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# Tax Law Decisions

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IN TWO VOLUMES PER YEAR

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# इस दीप पर्व पर

कहते हैं कि राम के 14 वर्ष बाद अयोध्या लौटने याने घर वापसी की खुशी में घर-घर दीप जलाए जाकर दीपावली मनाई गई थी। तभी से आज तक मनाई जा रही है। पिछली दिवाली से इस दिवाली के बीच हमारा भी कई तरह से लौटना या घर वापसी हुई है।

हम कृत्रिमता से प्रकृति की ओर लौटे हैं, या जबरिया लौटाए गए हैं। यह वापसी हमारे लिए सबसे बड़ा सबक है।

लॉकडाउन में अकेलेपन के शिकार बुजुर्गों की आस बनकर बच्चे लौटे हैं। दिन रात की भागदौड़ और आपाधापी से बच कर हम अपने घरों में लौटे हैं।

होटलों, बाजार में दुकानों के चटपटे खाने से घर के सादे भोजन की ओर लौटे हैं। कॉकटेल मॉकटेल, कोल्ड ड्रिंक आदि से नींबू पानी, हल्दी के दूध, तुलसी, दालचीनी, अदरक आदि के काढ़े की ओर लौटे हैं। अपने पुरातन आयुर्वेद की ओर लौटे हैं।

चमक-दमक भरे दिखावटी आयोजन की निस्सारता समझकर सादगी पूर्ण कम खर्चीले आयोजनों की ओर लौटे हैं। देर तक सोने से जल्दी उठकर व्यायाम करने और सूर्य नमस्कार तथा योग की ओर लौटे हैं।

कई खोखली धार्मिक सामाजिक मान्यताओं को छोड़कर वास्तविकता की ओर लौटे हैं। ऐशो आराम और वैभवपूर्ण रहवासों की जगह सीमित आवश्यकतापूर्ण घरों के महत्व की ओर लौटे हैं।

इस अवधि में सबसे त्रास दायक, पीड़ाजनक लौटना हुआ है लॉकडाउन में मजदूरों का। आशा करें कि ऐसी घर वापसी कभी ना आए।

विलास से आंशिक ही सही पर वैराग्य की ओर,

वैभव से सादगी की ओर,

पाखंड से स्वाभाविकता की ओर,

व्याधि से स्वास्थ्य की ओर ,

आप और हम इस दीप पर्व पर लौटने का प्रयत्न करें, इसी मंगल कामना के साथ सहस्त्र शुभकामनाएं।

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

**Volume 65** **Part – 5** **November 2020**

**Tax Law Decisions**

## CONTENTS

### STATUTES

* Central Goods and Services Tax (Twelveth Amendment) Rules, 2020 [**No. 79/2020-Central Tax]** 267
***G.S.R. 639(E). New Delhi, Dated 15th October, 2020***

☆☆

### ARTICLES

* जीएसटी से जुड़ी परेशानियों को लेकर अब सरकार को क्या करना चाहिए - सीए. सुधीर हालाखंडी 257
* GST Problems - What Our Govt. Should Do Now - Sudhir Halakhandi 260

☆☆

### PRESS RELEASES : PRESS INFORMATION BUREAU & CBIC

* Extension of due dates for Annual Return and Reconciliation Statement for 2018-19 (24-10-2020) 290
* 2018-19 के लिए वार्षिक रिटर्न और समाधान-विवरण दाखिल करने की निर्धारित तिथि बढ़ाई गई (24-10-2020)291
* Payment Date Extended for Vivad se Vishwas Scheme; Finance Secretary urges I-T Department to Reach Out to the Taxpayers (27-10-2020) 292
* 'विवाद से विश्वास' योजना के तहत भुगतान की तारीख बढ़ाई गई; वित्त सचिव ने आयकर विभाग से करदाताओं तक पहुंच बनाने का अनुरोध किया (27-10-2020)294
* Special Window to States for meeting the GST Compensation Cess shortfall (15-10-2020) 295
* Central Government borrows and transfers Rs. 6,000 crore as first tranche to 16 States on account of GST compensation under Special Borrowing Window (23-10-2020) 296

☆☆

**NOTIFICATIONS -**

**CENTRAL GOODS AND SERVICES TAX ACT, 2017**

* Notification u/s **37(1)** r/w 168 of CGST Act, 2017 prescribing the due date for furnishing FORM GSTR-1 by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from October, 2020 to March, 2021. 264
**[No. 75/2020-Central Tax]**
***G.S.R. 635(E). New Delhi, Dated 15th October, 2020***

* Notification u/s **44(1)** of CGST Act, 2017 amending No. 41/2020-Central Tax dt. 5-5-2020 extending due date of return till 31-12-2020 **[No. 80/2020-Central Tax]**
***G.S.R. 679(E). New Delhi, Dated 28th October, 2020*** 290

* Notification u/s **148** of CGST Act, 2017 prescribing the due date for furnishing FORM GSTR-1 for the quarters October, 2020 to December, 2020 and January, 2021 to March, 2021 for registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year **[No. 74/2020-Central Tax]**
***G.S.R. 634(E). New Delhi, Dated 15th October, 2020*** 263

* Notification u/s **148** of CGST Act, 2017 amending No. 47/2019-CT dtd. 9-10-2019 making filing of annual return u/s 44(1) for F.Y. 2019-20 optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date [**No. 77/2020-Central Tax]**
***G.S.R. 637(E). New Delhi, Dated 15th October, 2020*** 265

* Noti. u/s **168** of CGST Act, 2017 r/w Rule 61(5) prescribing return in FORM GSTR-3B along with due dates of furnishing the said form for October, 2020 to March, 2021.
[**No. 76/2020-Central Tax]**
***G.S.R. 636(E). New Delhi, Dated 15th October, 2020*** 264

* Notification u/r **46** of CGST Rules, 2017 notifying the number of HSN digits required on tax invoice
[**No. 78/2020-Central Tax]**
***G.S.R. 638(E). New Delhi, Dated 15th October, 2020*** 266

**:: RATE ::**

* Notification u/s **9(3)(4), 11(1), 15(5)** and **148** of CGST Act, 2017 amending No. 12/2017-Central Tax (Rate) dtd. 28-6-2017 exempting satellite launch services provided by ISRO, Antrix Co. Ltd and NSIL as recommended by GST Council in its 42nd meeting held on 5-10-2020
[**No. 05/2020-Central Tax (Rate)]**
***G.S.R. 643(E). New Delhi, Dated 16th October, 2020*** 288

☆☆

**VIVAD SE VISHWAS ACT, 2020**

* Notification u/s **3** of *Vivad se Vishwas* Act, 2020 289
[**Notification No. 85/2020]**
***S.O. 3847(E). New Delhi, Dated 27th October, 2020***

☆☆

**CHRONOLOGICAL LIST OF NOTIFICATIONS -**

**CENTRAL GOODS AND SERVICES TAX ACT, 2017**


| | | |
|---|---|---|
| No. 74/2020-Central Tax | Dated 15th October, 2020 | 263 |
| No. 75/2020-Central Tax | Dated 15th October, 2020 | 264 |
| No. 76/2020-Central Tax | Dated 15th October, 2020 | 264 |
| No. 77/2020-Central Tax | Dated 15th October, 2020 | 265 |
| No. 78/2020-Central Tax | Dated 15th October, 2020 | 266 |
| No. 79/2020-Central Tax | Dated 15th October, 2020 | 267 |
| No. 80/2020-Central Tax | Dated 28th October, 2020 | 290 |
| No. 05/2020-Central Tax (Rate) | Dated 16th October, 2020 | 288 |


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## LIST OF CASES REPORTED


| | | | |
|---|---|---|---|
| * | Amit Bothra Vs. State of M.P. | (MP) | 295 |
| * | Ankit Babeley Vs. State of M.P. | (MP) | 326 |
| * | Dhamtari Krishi Kendra Vs. Union of India | (CG) | 289 |
| * | Gurukripa Lubricants Vs. Union of India | (MP) | 344 |
| * | Jabalpur Hotels Pvt. Ltd. | (AAR-MP) | 349 |
| * | Jagdish Arora Vs. Union of India | (MP) | 309 |
| * | Jain Granites Vs. The Asst. Comm. (CT) | (Mad) | 293 |
| * | M.S. Steel and Pipes Vs. Asst. STO | (Ker) | 339 |
| * | Pawan Kumar Vs. S3 Buildwell LLP, Delhi | (NAA) | 342 |
| * | Prachi Construction Vs. CCT, M.P. | (Board) | 346 |
| * | Smt. Kanishka Matta Vs. Union of India | (MP) | 273 |
| * | Subhash Joshi Vs. D.G. of GST Intelligence | (MP) | 329 |
| * | Thoppil Agencies Vs. Asst. Comm. of C.T. | (Kar) | 337 |
| * | V E Commercial Vehicles Ltd. | (AAR-MP) | 368 |
| * | V E Commercial Vehicles Ltd. | (AAR-MP) | 359 |
| * | Vijay Kumar Nair Vs. State of M.P. | (MP) | 302 |


☆☆

## SUBJECT INDEX

* **AAR-MP - Fabrication of body -** Fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly. **V E Commercial Vehicles Ltd. (AAR-MP) 359**

* **AAR-MP - Fabrication of body -** Rectification Order - In para number 5 and para number 8.1 for the words and number "under entry No. 26(ii)" read as under entry No. 26(iv)". **V E Commercial Vehicles Ltd. (AAR-MP) 368**

* **AAR-MP - Input tax credit -** Input tax credit of tax paid on Lifts procured and installed in hotel building shall not be available as the same is blocked in terms of section 17(5)(d) of the CGST Act, 2017 become an integral part of the building. **Jabalpur Hotels Pvt. Ltd. (AAR-MP) 349**

* **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) 302**

* **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) 339**

* **NAA - Anti-profiteering measure - Penalty -** Since no penalty provisions were in existence between the period w.e.f. 1-7-2017 to 31-12-2018 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. **Pawan Kumar Vs. S3 Buildwell LLP, Delhi (NAA) 342**

* **Natural justice -** In absence of sufficient and reasonable opportunity of hearing to the petitioner the order passed was clearly in contravention of the principles of natural justice, therefore set aside by the High Court. **Thoppil Agencies Vs. Asst. Comm. of C.T. (Kar) 337**

* **Search and seizure -** Power of inspection, search and seizure - Section 67 of CGST Act, 2017 - The expression used in Section 67(2) "confiscation of any documents or books or things" - The expression 'things' also covers money and money can also be seized by authorized officer. **Smt. Kanishka Matta Vs. Union of India (MP) 273**

* **Search and seizure -** Power of inspection, search and seizure - Section 67 of CGST/MP GST Act, 2017 - The High Court rejected the submission of the petitioner that the search should be carried out in the presence of his Advocate. **Subhash Joshi Vs. D.G. of GST Intelligence (MP) 329**

* **TDS Certificate -** The M.P. Commercial Tax Appellate Board accepted the second copy of the TDS certificates and remanded the case for verification of facts to the Assessing Officer to verify the correctness of the certificate and for accepting the TDS certificates on verification if it is found proper. **Prachi Construction Vs. CCT, M.P. (Board) 346**

* **Tran-1 -** Due to technical difficulties, the petitioner was unable to file Trans-1 within permissible time - The High Court directed the respondents for taking decision on the representation filed by the petitioner. **Ankit Babeley Vs. State of M.P. (MP) 326**

* **TRAN-1 -** The petitioner filed writ petition seeking Court's direction to allow it to avail the short transitioning of ITC or to revise Form GST TRAN-1 - The High Court directed the petitioner to file a fresh representation annexing all the judgments before the Jurisdictional Commissioner. **Gurukripa Lubricants Vs. Union of India (MP) 344**

* **Transitional credit -** The petitioner has been promptly pursuing his claim all along thereafter on the basis of the recommendation, if referred by the Commissioner to the GST council, appropriate decision may be taken at the earliest. **Dhamtari Krishi Kendra Vs. Union of India (CG) 289**

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# (81) जीएसटी से जुड़ी परेशानियों को लेकर अब सरकार को क्या करना चाहिए

- सीए. सुधीर हालाखंडी

जीएसटी और टैक्स ऑडिट की तारीखें बढ़ाकर सरकार ने स्पष्ट संकेत दिए हैं कि सरकार करदाताओं की वास्तविक समस्याओं को लेकर इस समय ना सिर्फ संवेदनशील है बल्कि अब समय पर कार्यवाही भी कर रही है। देखिये ये तारीखें आखिर बढ़नी ही थी क्योंकि इस समय कोरोना समाप्त नहीं हुआ है लेकिन अंतिम समय पर तारीख बढ़ाने और समय रहते तारीख बढ़ाने में काफी फर्क है और यह सकारात्मक संकेत है कि सरकार इस समय करदाताओं और प्रोफेशनल्स को सही मायने में राहत देना चाहती है तो इससे अन्य समस्याओं के लिए भी एक उम्मीद बनती है। आइये कुछ और समस्याओं और मुद्दों पर बात करें जिनमें तत्काल राहत की आवश्यकता है।

**1. आईटीसी से सम्बंधित नियमों को सरल एवं तर्कसंगत बनाएं :**

जीएसटी का नियम 36(4) और धारा 16(4) जो कि आईटीसी को क्लेम करने के सम्बन्ध में है लेकिन इसमें भी राहत की जरुरत है क्योंकि इन दोनों ही मामलों में सरकार को विक्रेता से कर और ब्याज या तो मिल चुका है या मिलना ही है इसलिए क्रेता को इनपुट क्रेडिट से वंचित रखना न्यायोचित नहीं है। असल में इस सम्बन्ध में क्रेता जो एक बार कर का भुगतान कर चुका है जो कि वह विक्रेता को एक बार कर चुका है उससे फिर से यह कर वसूलना ही एक गलत नीति परिणाम है और यही वेट में होता था लेकिन आप मानिए वेट में सुधार के लिए ही तो जीएसटी लाया गया था तो फिर जीएसटी भी यदि इसी खामी के साथ चल रहा है तो फिर इस परिवर्तन का व्यापार और उद्योग को लाभ ही क्या हुआ ? कई बार व्यापार एवं उद्योग की तरफ से यह सवाल भी आता है कि यह किस तरह का सरलीकरण है।

सरकार को इस सम्बन्ध में एक न्यायोचित्त प्रावधान बनाना चाहिए और इस कर की वसूली हमेशा ब्याज समेत विक्रेता से करनी चाहिए। इसके लिए सरकार को क्रेता से उसके क्रय की लिस्ट विक्रेताओं के डिटेल्स के साथ ले और मिस्मेच होने पर इसकी वसूली विकेताओं से करे या उन्हें अपने रिटर्न सुधार का मौका दे। क्रेता से इस सम्बन्ध उसकी इनपुट क्रेडिट को रोक कर उससे वसूली करना सबसे आसान तरीका तो हो सकता है लेकिन यह तरीका व्यवहारिक नहीं है।

**2. जीएसटी एमनेस्टी स्कीम धारा 16(4) से छूट देते हुए फिर से लायें :**

जीएसटी एमनेस्टी स्कीम का भी लाभ कोरोना के चलते डीलर्स नहीं ले पाए तो 16(4)

से मुक्ति देते हुए इस स्कीम का लाभ फिर से से दिया जाए तो न्यायोचित रहेगा इसके अतिरिक्त भी इस स्कीम का जीएसटी की धारा 16 (4) के चलते कोई ज्यादा औचित्य नहीं था लेकिन यदि सरकार इन छूटे हुए डीलर्स को मुख्यधारा में लाना चाहती है तो इस योजना को एक बार फिर से विचार करते हुए लाना चाहिए।

**3. कम्पोजीशन डीलर्स को भी छूट का लाभ दें :**

जीएसटीआर-4 की तारीख भी आ रही है लेकिन इसमें खरीद की डिटेल्स की जरूरत के कारण अधिकांश डीलर्स इसे भर नहीं पाए हैं तो उचित यही होगा कि उनकी इसकी तारीख बढ़ाने और खरीद की डिटेल्स हटाने की मांग मान ली जाए क्योंकि एक कम्पोजिशन डीलर्स के लिए रिकॉर्ड रखना भी मुश्किल होता है और दूसरा जब रिवर्स चार्ज नहीं है तो फिर इस तरह से खरीद की विगत मांगने का कोई औचित्य नहीं है। एक बात और है कि जब जीएसटी के अन्य डीलर्स ही अपने वार्षिक रिटर्न्स नहीं भर पा रहे हैं तो फिर कम्पोजीशन डीलर्स जिनके साधन तो सीमित ही हैं उनसे कैसे यह उम्मीद की जा सकती है कि वे अपने वार्षिक रिटर्न्स भी इस समय भर पायेंगे।

**4. डीलर्स को ऐसी गलतियां जिनमें कर चोरी नहीं है सुधारने का एक मौका दिया जाए :**

डीलर्स को अनजाने में हुई गलतियां जिनमें कर चोरी नहीं है उन्हें प्रारम्भ से ही सुधारने का मौका दिया जाए और जीएसटीआर-3बी में रिवीजन की सुविधा दी जाए। जीएसटी का यह रिटर्न जीएसटी की मूल स्कीम में नहीं था और इसे सिर्फ दो माह के लिए लाया गया था लेकिन 40 माह बाद भी यह रिटर्न वहीं का वहीं बना हुआ है लेकिन सिस्टम की तकनीकी खामियों के कारण इस रिटर्न में परिवर्तन या संशोचन की सुविधा नहीं दी गई है जब कि कानून में रिटर्न संशोधन पर कोई रोक नहीं है।

जीएसटी का यह रिटर्न जीएसटीआर-3बी केवल एक रिटर्न ही है लेकिन इस रिटर्न में संशोधन का प्रावधान नहीं होने के कारण जीएसटी कर समायोजन की कई समस्याएं उत्पन्न हो गई है और यदि जुलाई 2017 से ही इस रिटर्न में संशोधन का एक मौका दे दिया जाये तो जीएसटी समायोजन से जुड़ी अधिकांश समस्याएं हल हो जायेगी और इस तरह से लाखों की संख्या में दिए जाने वाले नोटिस भी रुक जायेंगे।

**5. जीएसटी लेट फीस की वसूली को तर्कसंगत बनाया जाए :**

जीएसटी लेट फीस को उस अवधि में भुगतान किए जाने वाले कर से कम रखा जाए और जिन डीलर ने लेट फीस का भुगतान उस समय अवधि के लिए कर दिया है जिस अवधि

के लिए सरकार ने बाद में उसे माफ कर दिया तो उन्हें वह लेट फीस लौटा दी जानी चाहिए। जीएसटी सरल होगा तो ही जीएसटी सफल होगा।

**6. जीएसटी नेटवर्क में सुधार किया जाए :**

जीएसटी नेटवर्क अपने स्वयं के कितने भी दावे कर ले लेकिन अभी तक 40 माह बीत जाने के बाद भी इसकी स्थिति में कोई सुधार नहीं हुआ और यह नेटवर्क इस समय भी डीलर्स और प्रोफेशनल्स के लिए परेशानी का कारण बना हुआ है लेकिन इस नेटवर्क की तरफ से हमेशा यही खबरें आती है कि सब कुछ ठीक ही नहीं बेहतर भी है और यही जीएसटी नेटवर्क का तरीका सुधार में सबसे बड़ी बाधा है।

**7. जीएसटी के वार्षिक रिटर्न को व्यवहारिक रूप से उपयोगी बनाया जाए :**

जीएसटी का वार्षिक रिटर्न जिस तरह से ड्राफ्ट किया गया है वह ज्यादा उपयोगी नहीं है और एक तरह से यह रिटर्न भी डीलर को उलझाने वाला ही है इसलिए इस रिटर्न को फिर से ड्राफ्ट करने की जरुरत है। इस रिटर्न को भी बदलने की सख्त जरुरत है। यदि इस रिटर्न को व्यवहारिक बनाना हो तो सबसे पहले डीलर को उन गलतियों को बताने की सुविधा दी जानी चाहिए जो वो जीएसटीआर-3बी में सुधार की सुविधा नहीं होने के कारण डीलर का आउटपुट एवं उसका सेट ऑफ सही नहीं हो पा रहा है और यही कठिनाई एक हेड से दूसरे हेड में गलत ली गई इनपुट के बारे में भी लागू होती है। सरकार को इस वार्षिक रिटर्न को इस तरह से बनाना चाहिए कि डीलर की वास्तविक कर देयता तथा उसे किस तरह से उसने भुगतान किया है के लिए उपयोगी हो सके और यही उद्देश्य इस रिटर्न का होना चाहिए।

**8. जीएसटी को लाने के उद्देश्य एक बार फिर से देख लें :**

सरकार जीएसटी के मूल उद्देश्यों को एक बार फिर से देख लेवे कि जीएसटी अप्रत्यक्ष कर प्राणाली में सरलीकरण और उससे जुड़ी हुई प्रक्रियाओं को आसान बनाना होता था लेकिन अब 40 माह के बाद एक बार देख लेना चाहिए कि इन उददेश्यों में कितनी सफलता प्राप्त हुई है। आम राय इस बारे में यह है कि जीएसटी लगने के बाद अप्रत्यक्ष कर प्रणाली और भी मुश्किल हो गई है और प्रक्रियाएं भी काफी जटिल हो गई हैं। सरकार अपनी ओर से यह मालूम करे कि जीएसटी इस समय किस स्थिति में है और यदि इसमें इस तरह से कमियाँ हैं तो फिर तुरंत सुधार की कार्यवाही प्रारम्भ करे अन्यथा अर्थव्यवस्था के लिए जीएसटी जो एक विकास का परिचायक बनना था वह स्वयं ही एक परेशानी का कारण नहीं बन जाए।

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## (82) GST Problems - What Our Govt. Should Do Now

- CA. Sudhir Halakhandi

By extending the dates of GST and tax audit, the government has given clear indication that the government is not only sensitive about the real problems of taxpayers at this time but is also taking timely action. See, these dates had to be extended later because the covid-19 pandemic has not ended yet but there is a big difference between extending the date at the last minute and extending the date before reasonable time and this is a positive sign that if the government wants to give relief to the taxpayers and professionals at this time, then it also creates an expectation for logical solution other problems. Let us talk about some more problems and issues that need immediate relief and action to solve these problems since 40 Months have already gone after introduction of GST in our country and these problems are troubling the Dealers and Professionals.

