanj and parts thereof” is taxable @18% with effect from 15-11-2017.

5.8 Clause (a) of para 6 of Schedule II as notified u/s 7 of CGST Act. “works contract” as defined in clause (119) of section 2 shall be treated as **supply of service**.

5.9 As per section 2(30) of CGST Act. “**composite supply**” means a supply made by a taxable person to a recipient consisting of **two or more taxable supplies of goods or services** or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, **one of which is a principal supply**.

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

5.10 As per section 8(a) of CGST Act, the tax liability on a composite or a mixed supply shall be determined in the following manner, namely -

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply,
- (b)

5.11 As per section 10(1)(d) of IGST Act, the place of supply of goods, other than supply of goods imported into or exported from India, shall be as under:-

“(d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly”.

5.12 As per the interpretation of law and the facts of the case, the **supply, installation, fixing of customized furniture for newly constructed Mantralaya, Bhopal is composite supply of goods within the meaning of section 2(30) and 8(a) of CGST Act, where the supply of furniture is a principal supply and installation/fixing thereof is ancillary supply**. The rate of tax of principal supply will be applicable to composite supply. The supply of furniture, which may or may not be customized is principal supply where the rate of tax is 18% (9% CGST & 9% SGST) as per Sl.No.438 of Schedule III of CGST Act under HSN 9403 with effect from 15-11-2017. The supply of furniture which may or may not be customized and the installation thereof are naturally bundled and as per business practice, the furniture is supplied in conjunction with their installation and fixing. In the applicant’s view point, the supply of furniture and the installation and fixing

thereof is composite supply of goods and the rate of tax of furniture which is principal supply is applicable to composite supply.

5.13 As per the contract executed with CPA, item-wise prices of furniture in the tender were required to be submitted which were approved by the contractee CPA. The items mentioned were such as Main Table + ERU, Back Runner for Minister etc. **The invoice issued by the applicant to the CPA was item-wise and consolidated transaction price was charged. The installation/fixing charges are not separately charged in the invoice, nor these charges are required to be charged item-wise.**

5.14 As per section 10(1)(d) of IGST Act, where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. It means that installation or assembly of goods is considered as supply of goods.

5.15 As per section 2(119) of CGST Act, **“works contract”** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement modification, repair, maintenance, renovation, alteration or commissioning of **any immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. In the light of definition of “works contract” under GST, any contract for building, construction, installation, fitting out etc must be of **immovable property**.

5.16 As per the definition of “works contract” u/s 2(119) of CGST Act, the contract **must result into immovable property** and the contract must be for creation of immovable property and the result of the said contract should be immovable property or part thereof.

5.17 The supply, installation and fixing of furniture, customized or customized cannot be a works contract, as the items of furniture have been made or manufactured at the supplier’s place which have been installed or fixed at the place of the recipient. Such installed or fixed items of furniture can be removed/moved to any place without damage to the furniture. Thus, supply, installation and fixing of furniture cannot be covered under works contract, as it does not result in immovable property or it is not going to be part of immovable property.

5.18 As per Sl.No. 3(vi) of Notification No.11/2017-Central Tax (Rate), composite supply of works contract as defined u/s 2(119) of CGST Act, provided to the Central Government, State Government etc. by way of

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construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other original works meant predominately for use other than for commerce, industry, or any other business or profession covered under heading 9954 are chargeable to tax @ 12% (CGST 6% & SGST 6%). The heading 9954 does not include the supply, installation or fixing of furniture customized or not customized in a building.

5.19 Sl.No. 3(vi) of Notification No.11/2017-Central Tax (Rate) deals with composite supply of works contract of a civil structure or any other original works meant predominately for use other than for commerce, industry, or any other business or profession. It is evident that the composite supply of works contract of a civil structure must result in the creation of immovable property, which is not happening by any stretch of imagination in the case of the applicant. Or the composite supply of works contract must be of original works. The Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 defines “original works” as under:-

“(zs) “**original works**” means - all new constructions;

- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable.
- (ii) erection, commissioning or installation of **plant, machinery or equipment or structures**, whether pre-fabricated or otherwise”.

The supply and installation of furniture by the applicant will not cover under works contract of original works, as it is neither new construction nor it is additions and alterations to abandoned or damaged structures on land that are required to make them workable.

Moreover, the applicant’s work does not cover under erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

The said entry of Notification No.11/2017-Central Tax (Rate) is not applicable to supply and installation of furniture by the applicant.