**1. Make the Rules Related to ITC Simple and Rational :-**

Rule 36 (4) and section 16 (4) of GST are there with relation to claim of ITC but the dealers need some relief from these provisions these cases the government has either received or will received tax and interest from the seller. Therefore, depriving the buyer of input credit is not justified by applying these provisions. In fact, in this regard, it is a wrong policy to collect tax from the buyer tax though the buyer has already paid it to the seller. This is copied from the VAT. But if you believe that GST was brought in to improve VAT, then if GST is going on with the same flaw then what is the benefit of this change to business and industry? Many times, the question also comes from the business and industry, what kind of simplification it is.

The government should make an equitable provision in this regard and should always recover this tax from the seller along with interest. For this, the government should take a purchase list from the buyer along with the details of the vendors and in case of mismatch, recover it from the vendors or give them a chance to rectify their returns. This process of collection the mismatch tax from the buyer may be the easiest way to recover by stopping the input credit., but this method is neither practical nor practical. It is beyond control of buyer to check his seller and in my opinion, it is duty of Govt. to do complete this task.

**2. Re-Granting GST Amnesty Scheme with Relaxing 16(4) :-**

The dealers are unable to avail the benefit of GST amnesty scheme, due to Corana, if the benefit of this scheme is given again, along with giving

them freedom from Section 16 (4) then it will be a very useful scheme. If the government seriously wants to bring these missing dealers into the mainstream, then this plan should be considered once again for the benefit of Trade and Industry and in turn Economy. The GST scheme with provisions of Section 16(4) is not very useful.

**3. Give Relief to Composition Dealer :-**

The date of GSTR-4 is also coming but due to the need for **details of purchase** in it, most of the dealers are not able to fill it, then it would be reasonable to accept their demand to extend the date and remove the details of the purchase because a composition dealers It is also difficult to keep records And secondly, when there is no reverse charge, then there is no justification for asking for purchases.

One more thing is that when other GST dealers are not able to file their annual returns, then how can it be expected from composition dealers whose resources are limited that they will be able to fill their annual returns in present time. The due date for the GSTR-4 should be rescheduled properly.

**4. Dealers should be given an Opportunity to Rectify such Mistakes which are not Tax Evasion :-**

Inadvertent mistakes made by dealers, which are not tax evasion, should be given an opportunity to rectify them right from the beginning and allow revision in GSTR-3B. This return of GST was not in the original scheme of GST and was brought for only two months but even after 40 months, this return remains the same but probably due to technical flaws of the system, there is no facility for change or modification in this return. It should be noted Given that there is no restriction on return amendment in the GST law.

This GST return GSTR-3B is only a return and not the whole GST but due to lack of provision for amendment of this return many problems of GST tax adjustment have arisen and if an opportunity to amend this return is given from July 2017 itself , most of the problems related to GST adjustment will be solved and in this way, notices to be given in lakhs will also be stopped.

**5. GST Late Fee Collection should be Rationalized :-**

The GST late fee should be kept lower than the actual tax paid in that period and the dealer who has paid the late fee for the time period for which the government later waived it, then such late fees should be return back to such dealers and it will certainly be a very reasonable decision.

**6. GST Network to be Improved :-**

The GST network Service provider and team can make any number

of claims on its own with respect to the GST Network, but till now even after 40 months its status has not improved and this network continues to be a problem for the dealers and professionals.

It is always the news from GSTN team that everything is fine but in fact the GST network is the biggest obstacle due to its limited capacity and it is a big problem for dealers and professionals. The Government should take care of this problem of GST Network on priority.

**7. The Annual Return of GST should be made Practically Useful :-**

The way the annual return of GST is drafted is not very useful and in a way this return is also confusing to the dealer, hence there is a need to re-draft this return. There is a dire need to change this return too. If this return is to be made practical then the dealer should first be allowed to disclose the mistakes which are not corrected in GSTR-3B due to lake of correction facility.

Due to this i.e. the restriction on revision of GSTR-3B, the dealer's output and its set off are not being correct and the same difficulty applies to the input taken wrong from one head to another. The government should make this annual return in such a way that it can be useful for the actual tax liability of the dealer and how he has paid it and that should be the aim of this return.

GST is a tax here to simplify the collection and deposit of tax but it is turning to be a tax which testing the technical expertise of professionals and Dealers with a restriction that Mistakes can't be rectified.

**8. Let's Revisit the Objectives of Bringing GST :-**

The government should once again take a look at the basic objectives of GST that GST was to simplify the indirect tax system and simplify the procedures related to it, but now after 40 months, one should see how much success has been achieved in these objectives. The general opinion is that indirect tax system has become more difficult after the imposition of GST and the processes have also become quite complex. The government should know from itself what position GST is currently in and if there are deficiencies in this way, then immediately start the process of reform, otherwise the GST which was introduced to become the growth vehicle of the economy is now becoming a cause of trouble for Trade and Industry.

"GST will be successful if it is made simple and easy".

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## (83) Notification u/s 148 of CGST Act, 2017 prescribing the due date for furnishing FORM GSTR-1 for the quarters October, 2020 to December, 2020 and January, 2021 to March, 2021 for registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year

**No. 74/2020-Central Tax**

**G.S.R. 634(E). New Delhi, Dated 15th October, 2020 -** In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

**2.** The said registered persons shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** under the Central Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

**TABLE**

| Sl. No. | Quarter for which details in FORM GSTR-1 are furnished | Time period for furnishing details in FORM GSTR-1 |
|---|---|---|
| (1) | (2) | (3) |
| 1. | October, 2020 to December, 2020 | 13th January, 2021 |
| 2. | January, 2021 to March, 2021 | 13th April, 2021 |

**3.** The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2020 to March, 2021 shall be subsequently notified in the Official Gazette.

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## (84) Notification u/s 37(1) r/w 168 of CGST Act, 2017 prescribing the due date for furnishing FORM GSTR-1 by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from October, 2020 to March, 2021.

**No. 75/2020-Central Tax**

**G.S.R. 635(E). New Delhi, Dated 15th October, 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), 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, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from October, 2020 to March, 2021 till the eleventh day of the month succeeding such month.

**2.** The time-limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2020 to March, 2021 shall be subsequently notified in the Official Gazette.

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## (85) Noti. u/s 168 of CGST Act, 2017 r/w Rule 61(5) prescribing return in FORM GSTR-3B along with due dates of furnishing the said form for October, 2020 to March, 2021.

**No. 76/2020-Central Tax**

**G.S.R. 636(E). New Delhi, Dated 15th October, 2020 -** In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby specifies that the return in **FORM GSTR-3B** of the said rules for each of the months from October, 2020 to March, 2021 shall be furnished electronically through

the common portal, on or before the twentieth day of the month succeeding such month:

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.

**2. Payment of taxes for discharge of tax liability as per FORM GSTR-3B**. – Every registered person furnishing the return in **FORM GSTR-3B** of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax by debiting the electronic cash ledger or electronic credit ledger, as the case may be and his liability towards interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

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## (86) Notification u/s 148 of CGST Act, 2017 amending No. 47/2019 - CT dtd. 9-10-2019 making filing of annual return u/s 44(1) for F.Y. 2019-20 optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date

**No. 77/2020-Central Tax**

**G.S.R. 637(E). New Delhi, Dated 15th October, 2020 -** In exercise of the powers conferred by section 148 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 makes the following amendment in the notification of Government of India in the Ministry of Finance, (Department of Revenue), No. 47/2019-Central Tax dated the 9th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 770(E), dated the 9th October, 2019, namely: -

In the said notification in the opening paragraph, for the words and figures "financial years 2017-18 and 2018-19", the words and figures "financial years 2017-18, 2018-19 and 2019-20" shall be substituted.

**Note**: The principal notification No. 47/2019 – Central Tax, dated the 9th October, 2019 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 770(E), dated the 9th October, 2019.

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## (87) Notification u/r 46 of CGST Rules, 2017 notifying the number of HSN digits required on tax invoice

**No. 78/2020-Central Tax**

**G.S.R. 638(E). New Delhi, Dated 15th October, 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, with effect from the 01st day of April, 2021, for the Table, the following shall be substituted, namely, -

"TABLE

| Sl. No. | Aggregate Turnover in the preceding Financial Year | Number of Digits of Harmonised System of Nomenclature Code (HSN Code) |
|---|---|---|
| (1) | (2) | (3) |
| 1. | Up to rupees five crores | 4 |
| 2. | more than rupees five crores | 6 |

Provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, as specified in the corresponding entry in column (3) of the said Table in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.".

**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.

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## (88) Central Goods and Services Tax (Twelveth Amendment) Rules, 2020

**No. 79/2020-Central Tax**

**G.S.R. 639(E). New Delhi, Dated 15th October, 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 (Twelveth 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 (hereinafter referred to as the said rules), in rule 46, for the first proviso, the following proviso

shall be substituted, namely: -

"Provided that the Board may, on the recommendations of the Council, by notification, specify-

(i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or

(ii) a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and

(iii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services:".

**3.** In the said rules, for rule 67A, the following rule shall be substituted, namely: -

"**67A. Manner of furnishing of return or details of outward supplies by short messaging service facility.-** Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** or a Nil details of outward supplies under section 37 in **FORM GSTR-1** or a Nil statement in **FORM GST CMP-08** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

***Explanation.*** **-** For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B** or **FORM GSTR-1** or **FORM GST CMP-08**, as the case may be.".

**4.** In the said rules, in rule 80, in sub-rule (3), for the proviso, the following proviso shall be substituted, namely:-

"Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation

statement, duly certified, in **FORM GSTR-9C** for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.".

**5.** In the said rules, with effect from the 20th day of March, 2020, in rule 138E, after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in **FORM GSTR-3B** or the statement of outward supplies in **FORM GSTR-1** or the statement in **FORM GST CMP-08**, as the case may be, has not been furnished for the period February, 2020 to August, 2020.".

**6.** In the said rules, in rule 142, in sub-rule (1A), -

(i) for the words "proper officer shall", the words "proper officer may" shall be substituted;

(ii) for the words "shall communicate", the word "communicate" shall be substituted.

**7.** In the said rules, in **FORM GSTR-1,** against serial number 12, in the Table, in column 6, in the heading, for the words "Total value", the words "Rate of Tax" shall be substituted.

**8.** In the said rules, for **FORM GSTR-2A**, the following form shall be substituted, namely:-

**"FORM GSTR-2A**

*[See rule 60(1)]*

***Details of auto drafted supplies***

*(From GSTR 1, GSTR 5, GSTR-6, GSTR-7, GSTR-8, import of goods and inward supplies of goods received from SEZ units / developers)*

Year : .....

Month : .....

1. GSTIN : .....

2. (a) Legal name of the registered person : .....

   (b) Trade name, if any : .....

## PART A

(Amount in Rs. all Tables)

*3. Inward supplies received from a registered person including supplies attracting reverse charge*

| GSTIN of supplier | Trade/ Legal name | Invoice details | | | | Rate (%) | Taxable value | Amount of tax | | | | Place of supply (Name of State/ UT) | Supply attracting reverse charge (Y/N) | GSTR-1/5 period | GSTR-1/5 filing date | GSTR-3B filing status (Yes/ No) | Amendment made, if any (GSTIN, Others) | Tax period in which amended | Effective date of cancellation, if any |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | No. | Type | Date | Value | | | Integrated tax | Central tax | State/ UT tax | Cess | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | | | | | | | | | | | | | | | | | | | |

*4. Amendment to Inward supplies received from a registered person including supplies attracting reverse charge (Amendment to 3)*

| Details of original Document | | Revised details | | | | | | Rate (%) | Taxable value | Amount of tax | | | | Place of supply (Name of State/ UT) | Supply attracting reverse charge (Y/N) | GSTR-1/5 period | GSTR-1/5 filing date | GSTR-3B filing status (Yes / No) | Amendment made (GSTIN, Others) | Tax period of original record | Effective date of cancellation if any, |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| No. | Date | GSTIN | Trade / Legal name | No. | Type | Date | Value | | | Integrated tax | Central tax | State/ UT tax | Cess | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| | | | | | | | | | | | | | | | | | | | | | |

*5. Debit / Credit notes received during current tax period*

| GSTIN of supplier | Trade/ Legal name | Credit / Debit Note Details | | | | | Rate (%) | Taxable value | Amount of tax | | | | Place of supply (Name of State/UT) | Supply attracting reverse charge (Y/N) | GSTR-1/5 period | GSTR-1/5 filing date | GSTR-3B filing status (Yes/ No) | Amendment made, if any (GSTIN, Others) | Tax period in which amended | Effective date of cancellation, if any |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | No. | Note type | Note supply type | Date | Value | | | Integrated tax | Central tax | State/ UT tax | Cess | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| | | | | | | | | | | | | | | | | | | | | |

*6. Amendment to Debit / Credit notes (Amendment to 5)*

| Details of original document | | | Revised details | | | | | | | Rate (%) | Taxable value | Amount of tax | | | | Place of supply (Name of State/ UT) | Supply attracting reverse charge **(Y/N)** | GSTR-1/5 period | GSTR-1/5 filing date | GSTR-3B filing status (Yes / No) | Amendment made (GSTIN, Others) | Tax period of original record | Effective date of cancellation if any |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Type | No. | Date | GSTIN of Supplier | Trade / Legal name | No. | Note type | Note supply type | Date | Value | | | Integrated tax | Central tax | State/ UT tax | Cess | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| | | | | | | | | | | | | | | | | | | | | | | | |

## PART B

### 7. *ISD credit received*

| GSTIN of ISD | Trade/ Legal name | ISD document details | | ISD invoice details (for ISD credit note only) | | | ITC amount involved | | | | GSTR-6 Period | GSTR-6 filing date | Amendment made, if any | Tax Period in which amended | ITC Eligibility |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Type | No. | Date | No. | Date | Integrated tax | Central tax | State/ UT tax | Cess | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| | | | | | | | | | | | | | | | |

### 8. *Amendments to ISD credit details*

| Original ISD Document Details | | | Revised details | | | | | Original ISD invoice details (for ISD credit note only) | | ITC amount involved | | | | ISD GSTR-6 Period | ISD GSTR-6 filing date | Amendment made | Tax period of original record | ITC Eligibility |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Type | No. | Date | GSTIN of ISD | Trade/ Legal name | Type | No. | Date | No. | Date | Integrated Tax | Central Tax | State/ UT Tax | Cess | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| | | | | | | | | | | | | | | | | | | |

## PART- C

*9. TDS and TCS Credit (including amendments thereof) received*

| GSTIN of Deductor / GSTIN of E-Commerce Operator | Deductor Name / E-Commerce Operator Name | Tax period of GSTR-7 / GSTR-8 (Original / Amended) | Amount received / Gross value (Original / Revised) | Value of supplies returned | Net amount liable for TCS | Amount (Original / Revised) | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | Integrated tax | Central tax | State /UT tax |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 9A. TDS | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| 9B. TCS | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

## PART- D

*10. Import of goods from overseas on bill of entry (including amendments thereof)*

| ICEGATE Reference date | Bill of entry details | | | | Amount of tax | | Amended (Yes/ No) |
|---|---|---|---|---|---|---|---|
| | Port code | No. | Date | Value | Integrated tax | Cess | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | | | |

*11. Inward supplies of goods received from SEZ units / developers on bill of entry (including amendments thereof)*

| GSTIN of the Supplier (SEZ) | Trade / Legal name | ICEGATE Reference date | Bill of Entry details | | | | Amount of tax | | Amended (Yes/ No) |
|---|---|---|---|---|---|---|---|---|---|
| | | | Port code | No. | Date | Value | Integrated tax | Cess | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| | | | | | | | | | |

**Instructions**:

1. Terms Used :-
   a. ITC - Input tax credit
   b. ISD - Input Service Distributor
2. **Important Advisory**: FORM GSTR-2A is statement which has been generated on the basis of the information furnished by your suppliers in their respective FORMS GSTR-1,5,6,7 and 8. It is a dynamic statement and is updated on new addition/amendment made by your supplier in near real time. The details added by supplier would reflect in corresponding FORM GSTR-2A of the recipient irrespective of supplier's date of filing.
3. 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.
4. **Table wise instructions**:

| Table No. and Heading | Instructions |
|---|---|
| 3<br>Inward supplies received from a registered person including supplies attracting reverse charge | i. The table consists of all the invoices (including invoices on which reverse charge is applicable) which have been saved / filed by your suppliers in their FORM GSTR-1 and 5.<br>ii. Invoice type :<br>a. R- Regular (Other than SEZ supplies and Deemed exports)<br>b. SEZWP- SEZ supplies with payment of tax<br>c. SEZWOP- SEZ supplies without payment of tax<br>d. DE- Deemed exports<br>e. CBW - Intra-State supplies attracting IGST<br>iii. For every invoice, the period and date of FORM GSTR-1/5 in which such invoice has been declared and filed is being provided. It may be noted that the details |

| | |
|---|---|
| | added by supplier would reflect in corresponding FORM GSTR-2A of the recipient irrespective of supplier's date of filing. For example, if a supplier files his invoice INV-1 dated 10th November 2019 in his FORM GSTR-1 of March 2020, the invoice will be reflected in FORM GSTR-2A of March, 2020 only. Similarly, if the supplier files his FORM GSTR-1 for the month of November on 5th March 2020, the invoice will be reflected in FORM GSTR-2A of November 2019 for the recipient.<br>iv. The status of filing of corresponding FORM GSTR-3B for FORM GSTR-1 will also be provided.<br>v. The table also shows if the invoice or debit note was amended by the supplier and if yes, then the tax period in which such invoice was amended, declared and filed. For example, if a supplier has filed his invoice INV-1 dated 10th November 2019 in his FORM GSTR-1 of November 2019, the invoice will be reflected in FORM GSTR-2A of November, 2019. If the supplier amends this invoice in FORM GSTR-1 of December 2019, the amended invoice will be made available in Table 4 of FORM GSTR-2A of December 2019. The original record present in Table 3 of FORM GSTR-2A of November 2019 for the recipient will now have updated columns of amendment made (GSTIN, others) and tax period of amendment as December 2019.<br>vi. In case, the supplier has cancelled his registration, the effective date of cancellation will be provided. |
| 4<br>Amendment to Inward supplies | i. The table consists of amendment to invoices (including invoice on which reverse charge is applicable) which have |

| | |
|---|---|
| received from a registered person including supplies attracting reverse charge (Amendment to table 3) | been saved/filed by your suppliers in their FORM GSTR-1 and 5.<br>ii. Tax period in which the invoice was reported originally and type of amendment will also be provided. For example, if a supplier has filed his invoice INV-1 dated 10th November 2019 in his FORM GSTR-1 of November 2019, the invoice will be reflected in FORM GSTR-2A of November, 2019. If the supplier amends this invoice in FORM GSTR-1 of December 2019, the amended invoice will be made available in Table 4 of FORM GSTR-2A of December 2019. The original record present in Table 3 of FORM GSTR-2A of November 2019 for the recipient will now have updated columns of amendment made (GSTIN, others) and tax period of amendment as December 2019. |
| 5<br>Debit / Credit notes received during current tax period | i. The table consists of the credit and debit notes (including credit/debit notes relating to transactions on which reverse charge is applicable) which have been saved/filed by your suppliers in their FORM GSTR-1 and 5.<br>ii. If the credit/debit note has been amended subsequently, tax period in which the note has been amended will also be provided.<br>iii. Note Type:<br>• Credit Note<br>• Debit Note<br>iv. Note supply type:<br>• R- Regular (Other than SEZ supplies and Deemed exports)<br>• SEZWP- SEZ supplies with payment of tax<br>• SEZWOP- SEZ supplies without payment of tax<br>• DE- Deemed exports |

| | |
|---|---|
| | • CBW - Intra-State supplies attracting IGST<br>v. For every credit or debit note, the period and date of FORM GSTR-1/5 in which such credit or debit note has been declared and filed is being provided. It may be noted that the details added by supplier would reflect in corresponding FORM GSTR-2A of the recipient irrespective of supplier's filing of FORM GSTR-1. For example, if a supplier files his credit note CN-1 dated 10th November 2019 in his FORM GSTR-1 of March 2020, the credit note will be reflected in FORM GSTR-2A of March, 2020 only. Similarly, if the supplier files his FORM GSTR-1 for the month of November on 5th March 2020, the credit note will be reflected in FORM GSTR-2A of November 2019 for the recipient.<br>vi. The status of filing of corresponding FORM GSTR-3B of suppliers will also be provided.<br>vii. The table also shows if the credit note or debit note has been amended subsequently and if yes, then the tax period in which such credit note or debit note was amended, declared and filed.<br>viii. In case, the supplier has cancelled his registration, the effective date of cancellation will be displayed. |
| 6<br>Amendment to Debit/Credit notes (Amendment to 5) | i. The table consists of the amendments to credit and debit notes (including credit/ debit notes on which reverse charge is applicable) which have been saved/filed by your suppliers in their FORM GSTR-1 and 5.<br>ii. Tax period in which the note was reported originally will also be provided. |
| 7<br>ISD credit | i. The table consists of the details of the ISD invoices and ISD credit notes which have |

| | |
|---|---|
| received | been saved/filed by an input service distributor in their FORM GSTR-6.<br>ii. Document Type :<br>• ISD Invoice<br>• ISD Credit Note<br>iii. If ISD credit note is issued subsequent to issue of ISD invoice, original invoice number and date will also be shown against such credit note. In case document type is ISD Invoice these columns would be blank<br>iv. For every ISD invoice or ISD credit note, the period and date of FORM GSTR-6 in which such respective invoice or credit note has been declared and filed is being provided.<br>v. The status of eligibility of ITC on ISD invoices as declared in FORM GSTR-6 will be provided.<br>vi. The status of eligibility of ITC on ISD credit notes will be provided. |
| 8<br>Amendment to ISD credit received | i. The table consists of the details of the amendments to details of the ISD invoices and ISD credit notes which have been saved/filed by an input service distributor in their FORM GSTR-6. |
| 9<br>TDS / TCS credit received | i. The table consists of the details of TDS and TCS credit from FORM GSTR-7 and FORM GSTR-8 and its amendments in a tax period.<br>ii. A separate facility will be provided on the common portal to accept/ reject TDS and TCS credit. |
| 10 & 11<br>Details of Import of goods from overseas on bill of entry and from SEZ units and developers and | i. The table consists of details of IGST paid on imports of goods from overseas and SEZ units / developers on bill of entry and amendment thereof.<br>ii. The ICEGATE reference date is the date from which the recipient is eligible to take input tax credit. |

| | |
|---|---|
| their respective amendments | iii. The table also provides if the Bill of entry was amended.<br>iv. Information is provided in the tables based on data received from ICEGATE. Information on certain imports such as courier imports may not be available. |

".

**9.** In the said rules, in **FORM GSTR-5, -**

(i) in the table**, -**

(a) in serial number 2, after entry (c), the following entries shall be inserted, namely:-

| | | |
|---|---|---|
| "(d) | ARN | Auto Populated |
| (e) | Date of ARN | Auto Populated."; |

(b) in serial number 10, **-**

(A) in the heading, after the words, "Total tax liability", the brackets and words "(including reverse charge liability, if any)", shall be inserted;

(B) after serial number 10B and the entry relating thereto, the following serial number and entry shall be inserted, namely,-

| | | | | | |
|---|---|---|---|---|---|
| "10C. On account of inward supplies liable to reverse charge | | | | | |
| | | | | | ."; |

(ii) in the instructions, -

(a) for paragraph 7, the following paragraph shall be substituted, namely: -

"7. Invoice-level information, rate-wise, pertaining to the tax period should be reported as under:

(i.) for all B to B supplies (whether inter-State or intra-State), invoice level details should be uploaded in Table 5;

(ii.) for all inter-state B to C supplies, where invoice value is more than Rs. 2,50,000/- (B to C Large) invoice level detail to be provided in Table 6; and

(iii.) for all B to C supplies, other than those reported in table 6, shall

be reported in Table 7 providing State-wise summary of such supplies.";

(b) in paragraph 8, in clause (ii), after the words, "invoice value is more than", the word "rupees", shall be inserted;

(c) for paragraph 10, the following paragraph shall be substituted, namely: -

"10. Table 10 consists of tax liability on account of outward supplies declared in the current tax period and negative ITC on account of amendment to import of goods in the current tax period. Inward supplies attracting reverse charge shall be reported in Part C of the table.".

10. In the said rules, in **FORM GSTR-5A**, -

(i) against serial number 4 and entries relating thereto, the following entries shall be inserted, namely: -

"4(a) ARN:

4(b) Date of ARN:";

(ii) for serial number 6, the following shall be substituted, namely: -

**"6. Calculation of interest, or any other amount**

*(Amount in Rupees)*

| Sr. No. | Description | Place of supply (State/UT) | Amount due (Interest/ Other) | |
|---|---|---|---|---|
| | | | Integrated tax | Cess |
| 1 | 2 | 3 | 4 | 5 |
| 1. | Interest | | | |
| 2. | Others | | | |
| | Total | | | |

(iii). for serial number 7, the following shall be substituted, namely:-

**"7. Tax, interest and any other amount payable and paid**

*(Amount in Rupees)*

| Sr. No. | Description | Amount payable | | Debit entry no. | Amount paid | |
|---|---|---|---|---|---|---|
| | | Integrated tax | Cess | | Integrated tax | Cess |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1. | Tax Liability | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | (based on Table 5 & 5A) | | | | | |
| 2. | Interest (based on Table 6) | | | | | |
| 3. | Others (based on Table 6) | | | | | |

11. **In the said rules, in FORM GSTR-9, -**

(i) in the Table, -

(a) against serial number 8C, in column 2, for the entry, the following entry shall be substituted, namely: -

"ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the financial year but availed in the next financial year up to specified period";

(b) against Pt. V, for the heading, the following heading shall be substituted, namely: -

"Particulars of the transactions for the financial year declared in returns of the next financial year till the specified period.";

(ii) in the instructions, -

(a) after paragraph 2, the following entry shall be inserted, namely,-

"2A. In the Table, against serial numbers 4, 5, 6 and 7, the taxpayers shall report the values pertaining to the financial year only. The value pertaining to the preceding financial year shall not be reported here."

(b) in paragraph 4, -

(A) after the words, letters and figures, "that additional liability for the FY 2017-18 or FY 2018-19", the word, letters and figures "or FY 2019-20" shall be inserted;

(B) in the Table, in second column, for the letters, figures and word "FY 2017-18 and 2018-19" wherever they occur, the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted;

(c) in paragraph 5, in the Table, in second column, -

(A) against serial number 6B, after the entries, the following entry shall be inserted, namely: -

"For FY 2019-20, the registered person shall report the breakup of input tax credit as capital goods and have an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the "inputs" row only.";

(B) against serial number 6C and serial number 6D, -

(i) after the entry ending with the words "entire input tax credit under the "inputs" row only.", the following entry shall be inserted, namely: -

"For FY 2019-20, the registered person shall report the breakup of input tax credit as capital goods and have an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the "inputs" row only.";

(ii) in the entry ending with the words, figures and letters "Table 6C and 6D in Table 6D only.", for the letters, figures and word "FY 2017-18 and 2018-19", the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted;

(C) against serial number 6E, after the entry, the following entry shall be inserted, namely: -

"For FY 2019-20, the registered person shall report the breakup of input tax credit as capital goods and have an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the "inputs" row only.";

(D) against serial number 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, in the entry, for the letters, figures and word "FY 2017-18 and 2018-19", the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted.;

(E) against serial number 8A, after the entry, the following entry shall be inserted, namely: -

"For FY 2019-20, it may be noted that the details from

**FORM GSTR-2A** generated as on the 1st November, 2020 shall be auto-populated in this table.";

(F) against serial number 8C, for the entries, the following entry shall be substituted, namely:-

"Aggregate value of input tax credit availed on all inward supplies (except those on which tax is payable on reverse charge basis but includes supply of services received from SEZs) received during the financial year for which the annual return is being filed for but credit on which was availed in the next financial year within the period specified under Section 16(4) of the CGST Act, 2017.";

(d) in paragraph 7, –

(A) after the words and figures "April 2019 to September 2019.", the following shall be inserted, namely: -

"For FY 2019-20, Part V consists of particulars of transactions for the previous financial year but paid in the **FORM GSTR-3B** between April 2020 to September 2020.";

(B) in the Table, in second column, -

(I) against serial number 10 & 11, after the entries, the following entry shall be inserted, namely: -

"For FY 2019-20, Details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of **FORM GSTR-1** of April 2020 to September 2020 shall be declared here.";

(II) against serial number 12, -

(1) in the entry beginning with the word, letters and figures "For FY 2018-19" after the words "for filling up these details.", the following entry shall be inserted, namely: -

"For FY 2019-20, Aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April 2020 to September 2020 shall be declared here. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details. For FY 2019-20,

the registered person shall have an option to not fill this table.";

(2) in the entry beginning with the word, letters and figures "For FY 2017-18" and ending with the words "an option to not fill this table.", for the letters, figures and word "FY 2017-18 and 2018-19", the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted;

(III) against serial number 13, –

(1) in the entry beginning with the word, letters and figures "For FY 2018-19" after the words, letters and figures "in the annual return for FY 2019-20.", the following entry shall be inserted, namely: -

"For FY 2019-20, Details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April 2020 to September 2020 shall be declared here. Table 4(A) of **FORM GSTR-3B** may be used for filling up these details. However, any ITC which was reversed in the FY 2019-20 as per second proviso to sub-section (2) of section 16 but was reclaimed in FY 2020-21, the details of such ITC reclaimed shall be furnished in the annual return for FY 2020-21.";

(2) in the entry beginning with the word, letters and figures "For FY 2017-18" and ending with the words "an option to not fill this table.", for the letters, figures and word "FY 2017-18 and 2018-19", the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted;

(e) in paragraph 8, in the Table, in second column, for the letters, figures and word "FY 2017-18 and 2018-19" wherever they occur, the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted.

12. In the said rules, in **FORM GSTR-9C**, in the instructions, -

(i) in paragraph 4, in the Table, in second column, for the letters, figures and word "FY 2017-18 and 2018-19" wherever they occur, the letters, figures and word "FY 2017-18, 2018-19 and

2019-20" shall be substituted;

(ii) in paragraph 6, in the Table, in second column, for the letters, figures and word "FY 2017-18 and 2018-19" wherever they occur, the letters, figures and word "FY 2017-18, 2018-19 and 2019-20" shall be substituted.

13. In the said rules, in **FORM GST RFD-01**, in Annexure-1, in Statement-2, in the heading the brackets, word and letters "(accumulated ITC)**"**, shall be omitted.

14. In the said rules, in **FORM GST ASMT-16**, for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turn-over | Tax Period | | Act | POS (Place of Supply) | Tax | Inte-rest | Pena-lty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ". |

15. In the said rules, in **FORM GST DRC-01**, after entry (c), for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turn-over | Tax Period | | Act | POS (Place of Supply) | Tax | Inte-rest | Pena-lty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ". |

16. In the said rules, in **FORM GST DRC-02**, after entry (c), for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turn-over | Tax Period | | Act | POS (Place of Supply) | Tax | Inte-rest | Pena-lty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ". |

17. In the said rules, in **FORM GST DRC-07**, after serial number 5, for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turn-over | Tax Period | | Act | POS (Place of Supply) | Tax | Inte-rest | Pena-lty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ". |

18. In the said rules, in **FORM GST DRC-08**, after serial number 7, for the table, the following table shall be substituted, namely: -

| "Sr. No. | Tax Rate | Turn-over | Tax Period | | Act | POS (Place of Supply) | Tax | Inte-rest | Pena-lty | Fee | Others | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | From | To | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| | | | | | | | | | | | | |
| Total | | | | | | | | | | | | ". |

19. In the said rules, in **FORM GST DRC-09**, for the table, the following table shall be substituted, namely: -

| "Act | Tax/Cess | Interest | Penalty | Fee | Others | Total |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Integrated tax | | | | | | |
| Central tax | | | | | | |
| State/UT tax | | | | | | |
| Cess | | | | | | |
| Total | | | | | | ". |

20. In the said rules, in **FORM GST DRC-24**, for the table, the following table shall be substituted, namely: -

| "Act | Tax | Interest | Penalty | Fee | Others Dues | Total Arrears |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Central tax | | | | | | |
| State / UT tax | | | | | | |
| Integrated tax | | | | | | |
| Cess | | | | | | ". |

21. In the said rules, in **FORM GST DRC-25**, for the table, the following table shall be substituted, namely: -

| "Act | Tax | Interest | Penalty | Fee | Others Dues | Total Arrears |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Central tax | | | | | | |
| State / UT tax | | | | | | |
| Integrated tax | | | | | | |
| Cess | | | | | | ". |

".

**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 last amended *vide* 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.

[*Published in the Gazette of India dated 15-10-2020*]

❑

## (89) Notification u/s 9(3)(4), 11(1), 15(5) and 148 of CGST Act, 2017 amending No. 12/2017-Central Tax (Rate) dtd. 28-6-2017 exempting satellite launch services provided by ISRO, Antrix Co. Ltd and NSIL as recommended by GST Council in its 42nd meeting held on 5-10-2020

**No. 05/2020-Central Tax (Rate)**

**G.S.R. 643(E). New Delhi, Dated 16th October, 2020 -** In exercise of the powers conferred by sub-sections (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, 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.12/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 691(E), dated the

28th June, 2017, namely:-

In the said notification, in the Table, after serial number 19B and the entries relating thereto, the following shall be inserted, namely:-

| | | | | |
|---|---|---|---|---|
| "19C | 9965 | Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited. | Nil | Nil." |

**Note :** The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 12/2017 - Central Tax (Rate), dated the 28th June, 2017, *vide* number G.S.R. 691(E), dated the 28th June, 2017 and was last amended by notification No. 04/2020-Central Tax (Rate), dated the 30th September, 2020 *vide* number G.S.R. 604(E), dated the 30th September, 2020.

[*Published in the Gazette of India dated 16-10-2020*]

❑

## (90) Notification u/s 3 of *Vivad se Vishwas* Act, 2020

### Notification No. 85/2020

**S.O. 3847(E). New Delhi, Dated 27th October, 2020 -** In exercise of the powers conferred by section 3 of the Direct Tax *Vivad se Vishwas* Act, 2020 (3 of 2020), the Central Government hereby notifies that the,-

(a) 31st day of December, 2020 shall be the date, on or before which a declaration shall be filed to the designated authority, by the declarant, in accordance with the provisions of section 4 of the said Act in respect of tax arrear;

(b) 31st day of March, 2021 shall be the date on or before which the amount payable under the said Act shall be paid as per third column of the Table to section 3 of the said Act; and

(c) 1st day of April, 2021 shall be the date on or after which the amount payable under the said Act shall be paid as per fourth column of the Table to section 3 of the said Act.

**2.** This notification shall come into force from the date of its publication in the Official Gazette.

[*Published in the Gazette of India dated 27-10-2020*]

❑

## (91) Notification u/s 44(1) of CGST Act, 2017 amending No. 41/2020-Central Tax dt. 5-5-2020 extending due date of return till 31-12-2020

**No. 80/2020-Central Tax**

**G.S.R. 679(E). New Delhi, Dated 28th October, 2020 -** In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with rule 80 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 41/2020 - Central Tax, dated the 5th May, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 275(E), dated the 5th May, 2020, namely:-

In the said notification, for the figures, letters and word "**31st October, 2020**", the figures, letters and word "**31st December, 2020**" shall be substituted.

**Note**: The principal notification No. 41/2020 - Central Tax, dated the 5th May, 2020, was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 275(E), dated the 5th May, 2020 and was last amended *vide* notification No. 69/2020 – Central Tax dated the 30th September, 2020, published *vide* number G.S.R. 595 (E), dated the 30th September, 2020.

[*Published in the Gazette of India dated 28-10-2020*]

❑

## (92) Extension of due dates for Annual Return and Reconciliation Statement for 2018-19

Press Information Bureau
Government of India, Ministry of Finance

24-Oct.-2020, 3:45 PM

The Government has been receiving a number of representations regarding need to extend due date for filing Annual Return (FORM GSTR-9) and Reconciliation Statement (FORM GSTR-9C) for 2018-19 on the grounds that on account of the COVID-19 pandemic related lockdown and restrictions, normal operation of businesses have still not been possible in

several parts of the country. It has been requested that the due dates for the same be extended beyond 31st October 2020 to enable the businesses and auditors to comply in this regard.

In view of the same, on the recommendations of the GST Council, it has been decided to extend the due date for filing Annual Return (FORM GSTR-9/GSTR-9A) and Reconciliation Statement (FORM GSTR-9C) for Financial Year 2018-19 from **31st October 2020 to 31st December, 2020**. Notifications to give effect to this decision would follow.

It may be noted that filing of Annual Return (FORM GSTR-9/GSTR-9A) for 2018-19 is optional for taxpayers who had aggregate turnover below Rs. 2 crore. The filing of reconciliation Statement in FORM 9C for 2018-19 is also optional for the taxpayers having aggregate turnover upto Rs. 5 crore.

❑

## (93) 2018–19 के लिए वार्षिक रिटर्न और समाधान–विवरण दाखिल करने की निर्धारित तिथि बढ़ाई गई

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

24 अक्टूबर, 2020, 3:45 पीएम

कोविड-19 महामारी और इससे संबंधित लॉकडाउन और अन्य पाबंदियों को देखते हुए 2018-19 के लिए वार्षिक रिटर्न (फॉर्म-जीएसटीआर-9) और समाधान-विवरण (फॉर्म जीएसटीआर-9सी) दाखिल करने की निर्धारित तिथि बढ़ाई गई। इसके लिए बड़ी संख्या में प्रतिनिधियों ने सरकार से मांग की थी। इसके तहत ये अनुरोध किया गया था कि व्यवसायों और लेखा परीक्षकों को और अधिक समय देने के लिए तय तारीख को 31 अक्टूबर से आगे बढ़ाया जाए। देश के कई हिस्सों में अब तक कारोबार करने के लिए सामान्य स्थिति नहीं बन पाई है।

इन मांगों को देखते हुए और जीएसटी परिषद की सिफारिश पर वित्तीय वर्ष 2018-19 के लिए वार्षिक रिटर्न (फॉर्म जीएसटीआर-9/जीएसटीआर-9ए) और समाधान-विवरण (फॉर्म जीएसटीआर-9सी) दाखिल करने की आखिरी तारीख को **31 अक्टूबर 2020 से बढ़ाकर 31 दिसंबर, 2020** करने का फैसला लिया गया है। इस बारे में अधिसूचना जारी की जाएगी, जिसका पालन करना होगा।

यहां ये ध्यान देने वाली बात है कि वैसे करदाता जिनका कुल कारोबार 2 करोड़ रुपये से कम है, उनके लिए 2018-19 का वार्षिक रिटर्न (फॉर्म जीएसटीआर-9/जीएसटीआर-

9ए) भरना वैकल्पिक है। इसके अलावा वैसे करदाता जिनका कुल कारोबार 5 करोड़ रुपये तक है, उनके लिए 2018-19 की फॉर्म 9सी में समाधान-विवरण दाखिल करना वैकल्पिक है।

❑

## (94) Payment Date Extended for Vivad se Vishwas Scheme; Finance Secretary urges I-T Department to Reach Out to the Taxpayers

Press Information Bureau
Government of India, Ministry of Finance

27-Oct.-2020, 6:49 PM

In order to provide further relief to the taxpayers desirous of settling disputes under *Vivad se Vishwas* Scheme, the Government today further extended the date for making payment without additional amount from 31st December 2020 to 31st March 2021. The last date for making declaration under the Scheme has also been notified as 31st December 2020. As per the notification issued today, the declaration under the Vivad se Vishwas Scheme shall be required to be furnished latest by 31st December 2020, however, only in respect of said declarations made by 31st December 2020 the payment without additional amount can now be made up to 31st March 2021.

Meanwhile, Finance Secretary Dr. Ajay Bhushan Pandey today reviewed the progress made so far by the Income Tax Department on Vivad se Vishwas Scheme in a high level meeting through video conferencing along with CBDT Chairman and Board members with all Principal Chief Commissioners of Income Tax across the country to expedite the Scheme which, he said, is highly beneficial to the taxpayers, adding further that "We need to advance the Vivad se Vishwas Scheme with greater persuasion and perseverance and must reach out to the taxpayers to facilitate all necessary handholding."

In the meeting, suggestions and comments of the Field Officers were also discussed regarding the action plan for successful implementation of the Scheme in a time bound manner.

Finance Secretary Dr. Pandey said, "This is a scheme for the benefit and convenience of the taxpayers as they would get instant disposal of the

dispute with no further cost of litigation besides monetary benefits in the form of waiver of penalty, interest and prosecution. With this Scheme, on the one hand, a taxpayer would be benefitted with stress-free time to put her/his efforts for more meaningful daily life/routine or expanding business activities while on the other, the government would be getting its due long pending revenue and also, savings on the huge cost on resources that these disputes consume."

In the meeting, CBDT Chairman Shri P.C. Mody mentioned the importance of cleaning up of demand for facilitating and persuading the taxpayers for filing declarations under the Scheme. He emphasized on Pr. Chief Commissioners of Income Tax to carry out all possible actions such as disposing pending rectifications, giving pending appeal effects, removing duplicate demands, etc. so as to arrive at a final demand for each assessee so that whenever a taxpayer files Form 1 or 2 under the Vivad se Vishwas Scheme, the Pr. Commissioner of Income Tax concerned is in a position to issue Form 3 promptly.

It was also decided in the meeting to adopt a proactive approach for implementation of the Scheme by approaching taxpayers directly, guiding and facilitating them in filing of declarations and removing any difficulties or problems faced by them in availing the Scheme. It was further decided to have periodic review of the progress of the Scheme every fortnight.