5.20 As per the view point and interpretation of law and facts of the case, the supply, installation and fixing of furniture, either customized or not customized, is not composite supply of works contract by way of construction etc. of civil structure or other original works to the Government and therefore, is not chargeable to concessional rate of 12% as per the Notification No.11/

2017 dated, 28-6-2017.

5.21 As per the view point and interpretation of law and facts of the applicant, the supply, installation and fixing of customized furniture is composite supply of goods where the supply of furniture is principal supply and is chargeable to tax @18% under HSN 9954.

6. DISCUSSIONS AND FINDINGS:

6.1 We have carefully considered the submissions made by the applicant in the application and during the time of personal hearing.

6.2 We find that the question before us essentially pertains to whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. We, therefore, observe that the issue before us is squarely covered under section 97(2)(g) and therefore we admit the application for consideration.

6.3 The applicant dealing in wide range of office furniture and automation products is registered under the GST Act, 2017. The applicant is carrying on the business as manufacturer, marketers, exporters, importers and distributors in all kinds of office equipment. The goods dealt by the applicant are classifiable under Chapter 94 of the first Schedule to Customs Tariff Act, 1975, which has been adopted in the GST regime as GST Tariff.

6.4 Section 2(119) of CGST Act provides “**works contract**” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

6.5 As per Annexure - Scheme of Classification of services to Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, works contract services has been classified as “construction services” under heading 9954, which includes the following groups:

Group	Service description
99541	Construction services of buildings
99542	General construction services of civil engineering works

2020) Methodex Systems Pvt. Ltd., Indore (AAR-MP)) 415

99543 Sit preparation service

99544 Assembly and erection of prefabricated construction

99545 Special trade construction services

99546 Installation services

99547 Building completion and finishing services

6.6 The claim as made by the CPA, Bhopal, which is a Department of the State Government, in their letter dated, 28-12-2019 that the supply, installation and fixing of customized furniture for newly constructed Mantralaya, Vallabh Bhawan Extension, Bhopal is covered under composite supply of works contract as defined u/s 2(119) of CGST Act and the rate of tax applicable to the said supply is 12% as per Notification No. 11/2017-Central Tax (Rate), dated, 28-6-2017 is not legally tenable.

6.7 As per section 2(30) of CGST Act, “**composite supply**” means a supply made by a taxable person to a recipient consisting of **two or more taxable supplies of goods or services** or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, **one of which is a principal supply**.

6.8 As per section 8(a) of CGST Act, the tax liability on a composite or a mixed supply shall be determined in the following manner, namely -

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply,

(b)

6.9 As per the definition of “works contract” u/s 2(119) of CGST Act, the contract must result into immovable property and the contract **must be for creation of immovable property** and the result of the said contract should be immovable property or part thereof.

6.10 The supply, installation and fixing of furniture, customized or customized cannot be a works contract, as the items of furniture have been made or manufactured at the supplier’s place which have been installed or fixed at the place of the recipient. Such installed or fixed items of furniture can be removed/moved to any place without damage to the furniture. Thus, supply, installation and fixing of furniture cannot be covered under works contract, as it does not result in immovable property or it is not going to be part of

immovable property.

6.11 As per the view point and interpretation of law and facts of the case, the supply, installation and fixing of furniture, either customized or not customized, is not composite supply of works contract by way of construction etc. of civil structure or other original works to the Government and therefore, is not chargeable to concessional rate of 12% as per the Notification No.11/2017 dated, 28-6-2017.

6.12 Having regard to our observations and findings detailed in the foregoing paras, we conclude that the contract in questions i.e. work order relating to supply, installation and fixing of customized furniture in a building conform to the “COMPOSITE SUPPLY” as provided in section 2(30) of CGST Act, 2017. The supply made by the applicant to the Capital Project Administration consists of Two taxable supplies of Goods and Services, which are naturally bundled and supplied in conjunction with each others, where the supply of goods viz. Furniture is the principal supply. We thus hold that the work order in question shall merit classification under Chapter Head 9403 of GST Tariff and shall be liable to GST at the rate applicable at the time of supply.

7. RULING

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

7.1 The activities of supply, installation and fixing of furniture to be performed by the applicant cannot be classified under Heading 9954 - Construction services, as provided in Sl. No. 1 of Notification No. 11/2017-Central Tax (Rate), dated, 28-6-2017. as amended from time to time. Rather, the contract conforms to **composite supply** as provided in **section 2(30) of GST Act, 2017**. The supply made by the applicant consists of two taxable supplies of goods and services which are naturally bundled and supplied in conjunction with each other, where the **supply of goods** i.e. furniture is the **principal supply**.