It is pertinent to mention here that the Direct Tax Vivad se Vishwas Act, 2020 was enacted on 17th March, 2020 with the objective to reduce pending income tax litigation, generate timely revenue for the Government and to benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process. In order to provide more time to taxpayers to settle disputes, earlier the date for filing declaration and making payment without additional amount under Vivad se Vishwas was extended from 31st March 2020 to 30th June, 2020. Later again, this date was extended further to 31st December, 2020. Therefore, earlier both the declaration and the payment without additional amount under the Vivad se Vishwas were required to be made by 31st December, 2020.

❑

## (95) 'विवाद से विश्वास' योजना के तहत भुगतान की तारीख बढ़ाई गई; वित्त सचिव ने आयकर विभाग से करदाताओं तक पहुंच बनाने का अनुरोध किया

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

27 अक्टूबर, 2020, 10:36 पीएम

'विवाद से विश्वास' योजना के तहत विवादों का निपटारा करने के इच्छुक करदाताओं को और राहत देते हुए सरकार ने बिना किसी अतिरिक्त राशि के भुगतान की तारीख को 31 दिसम्बर, 2020 से आगे बढ़ाकर 31 मार्च, 2021 कर दिया है। योजना के तहत आयकर की घोषणा करने की अंतिम तिथि 31 दिसम्बर, 2020 अधिसूचित की गई है। आज जारी अधिसूचना के अनुसार 'विवाद से विश्वास' योजना के तहत आयकर की घोषणा को 31 दिसम्बर, 2020 तक कर देनी होगी। हालांकि 31 दिसम्बर, 2020 तक की गई ऐसी घोषणाओं के संबंध में अतिरिक्त राशि के बिना भुगतान 31 मार्च, 2021 तक किया जा सकता है।

इस बीच वित्त सचिव डॉ. अजय भूषण पांडे ने 'विवाद से विश्वास' योजना के संबंध में आयकर विभाग द्वारा अब तक की गई प्रगति की समीक्षा की। वीडियो कॉन्फ्रेंसिंग के माध्यम से हुई उच्चस्तरीय बैठक में केन्द्रीय प्रत्यक्ष कर बोर्ड (सीबीडीटी) के अध्यक्ष बोर्ड के सदस्य और आयकर विभाग के मुख्य आयुक्त उपस्थित थे। डॉ. पांडे ने आयकर विभाग के अधिकारियों से देश भर में 'विवाद से विश्वास' योजना का तेजी से विस्तार करने का आग्रह करते हुए कहा कि इसके लिए करदाताओं तक पहुंच बनाना जरुरी है। बैठक में फील्ड अधिकारियों के सुझावों और टिप्पणियों पर समयबद्ध तरीके से काम किए जाने के बारे में भी चर्चा की गई।

वित्त सचिव ने कहा कि यह करदाताओं के लाभ और सुविधा के लिए शुरू की गई योजना है जिससे बिना किसी मुकदमेबाजी के करदाताओं के आयकर से जुड़े विवादों का तत्काल निपटारा हो सकता है। इस प्रक्रिया में उन्हें जुर्माना या ब्याज का भुगतान करने की आवश्यकता नहीं होती और साथ ही किसी तरह की कानूनी कार्रवाई से भी छूट मिलती है। यह योजना एक तरफ करदाताओं को तनाव मुक्त होकर अपने समय का सदुपयोग व्यावसायिक गतिविधियों का विस्तार करने का अवसर देती है तो वहीं दूसरी ओर सरकार को लंबित पड़े राजस्व का संग्रह करने और इसके लिए संसाधनों पर होने वाले बड़े खर्चे की बचत का मौका भी देती है।

बैठक में सीबीडीटी के अध्यक्ष श्री पी.सी. मोदी ने योजना का लाभ उठाने के इच्छुक करदाताओं के आवेदन को जल्दी निपटाने की सुविधा के महत्व का उल्लेख किया। उन्होंने आयकर विभाग के मुख्य आयुक्त से सभी संभावित कार्रवाइयों जैसे कि लंबित मुकदमों का

निपटारा, अपील पर जल्द सुनवाई, एक ही विवाद के निपटारे के लिए दो बार किए गए आवेदन को निरस्त करने आदि जैसी बातों पर ध्यान देने का आग्रह किया ताकि जब भी आयकरदाता फॉर्म 1 और फॉर्म 2 के जरिए 'विवाद से विश्वास' योजना के तहत आयकर की घोषणा करें तो उन्हें तुरंत फॉर्म संख्या 3 जारी की जा सके।

बैठक में करदाताओं से सीधे संपर्क स्थापित करते हुए आयकरदाताओं को आयकर घोषणाएं करने की सुविधाएं प्रदान करने और योजना का लाभ उठाने में उनके समक्ष आने वाली कठिनाइयों को दूर करने के लिए सक्रिय दृष्टिकोण अपनाने का फैसला लिया गया। इसके साथ ही प्रत्येक पखवाड़े में योजना की प्रगति की समीक्षा करना भी तय किया गया।

'विवाद से विश्वास' अधिनियम 2020, 17 मार्च, 2020 को लागू किया गया था। इसका उद्देश्य लंबित आयकर विवादों को कम करने, सरकार के लिए समय पर राजस्व प्राप्त करने और करदाताओं को खर्चीली और जटिल मुकदमेबाजी की प्रक्रिया से राहत देने के उद्देश्य से लाया गया था। योजना के तहत बिना किसी अतिरिक्त राशि के आयकरदाताओं को आयकर भुगतान की सुविधा 31 मार्च, 2020 से बढ़ाकर 20 जून, 2020 कर दी गई थी, बाद में इसे और आगे बढ़ाकर 31 दिसम्बर, 2020 कर दिया गया।

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## (96) Special Window to States for meeting the GST Compensation Cess shortfall

Press Information Bureau
Government of India, Ministry of Finance

15-Oct.-2020, 6:05 PM

Under Option-I States were to be provided a Special Window of Borrowing of Rs. 1.1 lakh cr, and over and above that, an authorisation for additional Open Market Borrowings of 0.5% of their GSDP. The authorisation for increased OMBs of 0.5% of GSDP has been issued by Ministry of Finance on 13th October and are in relaxation of the reform conditions that were stipulated for eligibility. Additionally, under Option-I, the States are also eligible to carry forward their unutilised borrowing space to the next Financial Year.

Under the Special Window, the estimated shortfall of Rs. 1.1 lakh cr (assuming all States join) will be borrowed by Government of India in appropriate tranches.

The amount so borrowed will be passed on to the States as a back-to-back loan in lieu of GST Compensation Cess releases.

This will not have any impact on the fiscal deficit of the Government of India. The amounts will be reflected as the capital receipts of the State Governments and as part of financing of its respective fiscal deficits.

This will avoid differential rates of interest that individual States may be charged for their respective SDLs and will be an administratively easier arrangement.

It may also be clarified that the General Government (States+Centre) borrowings will not increase by this step. The States that get the benefit from the Special Window are likely to borrow a considerably lesser amount from the additional borrowing facility of 2% of GSDP (from 3% to 5%) under the Aatma Nirbhar Package.

❑

## (97) Central Government borrows and transfers Rs.6,000 crore as first tranche to 16 States on account of GST compensation under Special Borrowing Window

Press Information Bureau
Government of India, Ministry of Finance

23-Oct.-2020, 6:42 PM

The Government of India has evolved a special borrowing window to addressthe shortfall in the GST collection during the year 2020 – 2021. 21 States and 2 Union Territories opted for this special window involving back-to-back borrowing coordinated by the Ministry of Finance.

Out of these, five States did not have any shortfall on account of GST compensation. Today, the Central Government borrowed and transferred Rs.6,000crores as first tranche to 16 States namely Andhra Pradesh, Assam, Bihar, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Meghalaya, Odisha, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhandand 2 Union Territories: UT of Delhi and UT of Jammu and Kashmir.

The borrowing is at an interest rate of 5.19 percent.It is intended to make weekly releases of Rs.6,000 croreto the States.Tenor of borrowing is expected to be broadly in the range of 3 to 5 years.

❑

**(2020) 65 TLD 273**

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

**Smt. Kanishka Matta**

**Vs.**

**Union of India and Others**

Writ Petition No. : 8204/2020

August 26, 2020

***Deposition : In favour of Revenue***

**Search and seizure - Power of inspection, search and seizure - Section 67 of CGST Act, 2017 - The expression used in Section 67(2) "confiscation of any documents or books or things" - The expression 'things' also covers money and money can also be seized by authorized officer.**

*The core issue before this Court is that whether expression "things" covers within its meaning the cash or not. In the considered opinion of this Court, the CGST Act, 2017 has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation. Section 2(17) defines "business" and Section 2(31) defines "consideration". In the considered opinion of this Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by authorized officer.* [Para 18]

*Resultantly, keeping in view the totality of the circumstances of the case, the material available in the case diary and also keeping in view Section 67(2) of the CGST Act, 2017, this Court is of the opinion that the authorities have rightly seized the amount from the husband of the petitioner and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise. The writ petition is dismissed.* [Para 25]

**Writ petition dismissed**

**Cases referred :**

* D. Vinod Shivappa Vs. Nanda Belliappa (2006) 6 SCC 456

* R.S. Company Vs. Commissioner of Central Excise (2017) 351 E.L.T. 264 (M.P.)

* Sumedha Dutta & Another Vs. The Union of India Writ Petition No. 23680/2018, decided on 4-4-2019

* Surjeet Singh Chhabra Vs. Union of India (1997) 89 E.L.T. 646 (S.C.)

* Vinod Solanki Vs. Union of India and Another (2008) 16 SCC 537

Shri Vivek Dalal with Shri Lokendra Joshi, learned counsel for the petitioner.
Shri Prasanna Prasad, learned counsel for the respondents.

**:: ORDER ::**

The petitioner before this Court has filed this present petition for issuance of an appropriate writ, order or direction directing the respondent No.4 - Assistant Director, DGGSTI, Indore and respondent No.5 - Senior Intelligence Officer, DGGSTI, Indore to release the cash amounting to Rs.66,43,130/- seized from the petitioner *vide Panchnama* dated 30-5-2020 from the residential premises of the petitioner and her husband.

**02.** The petitioner is the wife of Shri Sanjay Matta. Shri Sanjay Matta is the Proprietor of the firm functioning in the name and style of M/s. S. S. Enterprises. The Firm is in the business of Confectionery and Pan Masala items. The petitioner has further stated that search operation was carried out by respondent No.5 (Senior Intelligence Officer, DGGSTI, Indore) at the business premises as well as residential premises and a *Panchnama* was drawn on 31-5-2020. The respondents have also seized an amount to the tune of Rs.66 Lakhs as per the *Panchnama* prepared by them.

**03.** Shri Vivek Dalal, learned counsel for the petitioner has vehemently argued before this Court that the respondent No.5 has got no power vested under Section 67(2) of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) to effect seizure of cash amount from the petitioner nor from her husband. He has stated that the cash cannot be treated as "Document, Book or Things" as per the definition under the definition clause of the CGST Act, 2017 and therefore, the respondents be directed to release the cash, which they have seized.

**04.** It has also been stated that as per the provisions of Section 37 of CGST Act, 2017 there is a procedure for filing of returns by the assessee and return could not be filed in time on account of lockdown keeping in view the Covid-19 Pandemic. It has vehemently been argued that the sale proceeds were kept by the petitioner and her husband and the respondents have illegally seized the money without their being any provision of law.

**05.** It has also been stated that the statement of the petitioner's husband was recorded on 30-5-2020, 31-5-2020, 1-6-2020 and 2-6-2020 and he was tortured in the name of tax terrorism by the authorities. The basic thrust is on the ground that without their being any provision under the CGST Act, 2017 the amount as seized by the respondents could not have been done and the same is violative of Article 14 of the Constitution of India. The another ground raised by the petitioner that the raid on the residential premises of petitioner and her husband is again violative of Article 19 and finally a prayer has been made to release the seized cash / sale proceeds to the tune of Rs.66,43,130/-.

**06.** A reply has been filed in the matter by respondents No.1 to 5 and it has been stated that from the Directorate of Revenue Intelligence, a specific input was received that Shri Sanjay Matta is involved in large scale of evasion of GST on Pan Masala. The proper officer under reasonable beliefs that the goods / documents / things were secreted at the said premises, issued a search warrant dated 30-5-2020 and a consequential search was carried out at the residential premises of Shri Sanjay Matta on 30-5-2020 by the Team of Directorate General of GST Intelligence. A *Panchnama* dated 30-5-2020 was also prepared and the officers seized documents and cash amounting to Rs. 66,43,130/-.

**07.** It has been stated that the documents and cash were seized in terms of Section 67(2) of the CGST Act, 2017 and the Order of Seizure in Form GST INS-02 dated 30-5-2020 was issued. It has also been stated that Shri Sanjay Matta, the husband of the petitioner, made a voluntary statement stating categorically that the said cash of Rs.66,43,130/- was the sale proceeds of the illegally sold Pan Masala without payment of GST.

**08.** The present petitioner is certainly not registered with GST Department and the investigation reveals that cash / documents seized, do not pertain to the applicant. The respondents have stated that the petition deserves to be dismissed as the petitioner does not have *locus* to file the present petition. It has been stated that as per the voluntary statement dated 30-5-2020 the said cash of Rs.66,43,130/- was the sale proceeds of illegally sold Pan Masala without payment of GST. The respondents have stated that keeping in view Section 67(2) of the CGST Act, 2017 read with definition Clause makes it very clear that the respondents were justified in seizing the amount from the petitioner and the statute empowers them to do so. The respondents have also submitted the Case Diary in a sealed cover before this Court.

**09.** A rejoinder has been filed in the matter and the stand of the petitioner is that by no stretch of imagination Section 67(2) of the GST Act, 2017 empowers the respondents to seize the cash and later on the husband of the petitioner Shri Sanjay Matta has retracted the statement *vide* affidavit dated 7-6-2020 and in light of his affidavit dated 7-6-2020 the respondents should release the cash forthwith.

**10.** Heard learned counsel for the parties at length and perused the record including the case diary. The matter is being disposed of at motion hearing stage itself with the consent of the parties.

**11.** The statement made in the case diary reveals that Shri Sanjay Matta, a Pakistani National, was involved in illicit supply of Pan Masala of various brands without invoices and without payment of applicable GST (this statement of the Department that Shri Sanjay Matta is a Pakistani National was controverted during the arguments by learned counsel for the petitioner and he has stated that later on Shri Sanjay Matta has been granted Indian citizenship).

**12.** The case diary also reveals that the searches were conducted on 30-5-2020 and 31-5-2020 at the residential premises of Shri Sanjay Matta and Shri Sandeep Matta and various godowns operated by them on the reasonable belief that the aforesaid premises are being used to clandestinely store goods / records / documents / things. During the searches it was found that huge quantity of Pan Masala and tobacco were lying / stored in the various godowns of Shri Sanjay Matta which are neither declared as principal place of business nor as additional place of business as mandatorily required under Section 22 of CGST Act, 2017 read with Rule 8 of CGST Rules, 2017.

**13.** Goods comprising of Pan Masala, Tobacco, Mouth Freshener, Confectionery, etc. valued at Rs.2.59 Crores were seized under Section 67(2) of the CGST Act read with Section 129 of the CGST Act and Section 130 of CGST Act from six godowns operated by Shri Sanjay Matta and his brother Shri Sandeep Matta as no bills / invoices could be produced by them. Unaccounted cash of Rs.66,43,130/- was also seized from the residential premises of Shri Sanjay Matta.

**14.** The case diary also reveals that seizure was done under Section 67(2) of the CGST Act, 2017 under a reasonable belief that the aforesaid are the proceeds of the illicit supply of goods namely Tobacco and Pan Masala and

would be useful for further investigation. *Panchnama* dated 30-5-2020, 31-5-2020 and 5-6-2020 were also brought to the notice of this Court. The case diary also reveals that Shri Sanjay Matta in his statement before the officers have stated categorically that the value of the goods sold without any bills and invoices during the period April, 2019 to May, 2020 would be approximately 40.11 Crores in cash and the GST on the said clandestine clearance works out to Rs.18.77 Crores.

**15.** There are other persons involved in the matter, however, as the controversy involved in the present case only relates to the seizure of cash, this Court is not referring to the names of the other persons involved in the matter nor in respect of other recoveries and other seizures from other persons.

**16.** The statutory provisions as contained under the Central Goods and Services Tax Act, 2017, which are necessary for deciding the present writ petition reads as under:-

**"2.Definitions**

**In this Act, unless the context otherwise requires.-**

2(17). "business" includes-

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade,

profession or vocation;

[(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

**2(31).** "consideration" in relation to the supply of goods or services or both includes-

(*a*) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(*b*) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

**2(75).**"money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

**37. Furnishing details of outward supplies**

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

details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

PROVIDED that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

PROVIDED FURTHER that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

PROVIDED ALSO that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(*2*) Every registered person who has been communicated the details under sub-section (*3*) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (*4*) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (*1*) shall stand amended accordingly.

(*3*) Any registered person, who has furnished the details under sub-section (*1*) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

PROVIDED that no rectification of error or omission in respect of the details furnished under sub-section (*1*) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

*Explanation* : For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit

notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

**41. Claim of input tax credit and provisional acceptance thereof**

(*1*) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(*2*) The credit referred to in sub-section (*1*) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

**52. Collection of tax at source**

(*1*) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

*Explanation* : For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (*5*) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(*2*) The power to collect the amount specified in sub-section (*1*) shall be without prejudice to any other mode of recovery from the operator.

(*3*) The amount collected under sub-section (*1*) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (*1*) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through

it, and the amount collected under sub-section (*1*) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(*5*) Every operator who collects the amount specified in sub-section (*1*) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

(*6*) If any operator after furnishing a statement under sub-section (*4*) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub- section (*1*) of section 50:

PROVIDED that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(*7*) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (*4*), in such manner as may be prescribed.

(*8*) The details of supplies furnished by every operator under sub-section (*4*) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(*9*) Where the details of outward supplies furnished by the operator under sub-section (*4*) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(*10*) The amount in respect of which any discrepancy is communicated under sub-section (*9*) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(*11*) The concerned supplier, in whose output tax liability any amount has been added under sub-section (*10*), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (*1*) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(*12*) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to-

(*a*) supplies of goods or services or both effected through such operator during any period; or

(*b*) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers,

as may be specified in the notice.

(*13*) Every operator on whom a notice has been served under sub-section (*12*) shall furnish the required information within fifteen working days of the date of service of such notice.

(*14*) Any person who fails to furnish the information required by the notice served under sub-section (*12*) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty- ive thousand rupees.

*Explanation* : For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.

**67. Power of inspection, search and seizure.**

**(2).** Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (*1*) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

PROVIDED that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

PROVIDED further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

**75. General provisions relating to determination of tax**

(*1*) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (*2*) and (*10*) of section 73 or sub-sections (*2*) and (*10*) of section 74, as the case may be.

(*2*) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (*1*) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (*1*) of section 73.

(*3*) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(*4*) An opportunity of hearing shall be granted where a request is

received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(*5*) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(*6*) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(*7*) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(*8*) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(*9*) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(*10*) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (*10*) of section 73 or within five years as provided for in sub-section (*10*) of section 74.

(*11*) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (*10*) of section 73 or sub-section (*10*) of section 74 where proceedings are initiated by way of issue of a show

cause notice under the said sections.

(*12*) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(*13*) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.**"**

The petitioner's contention is that the word "money" is not included in Section 67(2) of the CGST Act, 2017 and therefore, once the "money" is not included under Section 67(2) of the CGST Act, 2017 the Investigating Agency / Department is not competent to seize the same.

**17.** This Court has carefully gone through Section 67 of the CGST Act, 2017 and the expression used in sub-section (2) of Section 67 is "confiscation of any documents or books or things, which in proper officer's opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place". Thereafter, sub-section (2) has two provisos and first proviso relates to goods and the second proviso refers to documents or books or things so seized shall be retained.

**18.** The core issue before this Court is that whether expression "things" covers within its meaning the cash or not. In the considered opinion of this Court, the CGST Act, 2017 has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation. Section 2(17) defines "business" and Section 2(31) defines "consideration". In the considered opinion of this Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by authorized officer.

**19.** The word "things" appears in Section 67(2) of the CGST Act, 2017 is to be given wide meaning and as per Black's Law Dictionary, 10th Edition, any subject matter of ownership within the spear of proprietary or valuable right, would come under the definition of " thing" (page No.1707). Similarly, Wharton's Law Lexicon at page No.1869 and 1870, the word "thing" has been defined and it includes "money". It is a cardinal principle of interpretation of statute that unreasonable and inconvenient results are to be avoided,

artificially and anomaly to be avoided and most importantly a statute is to be given interpretation which suppresses the mischief and advances the remedy (Interpretation of statute by Maxwel , 12th Edition, page No.199 to 205). The same preposition of law is propounded in Craies on Statute Law, 7 Edition, page No. 94).

**20.** The Hon'ble Supreme Court in the case of **D. Vinod Shivappa Vs. Nanda Belliappa** reported in **(2006) 6 SCC 456** in paragraph No.12 as held as under:-

> **"12.** It is well settled that in interpreting a statute the court must adopt that construction which suppresses the mischief and advances the remedy. This is a rule laid down in *Heydon's case [(1584)* 76 ER 637 : 3 Co Rep 7a] also known as the rule of purposive construction or mischief rule.**"**

Therefore, keeping in view the aforesaid interpretation of the word "thing" money has to be included and it cannot be excluded as prayed by the petitioner from Section 67(2). The present case is at the stage of search and seizure. A search has been carried out and proceedings are going on.