7.2 The goods shall merit classification under Chapter Head 9403 of GST Tariff and shall be liable to GST at the rate applicable at the time of supply.

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

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INDORE-45200, Phone : 2494613, 898993-5075

Published and Printed by - Smt. Jaishree Gangrade, F-312, Sewa Sardar Nagar, Indore-452001, Printed at Jaishree Offset Company, Indore

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* **AAAR-HP - Penalty** - Section 129 of CGST Act, 2017 - Circular No. 64/38/2018 dated 14-9-2018 - In case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated in case of minor mistakes like error in one or two digits/characters of the vehicle number - Penalty imposed in the instant case under Section 129 was unwarranted. **K.B Enterprises Vs. The Assistant Commissioner State Taxes & Excise, Chamba H.P. (AAAR-HP)** 140

* **AAAR-HP - Penalty** - Section 129 of CGST Act, 2017 - E-way bill - Transpotation of goods for repair without the cover of proper documents (e way bill is one of them) - Penalty u/s 122(1) can not be imposed more than Rs. 10,000/-. **Neva Plantation Pvt. Ltd. Vs. ACST&E-cum-Proper Officer, Palampur (AAAR-HP)** 154

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- * **AAAR-Kar - Contribution received from members** - The position regarding the exemption from GST was always applicable only when the individual member's contribution per month was within Rs 7500/- - AAR order confirmed by Appellate Authority. **Vaishnavi Splendour Homeowners Welfare Association [21-1-2020] (AAAR-Kar)** 106
- * **AAAR-Kar - Filters** - Filters manufactured by the Appellant solely and principally for use by the Indian Railways and supplied directly to the Indian Railways are classifiable under Chapter Heading 84.21 - AAR order confirmed by Appellate Authority. **Parker Hannifin India Pvt. Ltd. [10-1-2020] (AAAR-Kar)** 105
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- * **AAAR-Kar - Pre-sale and Marketing Services Agreement** - The Appellate authority uphold the decision of the AAR that the pre-sale and marketing service is appropriately classified as an 'intermediary service' as defined under Section 2(13) of the IGST Act. **Infinera India Pvt. Ltd. [20-1-2020] (AAAR-Kar)** 106
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- * **AAAR-TN - Value in respect of supply** - Determination of value to be adopted in respect of transfer to branches located outside the State - The Appellate Authority set aside the original advance ruling and held that when the supply is to the distinct person of the appellant and the recipient is eligible for full Input tax credit, the second proviso provides the value declared in the invoice to be the 'open market value' for such transaction. **Specsmakers Opticians Pvt. Ltd. [13-11-2019] (AAAR-TN)** **133**
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- * **AAAR-WB - HDPE woven tarpaulins** - HDPE woven fabric is not a textile material and does not merit classification under HSN 5903 - Appellate Authority approved the Advance Ruling. **East Hooghly Agro Plantation Pvt. Ltd. [23-12-2019] (AAAR-WB)** **138**
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- * **AAAR-WB - Mobilization advance** - Part of the mobilisation advance remaining unadjusted on 1-7-2017 chargeable under the GST Act - Section 13(2) of the GST Act, 2017 will not be applicable - Advance Ruling approved by Appellate Authority. **Siemens Ltd. [16-12-2019] (AAAR-WB)** **137**
- * **AAAR-WB - Printing** - Job of printing of content provided by the customer - Content is exclusively the property of the client who entrusts the job to the Appellant and the usage right of the content remains with the client - Appellant supplies is nothing but service - Appellate Authority approved the Advance Ruling. **Macro Media Digital Imaging Pvt. Ltd. [17-12-2019] (AAAR-WB)** **138**
- * **AAAR-WB - Raw whole yellow peas** - Raw whole yellow peas are agricultural produce covered under serial no. 45 of the Rate Notification and are exempted goods - Appellate Authority approved the Advance Ruling. **T.P. Roy Chowdhury & Company [23-12-2019] (AAAR-WB)** **138**

- * **AAAR-WB - Stevedore** - Loading and unloading services to imported raw whole yellow peas - The primary market in the instant case being located in foreign shores - All services and processes are excluded beyond the primary market - Appellate Authority approved the Advance Ruling. **T.P. Roy Chowdhury & Company [23-12-2019] (AAAR-WB) 138**
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- * **AAR-AP - Advance Ruling** - Place of supply - Outside the purview of the Advance Ruling Authority. **Tech Mech Global Interface Pvt. Ltd. [31-1-2019] (AAR-AP) 92**
- * **AAR-AP - Advance Ruling - Recipient** - The applicant is recipient of the services and not supplier of such services - Accordingly the application is not liable for admission and therefore rejected. **Divisional Forest Officer, Logging Division [28-12-2018] (AAR-AP) 89**
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- * **AAR-AP - Composite supply of works contract** - Neither the contractee nor the stated works executed are "non-commercial" in the facts and circumstances as discussed above and the said stated works are taxable under GST. **Sealwel Corporation Pvt. Ltd. [30-1-2019] (AAR-AP) 91**
- * **AAR-AP - Composite supply of works contract** - The value of materials recovered on cost recovery basis by the Contractee from the R.A. bills issued by the applicant is includible in the taxable value of supply in terms of Section 15(2)(b) of the CGST Act, 2017. **GVS Projects Pvt. Ltd. [30-1-2019] (AAR-AP) 91**
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 - * **AAR-TN - NFC Board - NFC Board manufactured by the applicant with main content as Rice husk, will more appropriately be classified under CTH 441193. Papaka Herbs & Spices [23-12-2019] (AAR-TN) 132**
 - * **AAR-TN - TDS provision - The Government of Tamil Nadu does not control the applicant, therefore, the applicant is not a person or category of person stipulated under Notification No. 33/2017-C.T. dated 15-9-2017. Tamil Nadu Coop. Silk Producers Federation Ltd., Ind 944 [22-10-2019] (AAR-TN) 129**
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* **AAR-WB - Supply of goods through PDS is not exempt** - The Applicant is liable to pay GST. **Dipeet Agarwal [11-11-2019] (AAR-WB)** 134

* **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

* **Assessment** - Circular issued by State of T.N. has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials - Proceeding started on the basis of the proposals/reports of the Enforcement Wing/ISIC, is set aside - Circular No. 3 dated 18-1-2019. **Jain Granites Vs. The Asst. Comm. (CT) (Mad)** 293

* **Bail application** - Punishment for certain offences - Section 132 of CGST/MP GST Act, 2017 - There is no documentary material produced on record against the petitioners and they had already resigned legally from the Directorship of the Company - Therefore, High Court allowed the bail application. **Jagdish Arora Vs. Union of India (MP)** 309

* **Bail application** - The High Court observed that the nature of evidence is documentary and all documents are in custody of the Department. Hence, there is no fruitful purpose to keep them in custody and granted bail to Pakistani National accused of GST evasion. **Amit Bothra Vs. State of M.P. (MP)** 295

* **Bail application** - The petitioner involved in the alleged tax evasion - Parity of petitioner's case with the case of the co-accused persons who have been already granted bail, therefore, the High Court also allowed the bail

application of the petitioner. **Vijay Kumar Nair Vs. State of M.P. (MP)**
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* **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)**
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* **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)**
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* **Entry Tax** - Exemption certificate - Once exemption certificate was granted, the Department cannot take advantage of technicalities, especially when the certificate itself was granted in the year 2017 with retrospective effect - Section 51 of M.P. Vat Act, 2002. **SRF Ltd. Vs. State of Madhya Pradesh and Others (MP)**
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* **E-Way Bill** - Non mention of the tax amount separately in the e-way bill - The transpiration was covered by a valid tax invoice and e-way bill, therefore detention u/s 129 was not justified. **M.S. Steel and Pipes Vs. Asst. STO (Ker)**
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* **Form GST Trans-1** - The High Court directed the respondents to ensure compliance of the captioned judgment (Brand Equity) by 19-6-2020 i.e. by opening its common portal to enable the petitioner and all similarly placed parties to upload Form GST Trans-1, for claiming CENVAT tax credit. **Mangla Hoist P. Ltd. Vs. Union of India (Del)**
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* **Form GSTR-3B** - Rectification - Circular No. 26/26/2017-GST dated 29-12-2017 - The rectification of the return for that very month to which it relates is imperative - The High Court allowed the petition and permitted the petitioner to rectify Form GSTR-3B for the period to which the error relates. **Bharti Airtel Ltd. Vs. Union of India (Del)**
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* **GST Tran-1** - The Delhi High Court directed in case the SLP preferred against the decision in Brand Equity Treaties is rejected, and our decision

is upheld, it goes without saying that this Court would not be powerless to direct the respondents to accept the GST Tran-1 Form of the petitioner at a later point of time. **Rehau Polymers Pvt. Ltd. Vs. Union of India (Del)** 67