**21.** A Division Bench of this Court in the case of **Sumedha Dutta & Another Vs. The Union of India & Another** (Writ Petition No.23680/ 2018, decided on 4-4-2019) in paragraphs No.9 to 12 has held as under:-

> **"9.** The Hon'ble Apex Court in the case of ***Director General of Income Tax (Investigation) & Others Vs. Spacewood Furnishers Pvt. Ltd & Others*** *reported in* ***2015 (374) ITR 595 (SC)*** has dealt with the scope of interference by the High Court in the matter of search and seizure. The Apex Court has held that findings with regard to satisfaction touching upon sufficiency and adequacy of reasons and authenticity and acceptability of information on which satisfaction reached, is not permissible in writ jurisdiction. The scope of interference has been dealt with in depth by the Apex Court.
>
> **10.** The Apex Court in the case of ***Dr. Pratap Singh & Another Vs. Director of Enforcement & Others*** *reported in* ***AIR 1985 SC 989*** has held that illegality, if any, does not vitiate the evidence collected during the search.
>
> **11.** The Orissa High Court in the case of ***Aditya Narayan Mahasupakar Vs. Chief Commissioner of Income Tax & Others***

*reported in* ***2017 (392) ITR 131 (Orissa)*** was dealing with the issue of search and seizure with specific reference to warrant of authorization and it has been held that the High Court should not go into the sufficiency and insufficiency of the ground, which induce the Income Tax Officer to arrive at a conclusion to carry out search and seizure operation.

**12.** The scope of interference at this stage is very limited and the Income Tax Act, 1961 provides a complete mechanism, which has been followed after the search and seizure operation has been carried out. Even if it is presumed for a moment that warrant relating to search and seizure was not proper and there was some defect in it, the material collected during the search and seizure cannot be brushed aside on this count alone. The Income Tax Act, 1961 provides for a detailed procedure that has to be followed and this Court, in the present writ petition, does not find any reason to quash the entire search and seizure operation as prayed by the petitioners in the relief clause.

Accordingly, the present writ petition stands dismissed."

The Division Bench of this Court was dealing with a search a seizure case and the writ petition was filed at the initial stage only. Though it was a case under the Income Tax Act, 1961, however, this Court has declined to interfere in the matter of search and seizure by way of judicial review.

**22.** Much has been argued by learned counsel for the petitioner in respect of "confessional statements" and the fact that the husband of the petitioner has retracted at a later stage. In the case of **Surjeet Singh Chhabra Vs. Union of India** reported in **1997 (89) E.L.T. 646 (S.C.)**, the Hon'ble Supreme Court has held that "confessional statements" made before Customs Officer though retracted within six days is an admission and binding since Custom Officers are not Police Officers. In the present case also the statements were made confessing the guilt by the husband of the petitioner and later on he has retracted from that statement as stated in the writ petition and therefore, in light of the Hon'ble Supreme Court's judgment no relief can be granted in the present writ petition on the basis of aforesaid ground keeping in view the judgment of Hon'ble Supreme Court.

**23.** A Division Bench of this Court in the case of **R.S. Company Vs. Commissioner of Central Excise** reported in **2017 (351) E.L.T. 264 (M.P.)** has dealt with "confessional statements" and decided the matter in

favour of the revenue and therefore, the ground raised in the present petition that the husband of the petitioner retracted the confessional statement does not help the petitioner nor her husband in any manner.

**24.** Learned counsel for the petitioner has placed reliance upon a judgment delivered in the case of **Vinod Solanki Vs. Union of India and Another** reported in **(2008) 16 SCC 537**. Heavy reliance has been placed in paragraph No.23 and the same reads as under:-

> **"22.** It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. {See *Pon Adithan Vs. Deputy Director, Narcotics Control Bureau*, (1999) 6 SCC 1 : 1999 SCC (Cri) 1051}**"**

The aforesaid case was a case under the Foreign Exchange Regulation Act, 1973 and the Hon'ble Apex Court has held that evidence brought on record by way of confession, which stood retracted must be substantially corroborated by other independent and cogent evidence, which would lend adequate assurance to the Court that it may seek to rely thereupon. In the present case, the authorities are at the stage of investigation. The evidence is being collected and and therefore, at this stage, the judgment relied upon by learned counsel for the petitioner is of no help.

**25.** Resultantly, keeping in view the totality of the circumstances of the case, the material available in the case diary and also keeping in view Section 67(2) of the CGST Act, 2017, this Court is of the opinion that the authorities have rightly seized the amount from the husband of the petitioner and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise. The writ petition is dismissed.

❑

**(2020) 65 TLD 289**

In the High Court of Chhattisgarh
Hon'ble P. Sam Koshy, J.
**Dhamtari Krishi Kendra**
**Vs.**
**Union of India & Others**
Writ Petition (T) No. : 70 of 2019
July 17, 2020

***Deposition : In favour of Petitioner***

**Transitional credit - The petitioner has been promptly pursuing his claim all along thereafter on the basis of the recommendation, if referred by the Commissioner to the GST council, appropriate decision may be taken at the earliest.**

**Cases referred :**

* Adfert Technologies Pvt. Ltd. Vs. Union of India & Others decided on 4-11-2019 (P&H)

* Tara Exports Vs. Union of India, decided on 10-9-2018 (Mad)

Shri Rajkamal Singh, Advocate for the petitioner.
Shri Himanshu Pandey on behalf of Shri B. Gopa Kumar, Asst. Solicitor General for Respondent 1 & 2, Shri Sidharth Dubey, Dy. Govt. Advocate for State & Shri Maneesh Sharma, Advocate for Respondent 4.

**:: ORDER ::**

**1.** The present is a second round of litigation. The grievance of the petitioner is in respect of his unable to upload GST TRAN-1 and TRAN-2 returns on the GST web portal by the last date prescribed i.e. 27-12-2017.

**2.** According to the petitioner, after the new tax regime i.e. the GST law came into force, the last date for submission of GST Tran-1 and Tran-2 returns was extended by the government up till 27-12-2017. The petitioner tried to submit returns, however, because of the technical glitch faced by the petitioner it could not be submitted. The petitioner immediately reported this matter to the authorities in the department on 26-12-2017 itself. The petitioner has filed a document Annexure P/7 dated 26-12-2017 in this regard and the said document also bears the seal and signature of the Commercial Tax Department having received the same.

**3.** Further, the counsel for the petitioner also submitted that the petitioner had tried to submit TRAN-1 and TRAN-2 returns manually on 18-1-2018 by approaching the GST Officers in the GST office at District Dhamtari. On the same day the petitioner also has sent the GST TRAN-1 form by post to the department. The receipt of registered post sent also is enclosed along with the present writ petition, which too was not accepted by the department which led to the petitioner filing a writ petition in the High Court on 26-2-2018 which was registered as WPT No. 68 of 2018 which came up for hearing before this Court on 14-5-2018 and considering all the aforesaid aspects submitted by the petitioner, the High Court disposed of the writ petition directing the petitioner to approach the Nodal Officer at Dhamtari within 4 days by filing a detailed representation with all necessary records and documents and the authority, in turn, were directed to consider and dispose of the same in terms of the circular dated 3-4-2018. It was also pointed out by this Court that the authorities while deciding the claim shall bear in mind that the writ petition is pending before the High Court since 26-2-2018.

**4.** Pursuant to which the petitioner filed his representation before the concerned authorities as directed by this court. The authority i.e. the Commissioner, State Commercial Tax, in turn, took a decision on 14-9-2018 (Annexure P/3) and has refused grant of permission to the petitioner to submit TRAN-1 and TRAN-2. The rejection has been categorically on the ground of the petitioner failing to produce any material/evidence to show that he had tried to submit the TRAN-1 and TRAN-2 within the stipulated period, the petitioner faced technical glitch. In Annexure P/3 there is no reference whatsoever by the Commissioner in respect of Annexure P/7 dated 26-2-2017 submitted by the petitioner in respect of his complaint regarding the technical glitch that was faced by him. There is also no reference of the attempt made by the petitioner to submit TRAN-1 form manually as well as having sent it by post through registered AD. In the light of the document Annexure P/7, so also the documents by which the petitioner claims to have submitted TRAN-1 manually on 18-1-2018, the finding of the Commissioner in Annexure P/3 dated 14-9-2018 prima facie seems to be incorrect. This refusal of granting permission to submit TRAN-1 form on 14-9-2018 has led to the filing of the present writ petition.

**5.** The counsel for the petitioner submits that the finding given by the Commissioner is totally erroneous as also perverse as it is without proper

verification of the factual matrix from the records. The petitioner referred to a judgment passed by the **Madurai Bench of the Madras High Court in case of Tara Exports Vs. Union of India, decided on 10-9-2018**, wherein the Division Bench of the Madurai Bench under similar circumstances had granted permission to the petitioner to submit TRAN-1. The respondents therein were directed to open the portal so that the petitioner could file the TRAN-1 electronically or in alternative it was directed to accept the manually filled TRAN-1 and allow input credits.

**6.** Likewise, the counsel for the petitioner also referred to a judgment of the **Division Bench of Punjab & Haryana High Court deciding a bunch of about more than 100 writ petitions decided on 4-11-2019,** the lead case being **Adfert Technologies Pvt. Ltd. Vs. Union of India & Others**. In all these cases also the petitioners, for one reason or the other could not load the prescribed from electronically or they were facing some technical glitch in submitting the forms electronically and the High Court of Punjab & Haryana considering all the submissions made by the petitioners, so also by the counsel for the respondents, vide order dated 4-11-2019 allowed the writ petitions permitting them to submit TRAN-1 form.

**7.** Taking into consideration the aforesaid two judgments of the Madras High Court as well as the Punjab & Haryana High Court, this court is of the opinion that the respondent State authorities on the matter being referred to it by the High Court in the earlier round of litigation in WPT No.68 of 2018 should have considered the contentions of the petitioner raised by him in the said writ petition wherein itself he had categorically submitted that he has faced certain technical glitches while submitting TRAN-1 forms and the report in this regard was lodged on 26-12-2017 and he has lodged complaint in this regard to the authorities well before the last date. In addition, he has also manually submitted the same on 18-1-2018 and had also sent it by registered post on the same day. All these aspects have not been considered or decided by the Commissioner in his order dated 14-9-2018 in the absence of any reasons and discussion by the Commissioner to the contentions and submissions of the petitioner, this court is of the view that the said order dated 14-9-2018 needs to be reconsidered.

**8.** Accordingly, this court remits the matter back to the Commissioner, Commercial Tax for a reconsideration and for passing of a fresh order.

**9.** While remitting the matter, this court would like to bring to the notice of the Commissioner that he should keep in mind that the petitioner has produced certain documents of his being unable to submit his TRAN-1 form electronically; the complaint of which was submitted in the department; a document is there which shows the receipt of the complaint by the department before the last date i.e. 27-12-2017. In addition, there is also a document which shows that he had manually submitted it and had also sent it by registered post to the department within a period of less than three weeks from the last date of 27-12-2017.

**10.** Under the GST Law, Section 117(1)A, the GST Council has been empowered to extend the date for submission of the declaration electronically in Form GST TRAN-1 in respect of those persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension. If required, the Commissioner can refer the matter to the GST Council with its report for taking appropriate sanction/ recommendations from the GST Council.

**11.** Keeping in view the fact that the petitioner had timely intimated the department in respect of the technical glitch, in addition he had also promptly submitted his forms manually as well as had sent it by registered post; he had also approached the High Court immediately in the year 2018 itself which was refused by the Commissioner on 14-9-2018 thereafter again the petitioner has filed this present writ petition also immediately, thus, the petitioner has been promptly pursuing his claim all along thereafter on the basis of the recommendation, ireferred by the Commissioner to the GST council, appropriate decision may be taken at the earliest.

**12.** Considering the element of time which has consumed in the course of litigation, it is expected that the Commissioner, Commercial Tax shall take a decision at the earliest preferably within an outer limit of 60 days from the date of receipt of copy of this order.

**13.** In the event, if the Commissioner, Commercial Tax makes a reference to the GST Council, it is expected that the Council also, in turn, takes an early decision on the reference made by the Commissioner preferably within a period of 90 days from the date of receipt of reference by the Commissioner.

❑

**(2020) 65 TLD 293**

In the High Court of Madras
Hon'ble M.S. Ramesh, J.

**Jain Granites & Projects Pvt. Ltd.**

**Vs.**

**The Assistant Commissioner (CT)**

W.P. No. : 19162 of 2015 and M.P. No. : 1 of 2015

August 19, 2020

***Deposition : In favour of Petitioner***

**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.**

**Writ petition allowed**

**Cases referred :**

* Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another (2006) 146 STC 642 (MAD)

* Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing), Sankagiri and another (2015) 81 VST 560 (MAD).

Mr. P. Rajkumar for the petitioner.
Mr. Mohamed Shaffiq, Special Government Pleader for the respondent.

**:: ORDER ::**

The Writ Petition is heard through Video Conferencing on 3-8-2020. By consent of both the parties, the Writ Petition is taken up for final disposal.

**2.** One of the issues involved in the Writ Petition is that the impugned proceeding/notice is made on the basis of the Audit Reports/Inspection Proposals proceeded from the Enforement Wing or from ISIC Authorities. Among other grounds, the petitioner herein has raised a ground that the Assessing Officer, who is a Quasi Judicial Authority, has not independently applied his mind while dealing with the impugned proceedings, but had adopted the reports and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

**3.** This ground raised by the petitioner has been upheld by this Court in

various Writ Petitions holding that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement Wing Officers and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. Some of the decisions in which such a view has been taken are in the cases of ***Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another*** reported in ***2006 (146) STC 642 (MAD)*** and ***Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing), Sankagiri and another*** reported in ***2015 (81) VST 560 (MAD)***.

**4.** Such a ratio laid down by this Court in all the above Writ Petitions stand good till date and in these background, the Commissioner of State Tax, Chennai had issued Circular No.3 dated 18-1-2019, empowering the Assessing Authority to deviate from the proposals, without seeking for approval from the Enforcement Wing/ISIC Authorities. The relevant portion of Circular No.3 dated 18-1-2019 reads thus:-

> "b) If the Assessing Authority is of the view that the Audit report or Inspection proposals received from Enforcement wing or proposals received from ISIC are not in conformity with the Law or the established principles set by various higher judicial Forums and if he wishes to deviate from the proposals either partly or wholly, he himself can finalize the assessment or revision of assessment without seeking approval from the Enforcement Wing/ISIC Authorities who had approved the proposals, and reasons for the same to be recorded."

Thus, the Circular has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials.

**5.** In view of Circular No.3 dated 18-1-2019 issued by the Commissioner of State Tax, Chennai, the impugned proceeding in this Writ Petition, which proceeds on the basis of the proposals/reports of the Enforcement Wing/ ISIC, is set aside and consequently, the matter is remanded back to the Assessing Officer. The Assessee is granted liberty to file his objections with all supporting documents, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall extend due opportunity of personal hearing to the Assessee/Representative, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings independently and not being influenced by any of the reports or proposals of the Enforcement/ISIC Authorities. Such an

exercise shall be completed atleast within a period of 12 weeks from the date of receipt of the objections. In case, if the objections are not received within the date of expiry of 30 days from the date of receipt of a copy of this order, the Assessing Officer shall commence the assessment proceedings, after the expiry of the 30 days indicated above.

**6.** With the above observations and directions, the present Writ Petition stands thus allowed. No costs. Consequently connected Miscellaneous Petition is closed.

❑

**(2020) 65 TLD 295**

In the High Court of M.P.
Hon'ble Virender Singh, J.
**Amit Bothra**
MCRC No.: 21628/2020
**Ashok Dagar**
M.Cr.C No.: 21618/2020
**Vs.**
**State of M.P.**
July 27, 2020

***Deposition : In favour of petitioner***

**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.**

**Writ petition allowed**

**Cases referred :**

* C. Pradeep Vs. The Commissioner of GST and Central Excise Selman and Anr SLP 6834/2019
* D.K. Sethi Vs. Central Bureau of Investigation,
* Joti Prasad Vs. State of Haryana 1993 supp. SCC 497
* Lalit Kumar Gandhi Vs. State of MP
* Madhav Gopaldas Shah Vs. State of Gujarat
* Make My Trip Vs. UOI and Ors Delhi High Court WP (c) 525/2016 and C.M.2153/2016

* Mohit Vijay Vs. UOI (Rajasthan High Court)
* P. Chidambaram Vs. Directorate of Enforecement 2019 Lawsuit (SC) 1947
* P. V. Ramana Reddy Vs. UOI W.P. No.4764 of 2019
* Prasad Purshottam Mantri Vs. UOI and Ors
* Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr (2010) Vol.14 SCC 496
* Sandeep Kumar Bafna Vs. State of Maharashtra and Anr (2014) 16 SCC 623
* Sanjay Kumar Bhuwalka Vs. UOI 2018 SCC Online Cal 4674
* The State of Gujrat Vs. Mohanlal Jitamalji Porwal and others AIR 1987 SC 1321
* Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation Cr.A. No.730/2013 decided on 9th May, 2013

Shri Mukul Rohatgi, learned senior counsel with Shri Abhinav Dhanodkar, learned counsel for the petitioners.
Shri Vikramjit Banerjee, learned Additional Solicitor General along with Shri Prasanna Prasad, learned counsel for the respondent/Union of India.

**:: ORDER ::**

**1.** Both these petitions have arisen out of the same crime number of the same office/police station, therefore, they are heard together and are being decided by this common order.

**2.** These are the first applications under section 439 of the Cr.P.C. in crime no.23/2020 registered under section 132(1)(a)(i) of the Goods and Services Tax Act (hereinafter referred to as "GST Act"), Ss. 409, 467, 471, 120-B of the IPC by the Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District Indore (here-in-after referred to as the 'Department').

**3.** The case of the prosecution in brief is that the officials of the department received intelligence input that one Pakistani national Sanjay Matta is indulged in clandestine clearance of mouth freshener, commonly known as *"Pan Masala"*, without payment of GST. Acting on this information, several searches were conducted at various places between 30-5-2020 to 2-6-2020 and unaccounted goods worth Rs. 2.59 crores were found in different

godowns of Mr. Matta, which were seized. Subsequent information received during led to the search of premises of transporter M/s Ashu Roadlines, Indore. During this search 10 vehicles, unaccounted Pan Masala, its packing material and some raw material was seized. The Pan Masala was found to be of 'Vimal' brand manufactured by M/s Vishnu Essence, Sanwer Road, Indore. The truck drivers also confirmed clandestine transportation of Pan Masala. Information extracted from the mobile of an employee of Aashu Roadlines Mr. Sameer Khan, indicated that the firm M/s Vishnu Essence had procured large quantities of raw material and packing material from Ahmadabad clandestinely and had supplied the finished goods in the same manner to M/s AAA Enterprises, Indore. The petitioners Amit Bothara and Ashok Daga are partners of the firm M/s Vishnu Essence. They were called and interrogated. They confessed in their statements recorded under Section 70 of the GST Act that their firm had supplied Vimal brand Pan Masala worth Rs.320 crores clandestinely and has evaded payment of the GST to the tune of Rs.225 crores. Subsequent search of various places and statements of various persons further confirmed the aforesaid tax evasion. Following the due process, the petitioners were taken into custody and booked in the aforementioned crime.

**4.** Refuting all the allegations made by the prosecution, it is submitted by the learned senior counsel for the petitioners that the firm M/s Vishnu Essence is duly registered with the GST vide registration no.23AAQFV6401JIZZ. The firm is honestly doing its business. It is paying GST to the tune of Rs.7-8 crores per month on an average on the sales. Their product contains 85% betel nut (Supari) and 15% Sugandh, Kattha, Elaichi (perfume, catechu, cardamom) etc. Supari is purchased from the undertakings/ companies of the government or from the societies run by the government; therefore, clandestine purchase is not possible. Rest of the raw material is purchased from the open market but only from the traders duly registered under the GST through invoices. Therefore, there has never been any scope to evade the tax.

**5.** It is asserted that the petitioners have never confessed anything before the officials. Their statements were recorded under threat and pressure. They retracted them immediately after coming out of the fear.

**6.** It is further averred that the petitioners were doing their business honestly and were paying GST to the tune of Rs. 7 crore per month regularly, but due to unprecedented circumstances of spread of COVID-19 pandemic

and complete lockdown pursuant thereto; there was some delay in paper work and submission of the invoices etc. Taking advantage of this beyond control peculiar circumstance, the officials of the department abused their authority, presumed the tax evasion and assessed the amount only on the basis of their conjecture and surmises as there was no production during the period of lockdown. Nil electricity consumption establishes the fact of closure of the factory during this period. Therefore, the allegation of evasion of tax is false and frivolous from it's very foundation.

**7.** It is also submitted that the petitioners were earlier paying GST honestly and are also ready to pay the same in future. Though under pressure, but they have already paid Rs. 7 crores and are still ready to pay the deficit, if any, found due on the final assessment.

**8.** It is argued that the dispute is only a revenue matter. The alleged evasion is assessed about Rs. 7 crores. Despite their right to challenge the assessment by depositing 10% of the amount assessed, they have deposited entire amount of Rs. 7 crores.

**9.** It is asserted that the petitioners have no connection with Pakistani national Sanjay Matta or alleged main accused Kishore Wadhwani.

**10.** It is further argued that the petitioners have been falsely implicated in the case. The officials have acted maliciously. The allegation made against them is vague. There is no incriminating evidence or supporting documents qua the petitioners. Details of alleged tax evasion have not been supplied to them. Their custody is illegal as there is no evidence to show that the officials were having "reasons to believe" that their custody was necessary. The department has not sought their police remand. This shows that there detention was unnecessary and illegal. The sole basis of their arrest is their statements recorded by the officials, but the same were recorded under threat and pressure and have been retracted immediately. Procedure prescribed under Ss. 67, 69, 74, 134,136, 138 of the GST Act and S.41A of Cr.P.C. for arrest, recording of statement, search and seizure has not been followed. The dispute is entirely covered under Section 132 of the G.S.T. Act. Initially the offence was also registered under the same Section. Offences under Sections 409, 467, 471 and 120-B IPC are not made out. Record shows that these offences have been added by the officials at a later stage merely with intent to harass the petitioners.

**11.** It is also stated that the petitioners are in custody since 11-6-2020 and are in jail since 13-6-2020. Their custodial interrogation is not required. 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. They are paying around 70-80 crores G.S.T. per anum on an average. Their detention would cause loss of this amount to the State exchequer. About 150 workers are working in the firm of the petitioners. In case of their detention, the work of the firm will be at a halt and hence, affect the survival of the families of those 150 workers. The offence is punishable with maximum 5 years imprisonment and is triable by the Judicial Magistrate First Class. The petitioners are ready to abide by the terms and conditions to be imposed by this Court, therefore, it is prayed that they be granted bail.

**12.** The petitioners have relied upon **Joti Prasad Vs. State of Haryana 1993 supp. SCC 497, P. Chidambaram Vs. Directorate of Enforecement 2019 Lawsuit (SC) 1947, D.K. Sethi Vs. Central Bureau of Investigation, Prasanta Kumar Sarkar Vs. Ashis Chatterjee (2010) 14 SCC 496, Sandeep Kumar Bafna Vs. State of Maharashtra (2014) 16 SCC 623, C. Pradeep Vs. The Commissioner of GST and Central Excise Selman and Anr SLP 6834/2019, Madhav Gopaldas Shah Vs. State of Gujarat, Prasad Purshottam Mantri Vs. UOI, Sanjay Kumar Bhuwalka Vs. UOI 2018 SCC Online Cal 4674, Mohit Vijay Vs. UOI (Rajasthan High Court), Lalit Kumar Gandhi Vs. State of MP and Make My Trip Vs. UOI Delhi High Court WP (c) 525/2016 and C.M.2153/2016**.

**13.** Stand taken by the department is that the petitioners have a very proximate nexus to the entire syndicate involved in clandestine manufacturing of pan masala and have caused huge loss to the sovereign exchequer. Acting on the intelligence information, when several persons were interrogated and search of several places was conducted, tax evasion of crores of rupees was detected. Still the investigation is going on. As many as 11 searches and 14 statements have been recorded after the arrest of the petitioners. In all possibilities the magnitude of the offence would increase in many folds. Release of the petitioners would hamper the investigation, which is at very crucial stage, therefore, it is prayed that they be not granted bail.

**14.** It is submitted that during the course of investigating very clinching and cogent evidence has been unearthed which indicates that in connivance with each other, the petitioners as well as other wrongdoers have adopted a peculiar modus operandi for clandestine manufacturing and sale of pan masala. The petitioners are not merely benefactors of illegal activities, but had a very proximate nexus with the entire band of persons involved in the

said syndicate. Investigation revealed that Mr. Vijay Kumar Nair of M/s. AAA Enterprises is the front man of Kishore Wadhwani. Kishore Wadhwani is the kingpin of the entire illegal procurement, production and supply chain of pan masala clandestinely. Investigation has further revealed that the petitioners had procured raw materials of pan masala and packing material from Ahmadabad and various other cities in Gujarat in clandestine manner and supplied manufactured pan masala to M/s. AAA Enterprises without invoices and payment of G.S.T.

**15.** Sale and distribution of pan masala has been completely banned across the country due to pandemic induced lockdown from 25th March, 2020 considering its risk in spread of Covid-19 infection. In spite of the strict restriction, the petitioners' firms took undue benefit of this emergent situation and supplied their finished goods clandestinely in the State of Madhya Pradesh in connivance with M/s. AAA Enterprises. In view of the seriousness of the offence committed by the petitioners, they were arrested under Section 69 of the G.S.T. Act, 2017. As per Section 132(5), since the G.S.T. evasion detected is more than five crores rupees, the offence is cognizable and nonbailable. There is every likelihood of the petitioners affecting the investigation and tampering with the witness. The officials of the DGGI were assaulted when they tried to search the house of Kishore Wadhwani for which an FIR is lodged with Police Station—Juni, Indore.

**16.** In the case of **P. V. Ramana Reddy Vs. UOI W.P. No.4764 of 2019** at paras 56 and 57, the Telangana High Court has observed that the object of arrest is to prevent a person from committing any offence or from causing the evidence of the offence to disappear or tempering with such evidence in any manner or to prevent such person from any inducement, threat or promise to any person acquainted with the facts of the case and to do proper investigation or inquiry. The Hon'ble Supreme Court in **SLP (Crl.)4430/ 2019** has upheld this observation the High Court of Telangana.

**17.** The Hon'ble Supreme Court in **Cr.A. No.730/2013** decided on 9th May, 2013 in the case of **Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation** has observed in para 34 that the Economic Offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offence affecting the economy of the country as a whole and thereby posting serious threat to the financial health of the country.

Therefore, the petitioners be not granted bail.

**18.** Reliance has also been placed on **The State of Gujrat Vs. Mohanlal Jitamalji Porwal and others** reported in **AIR 1987 SC 1321.**

**19.** Provisions of section 69, 70, 131, 133, 135, 136 of the GST Act have been referred by the learned counsel for the respondent/UOI.

**20.** I have heard the learned senior counsels at length and have perused the record supplied by the department.

**21.** On careful consideration of nature and gravity of the allegation made against the petitioners and the specific evidence collected in respect of these allegations, elaborate discussion of which would not be apt as it may adversely affect the interest of either party, the specific facts put-forth by the learned senior counsels for the petitioners and their reply and other facts and circumstances of the case, in the considered opinion of this court, the case for granting bail is made out. Therefore, without commenting on the merits of the case, both the petitions stand allowed.

**22.** It is directed that the petitioners **Amit S/o Shri Shubhkaran Ji Bothara** and **Ashok Daga S/o Shri Ghawarchand Daga** be released from custody on their furnishing a personal bond in the sum of **Rs.5,00,000/- (Rupees Five Lakhs Only) each** with separate sureties to the satisfaction of the Trial Court for their appearance before it as and when required further subject to the following conditions :-

(i) The petitioners shall co-operate with the trial and shall not seek unnecessary adjournments on frivolous grounds to protract the trial.;
(ii) The petitioners shall not directly or indirectly allure or make any inducement, threat or promise to the prosecution witnesses, so as to dissuade him from disclosing truth before the Court;
(iii) The petitioners shall not commit any offence or involve in any criminal activity;
(iv) In case of their involvement in any other criminal activity or breach of any other aforesaid conditions, the bail granted in this case may also be cancelled.
(v) The petitioners shall submit their passports, if any, before the Trial Court and shall not leave India without prior permission of this Court.

**23.** Index of the file supplied by the respondent be retained in the record and the file be returned in sealed cover.

❑

**(2020) 65 TLD 302**

In the High Court of M.P.
Hon'ble Virender Singh, J.

**Vijay Kumar Nair**

**Vs.**

**State of M.P.**

M.Cr.C. No.: 23289 of 2020

August 13, 2020

***Deposition : In favour of Petitioner***

**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.**

**Writ petition allowed**

Shri Sanjay Agrawal, learned Senior Counsel with Shri N. L. Tiwari, learned Counsel for the petitioner.

Shri Vikramjit Banerjee, learned Additional Solicitor General along with Shri Prasanna Prasad, learned counsel for the respondent/Union of India.

**:: ORDER ::**

**Heard with consent of the parties through Video Conferencing.**

**1.** This is the first application under section 439 of the Cr.P.C. in crime no.23/2020 registered under section 132(1)(a)(i) of the Goods and Services Tax Act (hereinafter referred to as "GST Act"), Ss. 409, 467, 471, 120-B of the IPC by the Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District Indore (here-in-after referred to as the 'Department').

**2.** At the outset, learned Senior Counsel for the petitioner claimed parity with co-accused - Amit Bothra and Ashok Daga, who have been granted bail by this Court vide order dated 27-7-2020 passed in **M.Cr.C. Nos.21628/2020 and 21618/2020** respectively.

**3.** He further asserted that rather the case of the petitioner is on better footing than the case of co-accused - Amit Bothra and Ashok Daga, because all the allegations of the department of tax evasion are against their firm M/s. Vishnu Essence, while the petitioner is neither a partner nor in any other way concerned or connected with the firm. He is proprietor of the firm M/s. AAA Enterprises. As per the prosecution case itself, he was only a

trader, supplier or commission agent of the firm Vishnu Essence. There is no allegation of the department that he clandestinely removed or transported Pan Masala. No document to show that any goods was procured, received or sold without invoices is produced.

**4.** It is contended that the entire case of the respondent is based on the statement of the petitioner recorded under Section 7o of the Act, which was recorded under coercion and duress and was retracted immediately after coming out of the pressure. Simply on the basis of suspicion, conjecture and involuntary confessions, no offence can be made out against the petitioner.

**5.** Besides, the advance age (63 years), ailment (BP & Respiratory problems) and high risk to the life of such person due to spread of Covid-19 virus generated pandemic have also been taken as additional grounds for pressing the bail.

**6.** Learned Additional Solicitor General contested the parity as claimed by the learned Senior Counsel for the petitioner. However, nothing substantial could be pointed out to distinguish the case of the petitioner from the case of the co-accused Amit Bothra and Ashok Daga.

**7.** The fact that the petitioner is neither partner nor in any other way connected with the firm M/s. Vishnu Essence is not rebutted.

**8.** For the sake of convenience, facts and other contention of the parties can be borrowed from the order passed in the case of Amit Bothra and Ashok Daga, relevant part of which is being reproduced below:-

> "1. Both these petitions have arisen out of the same crime number of the same office/police station, therefore, they are heard together and are being decided by this common order.
>
> 2. These are the first applications under section 439 of the Cr.P.C. in crime no.23/2020 registered under section 132(1)(a)(i) of the Goods and Services Tax Act (hereinafter referred to as "GST Act"), Ss. 409, 467, 471, 120-B of the IPC by the Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District Indore (here-in-after referred to as the 'Department').
>
> 3. The case of the prosecution in brief is that the officials of the department received intelligence input that one Pakistani national Sanjay Matta is indulged in clandestine clearance of mouth freshener, commonly known as *"Pan Masala"*, without payment of GST. Acting

on this information, several searches were conducted at various places between 30-5-2020 to 2-6-2020 and unaccounted goods worth Rs.2.59 crores were found in different godowns of Mr. Matta, which were seized. Subsequent information received during search led to the search of premises of transporter M/s. Ashu Roadlines, Indore. During this search 10 vehicles, unaccounted Pan Masala, its packing material and some raw material was seized. The Pan Masala was found to be of 'Vimal' brand manufactured by M/s. Vishnu Essence, Sanwer Road, Indore. The truck drivers also confirmed clandestine transportation of Pan Masala. Information extracted from the mobile of an employee of Aashu Roadlines Mr. Sameer Khan, indicated that the firm M/s. Vishnu Essence had procured large quantities of raw material and packing material from Ahmadabad clandestinely and had supplied the finished goods in the same manner to M/s. AAA Enterprises, Indore. The petitioners Amit Bothara and Ashok Daga are partners of the firm M/s. Vishnu Essence. They were called and interrogated. They confessed in their statements recorded under Section 70 of the GST Act that their firm had supplied Vimal brand Pan Masala worth Rs.320 crores clandestinely and has evaded payment of the GST to the tune of Rs.225 crores. Subsequent search of various places and statements of various persons further confirmed the aforesaid tax evasion. Following the due process, the petitioners were taken into custody and booked in the aforementioned crime.

4. Refuting all the allegations made by the prosecution, it is submitted by the learned senior counsel for the petitioners that the firm M/s. Vishnu Essence is duly registered with the GST vide registration no.23AAQFV6401JIZZ. The firm is honestly doing its business. It is paying GST to the tune of Rs.7-8 crores per month on an average on the sales. Their product contains 85% betel nut (Supari) and 15% Sugandh, Kattha, Elaichi (essence, catechu, cardamom) etc. Supari is purchased from the undertakings/companies of the government or from the societies run by the government; therefore, clandestine purchase is not possible. Rest of the raw material is purchased from the open market but only from the traders duly registered under the GST through invoices. Therefore, there has never been any scope to evade the tax.

5. It is asserted that the petitioners have never confessed anything before the officials. Their statements were recorded under threat and pressure. They retracted them immediately after coming out of the fear.

6. It is further averred that the petitioners were doing their business honestly and were paying GST to the tune of Rs. 7 crore per month regularly, but due to unprecedented circumstances of spread of COVID-19 pandemic and complete lockdown pursuant thereto; there was some delay in paper work and submission of the invoices etc. Taking advantage of this beyond control peculiar circumstance, the officials of the department abused their authority, presumed the tax evasion and assessed the amount only on the basis of their conjecture and surmises as there was no production during the period of lockdown. Nil electricity consumption establishes the fact of closure of the factory during this period. Therefore, the allegation of evasion of tax is false and frivolous from it's very foundation.

7. It is also submitted that the petitioners were earlier paying GST honestly and are also ready to pay the same in future. Though under pressure, but they have already paid Rs. 7 crores and are still ready to pay the deficit, if any, found due on the final assessment.

8. It is argued that the dispute is only a revenue matter. The alleged evasion is assessed about Rs. 7 crores. Despite their right to challenge the assessment by depositing 10% of the amount assessed, they have deposited entire amount of Rs. 7 crores.

9. It is asserted that the petitioners have no connection with Pakistani national Sanjay Matta or alleged main accused Kishore Wadhwani.

10. It is further argued that the petitioners have been falsely implicated in the case. The officials have acted maliciously. The allegation made against them is vague. There is no incriminating evidence or supporting documents qua the petitioners. Details of alleged tax evasion have not been supplied to them. Their custody is illegal as there is no evidence to show that the officials were having "reasons to believe" that their custody was necessary. The department has not sought their police remand. This shows that there detention was unnecessary and illegal. The sole basis of their arrest is their statements recorded by the officials, but the same were recorded under threat and pressure and have been retracted immediately. Procedure prescribed under Ss. 67, 69, 74, 134,136, 138 of the GST Act and S.41A of Cr.P.C. for arrest, recording of statement, search and seizure have not been followed. The dispute is entirely covered under Section 132 of the G.S.T. Act. Initially the offence was also registered under

the same Section. Offences under Sections 409, 467, 471 and 120-B IPC are not made out. Record shows that these offences have been added by the officials at a later stage merely with intent to harass the petitioners.

11. It is also stated that the petitioners are in custody since 11-6-2020 and are in jail since 13-6-2020. Their custodial interrogation is not required. 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. They are paying around 70-80 crores G.S.T. per anum on an average. Their detention would cause loss of this amount to the State exchequer. About 150 workers are working in the firm of the petitioners. In case of their detention, the work of the firm will be at a halt and hence, affect the survival of the families of those 150 workers. The offence is punishable with maximum 5 years imprisonment and is triable by the Judicial Magistrate First Class. The petitioners are ready to abide by the terms and conditions to be imposed by this Court, therefore, it is prayed that they be granted bail.

12. The petitioners have relied upon ***Joti Prasad Vs. State of Haryana 1993 supp. SCC 497, P. Chidambaram Vs. Directorate of Enforecement 2019 Lawsuit (SC) 1947, D.K. Sethi Vs. Central Bureau of Investigation, Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr (2010) Vol.14 SCC 496, Sandeep Kumar Bafna Vs. State of Maharashtra and Anr (2014) 16 SCC 623, C. Pradeep Vs. The Commissioner of GST and Central Excise Selman and Anr SLP 6834/2019, Madhav Gopaldas Shah Vs. State of Gujarat, Prasad Purshottam Mantri Vs. UOI and Ors, Sanjay Kumar Bhuwalka Vs. UOI 2018 SCC Online Cal 4674, Mohit Vijay Vs. UOI (Rajasthan High Court), Lalit Kumar Gandhi Vs. State of MP and Make My Trip Vs. UOI and Ors Delhi High Court WP (c) 525/2016 and C.M.2153/2016***.

13. Stand taken by the department is that the petitioners have a very proximate nexus to the entire syndicate involved in clandestine manufacturing of pan masala and have caused huge loss to the sovereign exchequer. Acting on the intelligence information, when several persons were interrogated and search of several places was conducted, tax evasion of crores of rupees was detected. Still the investigation is going on. As many as 11 searches and 14 statements

have been recorded after the arrest of the petitioners. In all possibilities the magnitude of the offence would increase in many folds. Release of the petitioners would hamper the investigation, which is at very crucial stage, therefore, it is prayed that they be not granted bail.

14. It is submitted that during the course of investigating very clinching and cogent evidence has been unearthed which indicates that in connivance with each other, the petitioners as well as other wrongdoers have adopted a peculiar modus operandi for clandestine manufacturing and sale of pan masala. The petitioners are not merely benefactors of illegal activities, but had a very proximate nexus with the entire band of persons involved in the said syndicate. Investigation revealed that Mr. Vijay Kumar Nair of M/s.. AAA Enterprises is the front man of Kishore Wadhwani. Kishore Wadhwani is the kingpin of the entire illegal procurement, production and supply chain of pan masala clandestinely. Investigation has further revealed that the petitioners had procured raw materials of pan masala and packing material from Ahmadabad and various other cities in Gujarat in clandestine manner and supplied manufactured pan masala to M/s.. AAA Enterprises without invoices and payment of G.S.T.

15. Sale and distribution of pan masala has been completely banned across the country due to pandemic induced lockdown from 25th March, 2020 considering its risk in spread of Covid-19 infection. In spite of the strict restriction, the petitioners' firms took undue benefit of this emergent situation and supplied their finished goods clandestinely in the State of Madhya Pradesh in connivance with M/s.. AAA Enterprises. In view of the seriousness of the offence committed by the petitioners, they were arrested under Section 69 of the G.S.T. Act, 2017. As per Section 132(5), since the G.S.T. evasion detected is more than five crores rupees, the offence is cognizable and non-bailable. There is every likelihood of the petitioners affecting the investigation and tampering with the witness. The officials of the DGGI were assaulted when they tried to search the house of Kishore Wadhwani for which an FIR is lodged with Police Station—Juni, Indore.

16. In the case of ***P. V. Ramana Reddy Vs. UOI W.P. No.4764 of 2019*** at paras 56 and 57, the Telangana High Court has observed that the object of arrest is to prevent a person from committing any

offence or from causing the evidence of the offence to disappear or tempering with such evidence in any manner or to prevent such person from any inducement, threat or promise to any person acquainted with the facts of the case and to do proper investigation or inquiry. The Hon'ble Supreme Court in ***SLP (Crl.)4430/2019*** has upheld this observation the High Court of Telangana.

17. The Hon'ble Supreme Court in ***Cr.A. No.730/2013*** decided on 9th May, 2013 in the case of ***Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation*** has observed in para 34 that the Economic Offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offence affecting the economy of the country as a whole and thereby posting serious threat to the financial health of the country. Therefore, the petitioners be not granted bail.

18. Reliance has also been placed on ***The State of Gujrat Vs. Mohanlal Jitamalji Porwal*** reported in ***AIR 1987 SC 1321.***

19. Provisions of section 69, 70, 131, 133, 135, 136 of the GST Act have been referred by the learned counsel for the respondent/UOI.

20. I have heard the learned senior counsels at length and have perused the record supplied by the department.

21. On careful consideration of nature and gravity of the allegation made against the petitioners and the specific evidence collected in respect of these allegations, elaborate discussion of which would not be apt as it may adversely affect the interest of either party, the specific facts put-forth by the learned senior counsels for the petitioners and their reply and other facts and circumstances of the case, in the considered opinion of this court, the case for granting bail is made out. Therefore, without commenting on the merits of the case, both the petitions stand allowed.

22. It is directed that the petitioners **Amit S/o Shri Shubhkaran Ji Bothara** and **Ashok Daga S/o Shri Ghawarchand Daga** be released from custody on their furnishing a personal bond in the sum of **Rs.5,00,000/- (Rupees Five Lakhs Only) each** with separate sureties to the satisfaction of the Trial Court for their appearance before

it as and when required further subject to the following conditions :-

(i) The petitioners shall co-operate with the trial and shall not seek unnecessary adjournments on frivolous grounds to protract the trial.;

(ii) The petitioners shall not directly or indirectly allure or make any inducement, threat or promise to the prosecution witnesses, so as to dissuade him from disclosing truth before the Court;

(iii) The petitioners shall not commit any offence or involve in any criminal activity;

(iv) In case of their involvement in any other criminal activity or breach of any other aforesaid conditions, the bail granted in this case may also be cancelled.