* **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 annum interest on delay in grant of refund to exporters. **Union of India Vs. Saraf Natural Stone (Guj)** 196

* **Inter-state sale** - Sections 3 and 6 of the Central Sales Tax Act, 1956 - Movement of goods, from one State to another shall terminate, where the good have been delivered to a carrier for transmission, at the time of when delivery is taken from such carrier. **Commercial Taxes Officer Vs. Bombay Machinery Store (SC)** 15

* **Investigation** - Section 6(2)(b) of Central GST Act, 2017 - The High Court does not find any substance that the investigation and the proceedings now initiated is one, which hit by Section 6(2)(1)(b) of the CGST Act of 2017 - There is a clear distinction between a proceeding drawn for the demand of tax evaded by the petitioner-establishment and the investigation be conducted by the Department of the DG, GST Intelligence Wings in respect of an offence committed by an establishment by way of using bogus and fake invoices and illegally availing ITCs, which the petitioner-establishment otherwise was ineligible. **Dadhichi Iron And Steel Pvt. Ltd. Vs. Chhattisgarh G.S.T. Through Principal Commissioner (CG)** 74

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* 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
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* **Refund** - Section 54 of the Delhi Goods and Services Tax Act, 2017 - Zero rated supply - Refund not made within stipulated period - The High Court directed the respondent to pay to the petitioner the refund along with interest. **Jian International Vs. Commissioner of Delhi Goods And Services Tax (Del) 171**

* **Refund** - Zero Rated Supply - Refund not granted within time stipulated period - The High Court directed the respondents to grant refund along with interest - The respondent has lost the right to point out any deficiency at belated stage. **Jian International Vs. Commissioner Of Delhi Goods And Services Tax (Del) 267**

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Circular No. 1075/01/2020-CX

F.No. 267/78/2019/CX-8-Pt. III

Government of India, Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes and Customs

Dated, the 14th November, 2020.

Subject: Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (Removal of Difficulties) order 2020 dated 13th Nov.,2020- procedure for filing of declaration by the eligible declarant in the UT of J & K and UT of Ladakh and its verification thereafter, etc. - reg.

I am directed to draw your attention to the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (Removal of Difficulties) Order, 2020, dated 13th November, 2020 (hereinafter to be referred as the said ROD Order) published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide G.S.R 715(E) dated 13th Nov., 2020 (copy enclosed).

2. To obviate the hardship faced by the taxpayers in the Union Territory of Jammu and Kashmir and Union Territory of Ladakh, in filing declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, during the original period of its operation, due to disruption in the internet services, the Central Government has decided to extend the date of filing of the declaration, by the eligible declarants, in respect of cases eligible under the said Scheme, as on the 15th January, 2020, till 31st December, 2020.

3. The following timelines have been provided by the said ROD order for the filing and verification of declaration thereafter, etc. for the taxpayers in these Union Territories.

- a. The last date for filing of the declaration referred to in sub-rule (1) of rule 3 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 shall be on or before the 31st December, 2020;
- b. The last date of issuance of statement under sub-section (1) and (4) of section 127 of the Finance (No.2) Act, 2019, shall be on or before the 31st January, 2021;
- c. The last date of issuance of estimate of amount payable under sub-section (2) of section 127 of the Finance (No.2) Act, 2019, shall be on or before the 15th January, 2021;
- d. The last date for payment of dues by declarant under sub-section (5) of section 127 of the Finance (No.2) Act, 2019, shall be on or before the 28th February, 2021.

4. The filling of the declaration and its verifications thereafter, etc. shall be done as per the provisions of the Chapter V of the Finance (No. 2) Act, 2019 (23 of 2019) and the rules made thereunder and in accordance with the timelines provided by the said ROD order.

5. Trade, industry and field formations may be suitably informed.

6. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Mazid Khan)

Under Secretary to Govt. of India

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

REGN.NO. 47503/87/ OF REGISTRAR OF NEWS PAPER FOR INDIA.

Vol. 65 Part-6 December-2020 Date of Publication & Posting 15-12-2020

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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

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