(v) The petitioners shall submit their passports, if any, before the Trial Court and shall not leave India without prior permission of this Court."

**9.** I have considered the rival contentions of the parties and have gone through the documents produced before the Court as well as the statements recorded under Section 70 of the G.S.T. Act..

**10.** On due consideration of the allegation against the petitioner, evidence produced before the court to show his involvement, the act attributed to him, the part played by him in the alleged tax evasion, parity of his case with the case of the co-accursed persons who have been granted bail and other facts and circumstances of the case, I deem it appropriate to allow the application. Therefore, without commenting on the merits of the case, the petition is allowed on the same terms, as is allowed in the case of coaccused Amit Bothra and Ashok Daga.

**11.** All the pending IAs, if any, stand closed.

❑

**(2020) 65 TLD 309** In the High Court of M.P.

Hon'ble Ajay Kumar Mittal, CJ. & Vijay Kumar Shukla, J.

**Jagdish Arora and another**

**Vs.**

**Union of India**

M.Cr.C. No.: 24219/2020

August 18, 2020

***Deposition : In favour of Petitioner***

**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.**

**Writ petition allowed**

**Cases referred :**

* Akhil Krishan Maggu and another Vs. Deputy Director, DGGI and Ors – C.W.P. No.24195/2019 (OM)
* Akshay Dinesh Patel Vs. Commissioner of Central Goods and Services Tax (R/Crl Misc. Application No.1442 of 2020) (Guj)
* Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273 (SC)
* C. Pradeep Vs. Commissioner of GST, dated 6-8-2019 (SC)
* K.K. Ahuja Vs. V.K. Vora and another, (2009) 10 SCC 48 (SC)
* M. Jayachandran Alloys Pvt. Ltd. Vs. Superintendent of GST and Central Excise W.P. No. 5501/2019 (Mad)
* Make My Trip (MMT) Vs. Union of India (2016) 44 STR 481 (Delhi)
* N. Nagendra Rao and Co. Vs. State of A.P., AIR 1994 SC 2663 (SC)
* P.V. Ramana Reddy Vs. Union of India W.P. No. 4764/2019 (TS)
* P.V. Ramana Reddy Vs. Union of India Special Leave to Appeal (Criminal) No. 4430/2019 (SC)
* Ram Govind Upadhyay Vs. Sudarshan Singh, AIR 2002 SC 1475
* Sanjay Kumar Bhuwalka Vs. Union of India CRM No.3327 of 2018 (Cal)
* Som Distilleries Vs. Directorate of GST & Others W.P. No. 9650/2020 (MP)

Shri Mukul Rohatgi, Senior Advocate with Shri Ajay Gupta, Shri Rahul Diwaker, Shri Kapil Wadhwa and Shri Ravi Kant Patidar, Advocates for the applicants.

Shri Vikram Jeet Banerjee, Additional Solicitor General and Shri Siddharth Seth, Advocates for the respondent/Union of India.

**:: ORDER ::**

The Order of the Court was made by **VIJAY KUMAR SHUKLA, J. :**

***Hearing convened through video conferencing.***

**2.** This is the first bail application filed under Section 439 of the Code of Criminal Procedure [for short "the CrPC"] on behalf of the applicants, namely, Jagdish Arora and Ajay Kumar Arora, who have been taken into judicial custody in connection with Crime No.DGGI/BhZU/1204/03/2020-21/SDPL, registered at the Central Goods and Service Tax, Bhopal, in respect of the offence punishable under Section 132(1)(a) read with section 132(1)(i) of the Central Goods and Service Tax Act, 2017 [hereinafter referred to as "the CGST Act"].

**3.** The bail application preferred by the applicants under Section 437 of the CrPC before the learned Judicial Magistrate First Class, Bhopal, was rejected on 14-7-2020. Thereafter, they moved an application before the Court of Sessions under Section 439 of the CrPC, which also faced dismissal *vide* impugned order dated 16-7-2020.

**4.** Shorn of unnecessary details : the factual expose' adumbrated in a nutshell, are that the applicants were taken into custody by the Central Goods and Service Tax Department (CGST Department) on 7-7-2020, while their formal arrest was shown on 8-7-2020 under Section 69 of the CGST Act, and they have been in jail since 9-7-2020. The instant case arises out of proceedings initiated by the CGST Department in relation to purported evasion of Goods and Service Tax (GST) by the Company – Som Distilleries Pvt. Ltd. [hereinafter referred to as "SDPL"] purportedly leviable and evaded on account of production and sale of sanitizers.

**5.** At the outset, the petitioners claimed that neither Jagdish Arora nor Ajay Kumar Arora, the applicants herein, are Directors/ Managers/Officers/ employees or authorized representatives of the SDPL and as such, they are not responsible for the day-to-day business affairs of the Company. In fact, both the applicants had resigned their Directorship from the SDPL on 01-4-2009, i.e. nearly 11 years ago. A certified copy of Form-32 having the details of resignation from the Directorships is appended to the application as Annexure-P/3. It is asserted that the CGST Department, however, has not collected or placed on record even an iota of documentary evidence in order to substantiate their version. It is strenuously urged that the applicants are entitled to bail on this ground alone.

**6.** It is putforth that initially the GST authorities had communicated that the demand of GST liability was made to the extent of Rs. 7,96,00,000/-. Thus, in order to demonstrate its *bona fide* the SDPL immediately deposited

Rs. 8 crores under protest. According to the petitioners the CGST Department has now increased the purported liability to Rs. 33 crores as an afterthought.

**7.** It is argued that the instant arrest proceedings are completely premature, as till date the assessment proceedings have not commenced and, therefore, there is no concretized liability that the GST Department can fasten on the SDPL. To bolster the submission, reliance is placed on the decisions of the High Court of Madras in the case of **M. Jayachandran Alloys Pvt. Ltd. Vs. Superintendent of GST and Central Excise – W.P. No.5501/2019** and the Delhi High Court in **Make My Trip (MMT) Vs. Union of India, 2016 (44) STR 481 (Delhi),** confirmed by the Supreme Court in the judgment rendered in the case of **Akhil Krishan Maggu and another Vs. Deputy Director, DGGI and Ors – C.W.P. No.24195/2019 (OM)**.

**8.** It is stated on behalf of the applicants that the SDPL is a private limited company which was incorporated in the year 1986 under the provisions of the Companies Act, 1956. The SDPL is engaged in the business of manufacture and sale of alcohol based products and has made its mark across the country, primarily on account of consistently and uniformly manufacturing high quality products. It is a significant and honest contributor towards the Government exchequer and contributes about Rs. 38 crores annually on account of various taxes. The company also provides employment to about 800-1000 persons across India.

**9.** It is pleaded that prior to March, 2020 the SDPL was not manufacturing sanitizers. On 19-3-2020 vide order No.1(2)/2020- SP-1 the Government of India directed the Chief Secretaries of all States to initiate steps to enhance production of hand sanitizers and further accord necessary permission to sanitizer manufacturers and distilleries, which on account of having existing infrastructure and ability to manufacture alcohol based products, could easily manufacture sanitizers. This was done to meet the increased demand in order to curb the spread of the COVID-19 pandemic.

**10.** Accordingly the State of Madhya Pradesh issued a licence to the SDPL to manufacture hand rub sanitizer for the period 24-3-2020 to 30-6-2020. Subsequently, the licence was extended by the State of Madhya Pradesh, till 30-6-2025.

**11.** On 4-4-2020, the SDPL was granted a certificate of approval by the Government Analyst, who confirmed the fact that the sanitizers produced by

the Company were in conformity with the prescribed standards. The SDPL commenced production of hand sanitizers on 25-3-2020. As hand sanitizers are also an alcohol based product, manufacturing of the same is heavily regulated and monitored by the State Excise Department. Furthermore, even the raw material for the production of the hand sanitizer which is Rectified Spirit (RS) or ENA, also known as Neutral Spirit, is a controlled substance and the usage and manufacturing of which is monitored by the Excise Department.

**12.** It is next pleaded that as per Distillery, Bottling and Warehouse Rules, made under the Madhya Pradesh Excise Act, 1915, the manufacturing premises are under the direct control of an Excise Officer, who oversees the factory for 24 hrs. The said officer is responsible for monitoring the production carried out at such controlled premises and the dispatches/supply of all alcohol based products from the premises. The Excise Officer has issued a certificate dated 30-6-2020 certifying that the total production of hand sanitizer by the SDPL till 30-6-2020 has been 2090245 litres and that the company has supplied a total of 917721.46 litres of sanitizer. A copy of the said certificate is appended as Annexure- P/8.

**13**. It is asseverated that the SDPL has filed its GST returns for March and April, 2020, wherein the GST Tax has been paid at Rs.1,72,03,623/-. The due date for GSTR 3B return for the month of May, 2020 was 27th June 2020 and GSTRI due date is 28th July 2020, which are yet to be filed. The Central Board of Indirect Taxes has extended the limitation for filing of GST returns, vide Notifications dated 03-4-2020 and 24-6-2020, therefore, the Company is not in breach of any statutory or regulatory deadlines and it has fully complied with the GST regime.

**14.** The GST Department carried out search and seizure proceedings at the premises of the SDPL on 26-6-2020 which continued till 28-6-2020 and thereafter, on 30-6-2020. It is the case of the applicants that the search proceedings were carried out in complete derogation of the procedure envisaged in law and in violation of COVID-19 Guidelines. The search warrants have not been provided/served/shown to responsible persons; documents have been seized without proper inventory and without providing copies thereof, stock is being taken randomly without the aid of SDPL's Store Manager; and proper *panchnamas* are not being prepared and served by the respondent. It is canvassed that because of above-mentioned irregularities, several employees of the Company were abused, humiliated and even

assaulted. They are being interrogated rigorously till late hours and are not being spared and allowed to go home, nor they have been allowed to meet their lawyers. It is averred that a false declaration about permitting the applicants to meet their lawyers has been made in the memo of arrest. Further, the employees of the Company have been physically tortured and beaten up inhumanly.

**15.** It is further argued on behalf of the applicants that being aggrieved by the action of the GST Department, the SDPL has preferred a writ petition before this Court forming the subject-matter of **W.P. No.9650/2020 [Som Distilleries Vs. Directorate of GST & Others]**, wherein notice has been issued to the respondents vide order dated 14-7-2020.

**16.** It is also contended that the levy of GST in the present case is illegal as the GST is to be paid on the actual amount of sale consideration. A dispute is raised about the GST to be paid by the Company as both, the quantity and the valuation are based on hypothetical reasonings.

**17.** The action of the CGST authorities has also been challenged as they have committed deliberate and egregious errors in valuation of the purported GST liability of the SDPL, in order to bring the alleged acts within the purview of Section 132(5) of the CGST Act. The GST authorities have committed mischief in valuation of the hand rub sanitizer manufactured by the SDPL with the sole motive of taking the alleged tax evasion above Rs.500 lacs. The case of the GST Department is completely contrary to the figures certified by the Excise Department. A comparative chart of CGST and actual figures of the Excise Department has been reproduced in the application. On the basis of the figures enumerated in the chart it is submitted that the figure for total production, supply and closing stock of sanitizer, as estimated by the CGST, is not correct and the same is based on hypothetical reasoning. The basis of calculation made by the GST Department is completely erroneous and contrary to law.

**18.** It is also asseverated that for the sake of argument, even if the allegations of GST authorities are taken at the face value, the GST assessable upon the sale of sanitizer viz. 'Genius' at most, ought to be valued as follows :

| **Sr. No.** | **Particulars as alleged by the GST Authorities** | **GST Payable** |
|---|---|---|
| 1. | "Clandestine" production and supply of alleged 5,35,000 litres Genius Sanitizer. (Communicated | Rs. 80 lacs |

orally on 11-7-2020)

| | | |
|---|---|---|
| 2. | Qty. of Genius sanitizer to the tune of 3,47,000 litres seized at Biscuit and Basket Warehouse of Som Distilleries Pvt. Ltd. (which in fact, have not been sold and were stored for buffer purposes). | Rs. 52 lacs |
| 3. | Genius Sanitizer seized at job work site of Som Distilleries and Breweries Ltd. (unsold stock). | Rs. 23.50 lacs |
| 4. | Genius sanitizer seized at various warehouses in various cities of around 38,000 litres (unsold stock). | Rs. 04.45 lacs |
| 5. | Stock Transfer of Genius Sanitizer | Rs. 09.80 lacs |
| | **TOTAL** | **Rs.169.75 lacs** |

**19.** It is also submitted on behalf of the applicants that although the Company is disputing any demand of the GST authorities, but in order to demonstrate its *bonafide* the Company has already deposited Rs.8 crores towards GST, under protest. To substantiate the submission a reference is made to the order of the Apex Court passed in the case of **C. Pradeep Vs. Commissioner of GST**, dated 6-8-2019, wherein it is held that even if 10% or some portion of the disputed liability is paid, while filing an appeal, no coercive action ought to be taken and no arrest made.

**20**. Further, reliance is placed upon the judgments of the Gujarat High Court in **Akshay Dinesh Patel Vs. Commissioner of Central Goods and Services Tax** *(R/Crl Misc. Application No.1442 of 2020*) and the Calcutta High Court rendered in the case of **Sanjay Kumar Bhuwalka Vs. Union of India** *(CRM No.3327 of 2018)*, wherein benefit of bail was granted to the accused persons on deposit of certain portion of disputed liabilities/dues.

**21.** That apart, reference is made to Sub-section (7) of Section 107 of the CGST Act, which postulates that where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance sum, shall be deemed to be stayed. It is putforth that the statutory provision under the CGST Act permits the applicants to prefer an appeal against the amount of tax in dispute upon depositing of such amount and further stays the recovery proceedings during the pendency of such appeal. It is strenuously urged that the applicants could have conveniently preferred such an appeal by depositing 10% of the amount in dispute. However, it is pertinent to note that to show

their *bonafide*, the Company has already deposited the entire disputed amount of Rs.8 crores, under protest.

**22.** The next plank of submission on behalf of the applicants is that their arrest is bad in law, because the final assessment and adjudication has yet not been initiated. To buttress the submission, reliance is placed on the judgment passed by the Madras High Court in **M. Jayachandran Alloys Pvt. Ltd. Vs. Superintendent of GST and Central Excise** – *W.P. No. 5501 of 2019*, wherein it is clarified that power of arrest can be exercised only after the liability is quantified upon due assessment. In paras 27 and 36 of the judgement it is specifically observed :

> "27. The Act provides for an assessment to be made after notice to be issued to the assessee…
>
> xx xx xx
>
> 36. Though the discussions and conclusions therein have been rendered in the context of Chapter V of the finance Act, 1994, levying service tax, I am of the view that they are equally applicable to the provisions of the CGST as well. Section 132 of the Act as extracted earlier, imposes a punishment upon the assessee that commits an offence. There is no dispute whatsoever that the offences set out under (a) to (l) of the provision refer to those items that constitute matters of assessment and would form part of an order of assessment to be passed after the process of adjudication is complete and taking into account the submissions of the assessee and careful weighing of evidence found and explanations offered by the assessee in regard to the same."

Thus, it is submitted that the procedure adopted in the instant case, where arrest has been made without completion of assessment proceedings, runs counter to the established provisions of law. It is trite law that the power of arrest is to be used with great circumspection and not casually.

**23.** Support was drawn from the pronouncement in **Make My Trip (MMT) (supra),** wherein it is ruled that the provisions of the CGST Act is *para materia* with the provisions of the Finance Act, 1994. Based on the said observation, the Delhi High Court had observed that the power of arrest cannot be resorted to, whilst bypassing the procedures laid down in the Act.

**24.** The submission was reiterated that the applicants cannot be made vicariously responsible for the default of the Company, as they do not hold

a Managerial/Directorial or any Executive position in the company. The fastening of criminal liability on the applicants of the purported defaulted Company under Section 132 of the CGST Act and consequently arresting them, is squarely contrary to the established criminal jurisprudence concerning vicarious liability of penal provisions of India.

**25**. A reference is made to clause (1) of Section 137 of the CGST Act, which stipulates that a person who at the time of the alleged offence was in charge of, and was responsible to, the Company for the conduct of business of the Company, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. In the present case the applicants, who are neither Directors nor they occupy any Managerial post or position in the Company, cannot, by any stretch of imagination, be observed to be persons – in charge of and responsible to the Company for the conduct of business of the Company and hence, be deemed guilty of the alleged offence. It is, therefore, submitted that the applicants have been wrongly arraigned as accused in the instant case. The applicants are not Directors of the SDPL, therefore, they could not be held responsible for the GST tax evasion, if any, by the Company.

**26.** The petitioners urges that the alleged offences are punishable with imprisonment of only upto a maximum period of five years, therefore, their arrest was not necessary and they are entitled for grant of bail, keeping in mind the principles enunciated by the Apex Court in the case of **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.**

**27**. The learned counsel appearing for the applicants referred to the provisions of sections 69 and 137 of the CGST Act. At this juncture, it is apt to reproduce the said provisions :

> **"69. Power to arrest.**-(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of 2 of the said section, he may, by order, authorise any officer of central tax to arrest such person.
>
> (2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),-

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

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

… … … … … …

**137. Offences by companies**. (1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation.- For the purposes of this section,-

(i) "company" means a body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.**"**

**28.** The arrest of the applicants under Section 69(1) of the CGST Act was assailed to be bad in law, as there is failure on the part of the prosecution to provide reasons to believe. It is submitted that the power to arrest is conferred on the Commissioner under Section 69(1) of the CGST Act. As provided under Sub-section (3) of Section 69 of the GST Act, the power under Section 69(1) is subject to the provisions of the CrPC and, therefore, the phrase "reasons to believe" is to be understood in the context of how the said phrase is defined in Section 26 of the Indian Penal Code, 1860 [for short "the IPC"]. As such, 'reasonable belief' must be cogent and recorded in writing. In the instant case, the applicants have been kept in the dark and the investigation leading upto their arrest has been bereft of any reason being provided for the same.

**29.** It is pleaded that in complete disregard to Section 69 of the CGST Act, the GST authorities have failed to provide the "reasons to believe" and "grounds of arrest" in respect of the alleged offence punishable under Section 132(1)(a) to (d) of the CGST Act.

**30.** It is strenuously urged that in the present case, there is no rationale and intelligible nexus between the reasons to believe for the applicants committing the alleged offence. The reasons to believe, cannot be equated with the reasons to suspect. To bolster the submissions, reliance is placed on the judgment rendered in the case of **N. Nagendra Rao and Co. Vs. State of A.P., AIR 1994 SC 2663,** wherein the Supreme Court has observed that the expression "reason to believe" means that even though formation of opinion may be subjective, but it must be based on material on the record. It cannot be arbitrary, capricious or whimsical. It is, thus, a check on exercise of power to seize the goods.

Further reliance has been placed in the judgment of the Apex Court rendered in the case of **K.K. Ahuja Vs. V.K. Vora and another, (2009) 10 SCC 48,** to contend that in the case of vicarious liability, a person of the company has to be legally in charge and also responsible for the conduct of the company. Paras 22 and 23 of the judgement have been referred to, which we think apt to reproduce :

"22. Section 141 uses the words "was in charge of, and was

responsible to the company for the conduct of the business of the company" (emphasis supplied). It is evident that a person who can be made vicariously liable under sub-section (1) of Section 141 is a person who is responsible to the company for the conduct of the business of the company and in addition is also in charge of the business of the company. There may be many directors and secretaries who are not in charge of the business of the company at all. The meaning of the words "person in charge of the business of the company" was considered by this Court in Girdhari Lal Gupta Vs. D.N. Mehta [1971 (3) SCC 189] followed in State of Karnataka Vs. Pratap Chand [1981 (2) SCC 335] and Katta Sujatha Vs. Fertiliser & Chemicals Travancore Ltd. [2002 (7) SCC 655]. This Court held that the words refer to a person who is in overall control of the day to day business of the company. This Court pointed out that a person may be a director and thus belongs to the group of persons making the policy followed by the company, but yet may not be in charge of the business of the company; that a person may be a Manager who is in charge of the business but may not be in overall charge of the business; and that a person may be an officer who may be in charge of only some part of the business.

23. Therefore, if a person does not meet the first requirement, that is being a person who is responsible to the company for the conduct of the business of the company, neither the question of his meeting the second requirement (being a person in charge of the business of the company), nor the question of such person being liable under sub-section (1) of section 141 does not arise. To put it differently, to be vicariously liable under sub- section (1) of Section 141, a person should fulfil the 'legal requirement' of being a person in law (under the statute governing companies) responsible to the company for the conduct of the business of the company and also fulfil the 'factual requirement' of being a person in charge of the business of the company."

**31.** In the present case, the GST authorities have not placed on record any material whatsoever, to support such "reason to believe" against the applicants. Such *reason to believe* must be recorded by the Commissioner of CGST himself with application of mind.

**32.** That all the offences under the CGST Act are compoundable under

Section 138 of the CGST Act and hence, the arrest is wholly unnecessary. The object and purpose of the CGST Act is not penal in nature, but it is economic for the purpose of legislation being to recover any amount, that may be due to the Government exchequer. To substantiate the submission, it is urged that the Calcutta High Court in **Sanjay Kumar Bhuwalka (supra)** while deciding a bail application in case of similar nature observed thus :

> "…. I do agree with such contention of Mr. Basu that the GST Act of 2017 is essentially a fiscal statute and the statement of object and reason has to be read together, which is aimed at realization of revenue. Revenue is the monetary payment due to the Government and nonpayment, whatever be the means applied for such nonpayment confers right on the Government, both Central and State, to realise the revenue whereas penal provision of arrest and detention is only when there is violation of the provision under the statute which is not the intention of the Legislature to achieve the fiscal object regardless of the existence of a provision for the arrest of the offender in the Act."

**33.** That apart, it is submitted that the Court below has committed a grave error in rejecting the bail application moved on behalf of the applicants. The impugned order has been passed mechanically without giving due consideration to the correct position of law or facts. Further, the court below has failed to appreciate the letter and spirit of the CGST Act, which is to recover the dues payable under the Act and as such its primary object cannot be meted out by imposing punitive punishment.

**34.** Prayer for grant of bail has also been made on medical grounds. It is stated that the applicant No.2, Ajay Kumar Arora is an old and infirm person of 61 years of age. He is a heart patient having undergone an open heart bypass surgery in the year 2009. He is also suffering from an extreme form of Asthma and as such, is highly vulnerable to the COVID-19 virus. Despite these ailments, with a view to demonstrate his *bona fide*, he joined the proceedings before the G.S.T. Officers for the first time on 02-7-2020. On that day, he was interrogated from 12 noon till 10 p.m. After fully co-operating with the Department, he gave a written intimation humbly requesting to be excused from personal appearance on account of his health condition and his peculiar vulnerability on account of COVID-19 pandemic. Despite his precarious health he was again called on 3-7-2020, 4-7-2020 and 6-7-2020 and further fully cooperated with the Department. Copies of medical documents have been placed on record.

**35**. On behalf of applicant No.1 – Jagdish Arora, it is pointed out that he is 64 years old person and is also suffering from various ailments. He had undergone heart surgery in the form of Stent in the year 2010. He has a long history of gastroenterology diseases which on account of COVID-19 pandemic poses a serious threat to his life. Despite grave risk to his life, in order to show his *bona fide* he attended the proceedings and was interrogated continuously on 7-7-2020 from 05:30 p.m. till 3 p.m. on the next day – 8.7.2020. As there was severe chest pain during course of the interrogation, he was immediately admitted to the I.C.U. of the J.P. Hospital, Bhopal. Medical reports have been appended to the application.

**36.** The submissions made on behalf of the applicants on the anvil of the aforementioned facts and grounds, can be summarised as follows :

(a) The applicants are not the Directors of the SDPL, therefore, they are not responsible for the affairs of the Company. In this regard a reference has been made to the provisions envisaged in clause (1) of Section 137 of the CGST Act and some pronouncements of the High Courts and the Supreme Court.

(b) The power to arrest has to be exercised only upon completion of assessment. Various High Courts viz. Delhi, Karnataka and Gujarat have taken the view that the power to arrest under Section 132 of the CGST Act can only be invoked once the assessment is complete. The judgment of the Madras High Court rendered in the case of **M/s Jayachandran Alloys (supra)** has been referred, wherein it is held that the power to punish set out in Section 132 of the CGST Act, 2017 would stand triggered only when it is established that an assessee has committed an offence, which has to necessarily be post-determination of the demand due from the assessee after completion of process of assessment. Para 40 of the judgment relied upon being relevant, is extracted hereunder :

"40. In the present case, the Department does not dispute that action was intended or envisaged in the light of Section 132 of the CGST Act, the counter fairly stating that the provisions of Section 132 of the CGST Act were shown to the assessee. There is thus no doubt in my mind that the Department intended to intimidate the petitioner with the possibility of punishment under Section 132 and this action is contrary to the scheme of the Act. While the activities of an assessee contrary to the Scheme of the act are liable to be addressed swiftly and

effectively by the Department, (the statute in question being a revenue statute where strict interpretation is the norm), officials cannot be seen to be acting in excess of the authority vested in them under the Statute. I am of the considered view that the power to punish set out in Section 132 of the Act would stand triggered only once it is established that an assessee has committed an offence that has to necessarily be post-determination of the demand due from an assessee, that itself has to necessarily follow the process of an assessment."

(c) The High Court of Delhi in the case of **Make My Trip (MMT) India Private Ltd. (supra)** while dealing with the power of arrest under the Finance Act, 1994 held that without any determination to straight-way conclude, that the petitioners had collected and not deposited service tax in excess of Rs.50 lakhs and thereby had committed a cognizable offence, would be putting the cart before the horse.

(d) The decision in **Make My Trip (MMT) India Private Ltd. (supra)** was affirmed by the Supreme Court in Civil Appeal No.8080 of 2018, by way of a speaking order stating that the issue is as to whether the power of arrest under Section 91 of the Finance Act, 1994 can be exercised without following the procedure as set out in Section 73-A(3) and (4) of the said Act. The High Court has decided, after a detailed discussion, that it is mandatory to follow the procedure contained in Section 73-A(3) and (4) of the said Act before going ahead with the arrest of a person under sections 90 and 91. The aforesaid conclusion was affirmed as the Supreme Court did not see any reason to deviate from it.

(e) The applicants have been arrested without any 'reason to believe'. No such reasons as required under Section 69(1) have been provided by the respondent. No supporting documents existed at the time of the arrest and even in the proposal to arrest. The power to arrest under Section 69 can only be exercised for offences falling under clauses (a) to (d) of Section 132(1) of the CGST Act.

(f) Sanitizer contains 80% spirit/alcohol, a substance sourced, controlled and heavily regulated by the Excise Department. An Excise Officer is present at the premises of the Company 24 hrs. a day, 365 days a year and maintains the record of production of hand sanitizer.

(g) The Excise Department Certificate issued in favour of the SDPL evidences that it manufactured only 20 lacs litres of sanitizer and

supplied only 9 lacs litres till 30-6-2020 from the factory premises. The said figures were also affirmed by an independent report of the flying squad of the Excise Department.

(h) The respondent has taken the value at MPR of Rs.500/- per litre without any basis, and by reverse calculation arrived at the figure of Rs.381/- per litre as the value at which the GST is to be assessed.

(i) Section 15(1) of the CGST Act provides that the value of supply of goods shall be the transaction value, i.e. price actually paid or payable for the supply of goods and not the MRP.

(j) The respondent initially communicated the demand of GST liability of Rs.7,96,00,000. The SDPL immediately made deposit of Rs.8 crores , i.e. 100% of the alleged liability between the period 7-7-2020 to 9-7- 2020**.**

(k) In **C. Pradeep Vs. Commissioner of GST (supra)** the Apex Court has observed that until the assessment is concluded, respondents cannot invoke Section 132 of the CGST Act.

(l) The applicants have fully co-operated with the investigation proceedings.

(m) The offence under Section 132 of the CGST Act is punishable with a maximum of 5 years and is compoundable.

(n) Frivolity in prosecution has to be considered and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. ***[See : Ram Govind Upadhyay Vs. Sudarshan Singh, AIR 2002 SC 1475]***

(o) The applicant No.1 – Jagdish Arora, aged about 64 years, is a heart patient and had a Stent placement in the year 2010. He has also a long history of gastroenterology diseases. He was admitted to the ICU of J.P. Hospital Bhopal, on 8-7-2020.

(p) The applicant No.2 – Ajay Kumar Arora, aged about 61 years, is also a heart patient and had undergone an open heart bypass surgery in the year 2009. He is also an asthmatic.

**37.** The respondent submitted that the entire exercise undertaken, is strictly in accordance with the provisions of Sections 67 and 69 of the CGST Act. There is sufficient material to establish direct involvement of the applicants in the three Companies under investigation. There is basis of investigation which is evident from the note-sheets – investigation reports. It is submitted

that an intelligence was received from the Director General (DGST), Intelligence Headquarter that several distilleries (including the SDPL) across India engaged in manufacture of Ethanol from grains, are involved in GST evasion. Acting on the said intelligence, a reasonable belief was formed that the SDPL had evaded GST on the taxable product and the documents received for investigation have been searched in the premises. During search, the statements of employees of the Company were recorded. They informed that the actual control of the Company is at the hands of the applicants. The statement of one Binay Kumar Singh, an employee of the Company was heavily relied upon by the respondent. The framing of assessment is not a *sine-qua-non* for making the arrest as held by the Telangana High Court in **P.V. Ramana Reddy Vs. Union of India {W.P. No. 4764/2019 (para 56)}** which view was affirmed by the Apex Court in **Special Leave to Appeal (Criminal) No. 4430/2019 (P.V. Ramana Reddy Vs. Union of India)**.

**38.** We have heard the learned counsels appearing for the parties at length and bestowed our anxious consideration on their respective arguments advanced. The record was also produced by the respondent in a sealed cover. We have gone through the record in order to ascertain the existence of "reasons to believe" for the proceedings being initiated against the applicants. We do not perceive any material, except the statement of the employee – Binay Kumar Singh. There is no documentary material produced on record to show that the present applicants were legally in charge and responsible for the day-to-day working of the Company. They had already resigned legally from the Directorship of the Company. Merely on a bald statement of an employee of the Company, it cannot be held that the present applicants were in charge and responsible for the functions of the Company.

**39**. On a careful consideration of nature and gravity of the allegations made against the applicants and the specific evidence collected in respect of the allegations levelled, elaborate discussion of which would not be apt, as it may adversely affect the interest of either party, the specific facts put forth by the learned senior counsel for the applicants and the reply and other facts and circumstances of the case, in the considered opinion of this Court, the case for granting bail is made out. Therefore, without commenting on the merits of the case, **the application for grant of bail to the applicants stands allowed.** Needless to say that anything observed hereinbefore shall not be taken to be an expression of opinion in any ancillary or incidental proceeding taken in pursuance to search on 26-6-2020 to 28-6-2020.

**40.** It is directed that the applicants - **Jagdish Arora and Ajay Kumar Arora** be released from custody on their furnishing a personal bond in the sum of **Rs.5,00,000/- (Rupees five lacs only)** each, with separate sureties of the like sum to the satisfaction of the trial Court, for their appearance before it, as and when required, further subject to the following conditions :

(i) The applicants shall co-operate with the trial and shall not seek unnecessary adjournments on frivolous grounds to protract the trial;

(ii) The applicants shall not directly or indirectly allure or make any inducement, threat or promise to the prosecution witnesses, so as to dissuade them from disclosing truth before the Court.

(iii) The applicants shall not commit any offence or involve themselves in any criminal activity.

(iv) In case of their involvement in any other criminal activity or breach of any other aforesaid conditions, the bail granted in this case may also be cancelled.

(v) The applicants shall submit their passports, if any, before the trial Court and shall not leave India without prior permission of this Court.

**41.** Let the original records of the case be returned to the respondent in a sealed cover.

❑

**(2020) 65 TLD 326** In the High Court of M.P.

Hon'ble Ajay Kumar Mittal, CJ. & Vijay Kumar Shukla, J.

**Ankit Babeley**

**Vs.**

**State of M.P. & others**

Writ Petition No.: 4974/2020

July 15, 2020

***Deposition : In favour of petitioner***

**Tran-1 - Due to technical difficulties, the petitioner was unable to file Trans-1 within permissible time - The High Court directed the respondents for taking decision on the representation filed by the petitioner.**

**Writ petition disposed of**

**Cases referred :**

* Adfert Technologies Pvt. Ltd. Vs. Union of India & Ors CWP No. 30949/2018 (O&M) decided on 4-11-2019 (P&H)
* Krish Automotors Private Limited Vs. Union of India and others W.P. (C) No. 3736/2018 decided on 16-9-2019 (Del)
* Siddharth Enterprises through Partner Mahesh Liladhar Tibdewal Vs. The Nodal Officer R/Special Civil Application No. 5758/2019 decided on 6-9-2019 (Guj)

Mr. Abhishek Oswal, Advocate for the petitioner.
Mr. Pushpendra Yadav, Additional Advocate General for the respondents No.1 and 2/State & Mr. Gajendra Singh Thakur, Advocate for the respondent No.3 and 4.

**:: ORDER ::**

**Hearing convened through Video Conferencing**

The petitioner has approached this Court under Article 226/227 of the Constitution of India claiming following reliefs:-

"1. To direct the respondents No.2 to grant an opportunity to the petitioner to file Trans 1 before due date i.e. 31-3-2020.

2. Yours Lordship may be please to issue a writ of mandamus directing the Respondent No.2 to allow filing in Form GST Trans 1 to enable to claim transitional credit of eligible duties in respect of inputs held in stock on the appointed day in terms of Section 140(3) of CGST Act, 2017 by a writ in the nature of certiorari/mandamus and/or suitable writ, order or direction in the nature of writ be issued against the inaction of the Respondent No.2.

3. Your Lordships may please to issue a writ or declaration or any other writ for declaration of due date contemplated under Rule 117 of the CGST Rules, 2017 to claim transitional credit as being procedural in nature and thus merely directory and not a mandatory provision.

4. Any other relief considered expedient and just under the facts of the case by the Hon'ble Court may kindly be allowed along with cost of the petition to the petitioner."

Learned counsel for the petitioner inter alia contended that the petitioner is registered as work contractor and has been regularly filing his returns since

2013. For the months April to June, 2017, the petitioner had filed his return for VAT in Form 10 and got rebate of Rs.7,63,070/- to be carried forward in Trans 1. The Central Board of Indirect Taxes and Customs through Government of India, Ministry of Finance issued an order No.1/2020 GST dated 7-2-2020 in supersession of earlier order no.1/2019 GST dated 31-1-2019 under sub-rule (1A) of Rule 117 of the Central Goods and Service Tax Rules, 2017 (for short "the Rules") extending the deadline to file Trans 1 upto 31-3-2020. Earlier also the Board had extended the due date for filing Trans-1 from time to time. Learned counsel for the petitioner referred to Section 140 of the Central Goods and Service Tax Act, 2017 (for short "the Act" ) and Rule 117 of the Rules to the effect that the registered person should not be debarred to file his Trans 1, who could not file the same within time due to technical difficulties. Sub-section (3) of Section 140 of the Act provides for substantive right which cannot be curtailed or defeated on account of procedural lapses.

Reliance was placed by the petitioner upon a judgment of the Division Bench of Punjab and Haryana High Court in the case of **Adfert Technologies Pvt. Ltd. Vs. Union of India & Ors (CWP No.30949/2018 (O&M) decided on 4-11-2019** to contend that in the said case, the Division Bench of Punjab and Haryana High Court allowed the petition directing the respondents to permit the petitioners to file or revise the already filed incorrect TRAN-1, either electronically or manually, and liberty was granted to the respondents to verify genuineness of claim of petitioners but it was also held that nobody could be denied to carry forward legitimate claim of CENVAT/ ITC on the ground of non-filing of TRAN-1 by 27-12-2017. To fortify his contention, learned counsel for the petitioner also placed reliance upon a judgment of the Division Bench of Gujarat High Court in the case of **M/s. Siddharth Enterprises through Partner Mahesh Liladhar Tibdewal Vs. The Nodal Officer (R/Special Civil Application No.5758/2019 & other connected cases, decided on 6-9-2019)** and of the Delhi High Court in **Krish Automotors Private Limited Vs. Union of India and others (W.P.(C) No.3736/2018 decided on 16-9-2019**. It was further stated that against the judgment of the High Court of Punjab and Haryana in **Adfert Technologies Pvt. Ltd's case. (supra)**, a Special Leave to Appeal (C) No.4408/2020 preferred before the Supreme Court by the Union of India and others was dismissed on 28-2-2020 and thus, the aforesaid judgment of the High Court of Punjab and Haryana was affirmed by the Supreme Court.

At the outset, learned counsel for the petitioner urged that a representation (Annexure P/7) was submitted on 26-12-2019 before the respondent No.2 claiming that due to technical difficulties, the petitioner was unable to file Trans-1 within permissible time and requested to allow the petitioner to file the same so as to enable him to claim transitional credit of eligible duties in respect of inputs held in stock on the appointed day in terms of Section 140(3) of the Act. It was urged that no heed was paid by the respondents. Accordingly, a prayer was made that respondents be directed to consider and decide the said representation.

Learned counsel appearing for the respondents did not object to the said prayer and stated that if the said representation is pending, the same will be decided by the respondents in accordance with law.

After perusing the writ petition and hearing learned counsel for the parties, without expressing any opinion on the merits of the controversy, we dispose of the writ petition with a direction to the respondent No.2, 3 and 4, as the case may be, to take a decision on the representation (Annexure P/7) filed by the petitioner within fifteen days by passing a speaking order after affording an opportunity of hearing to the petitioner or his representative through video conferencing, in accordance with law.

Accordingly, the writ petition stands disposed of.

❑

**(2020) 65 TLD 329** In the High Court of M.P.

Hon'ble Prakash Shrivastava & Ms.Vandana Kasrekar, JJ.

**Subhash Joshi & another**

**Vs.**

**Director General of GST Intelligence (DGGI) & Ors.**

W.P. No.: 9184/2020

July 03, 2020

***Deposition : In favour of Revenue***

**Search and seizure - Power of inspection, search and seizure - Section 67 of CGST/MP GST Act, 2017 - The High Court rejected the submission of the petitioner that the search should be carried out in the presence of his Advocate.**

**Writ petition dismissed**

**Cases referred :**

* Akhil Krishan Maggu & another Vs. Dy. Director, Directorate General and GST Intelligence and others CWP No.24195/2019 dated 15-11-2019 (P&H)

* Poolpandi and others Vs. Superintendent, Central Excise & Ors. (1992) 3 SCC 259 (SC)

* Sudhir Kumar Aggarwal Vs. Directorate General of GST Intelligence 2019 SCC OnLine Del 11101 (Del)

Shri Sunil Jain, learned Sr. Counsel with Shri Kushagra Jain, learned counsel for petitioner.

Shri Prasanna Prasad, learned counsel for respondent. Shri Shailesh Kumar Mehta, Sr. Intelligence Officer also present in person.

**:: ORDER ::**

The Order of the Court was made by **PRAKASH SHRIVASTAVA, J. :**

**Heard through Video Conferencing.**

By this petition, the petitioner has challenged the notice dated 20th June, 2020 whereby the premises of the petitioner has been sealed under the provisions of The Central Goods and Services Tax Act, 2017 (for short "GST Act").

**2.** The case of the petitioner is that the petitioner is the manufacturer of sweet betel nut and which has all the necessary licenses and permissions for this purpose and is regularly paying the GST. Further case of the petitioner is that the Plot No.15-A/B-1, Sector-B, Industrial Area, Sanwer Road, Indore belongs to Shri Kishore Wadhwani and petitioner has taken this plot on lease from Shri Kishore Wadhwani and the petitioner is running the manufacturing unit on this plot. The further case of the petitioner is that apart from the above, it has no connection with Shri Kishore Wadhwani. Earlier in the year 2011 Excise Department had taken certain action against the petitioner but nothing incriminating was found. On 20th June, 2020, by the impugned notice the factory premises of the petitioner has been sealed. Petitioner apprehends that since the action was initiated against Shri Kishore Wadhwani for evasion of tax, therefore, the premises of the petitioner has been sealed. According to the petitioner, on 20th June, 2020 he was out of station, and, therefore, the petitioner had sent the notice dated 26-6-2020

for demand of justice and, thereafter the present petition has been filed.

**3.** Learned counsel for petitioner submits that though the action relating to search and seizure u/S.67 of the GST Act has been taken, but the requisite procedure has not been followed. He has submitted that the petitioner apprehends that the search and seizure may not be carried out in a fair manner and the confession of the petitioner may be recorded under pressure, therefore, a direction be issued for carrying out the search in the present of an Advocate. He has further submitted that as per the requirement of Sec.67, two independent reputed witnesses of the locality are necessary, but the respondents want to carry out the search by keeping their own pocket witnesses.

**4.** Learned counsel for respondents has submitted that the officials of the respondents had approached the factory premises of the petitioner on 20th June, 2020 for the purpose of search and seizure by following the due procedure in accordance with Sec.67 of the Act, but since the premises was found locked, therefore, the option was either to break open the lock and carry out the search or to seal the premises and thereafter carry out the search of the premises in the presence of the petitioner. He submits that the officials of the respondents had adopted the second option of sealing the premises and now they want to carry out the search in the petitioner's presence. He further submits that there is no provision in law allowing the petitioner's prayer for presence of an Advocate during search and seizure. He has also submitted that the two independent witnesses will be kept as required by law and procedure prescribed in law will be duly followed in true letter and spirit.

**5.** We have heard the learned counsel for parties and perused the record.

Sec.67 of the GST Act reads as under:-

"67. **Power of inspection, search and seizure**

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that -

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods

or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer: Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under

sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under subsection (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may,

for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

**6.** In terms of sub-section 10 of Sec.67, the provisions of search and seizure as contained in Cr.P.C are applicable. Sub-section (4) of Sec.100 Cr.P.C provides as under:-

"(4)- Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."

**7.** In terms of the above sub-section presence of two or more independent and respectable inhabitants of the locality is necessary as witness to the search.

**8.** The search is yet to take place in the present case and the counsel for respondents has duly assured this court that the aforesaid provision will be complied with therefore no direction in this regard at this stage is required.

**9.** Another submission of counsel for petitioner is that the search should be carried out in the presence of the Advocate, but counsel for petitioner has failed to point out any statutory provision or any such legal right in favour of the petitioner.

**10.** Some what similar issue had come up before the Supreme Court in the matter of **Poolpandi and others Vs. Superintendent, Central Excise & Ors. (1992) 3 SCC 259** wherein during the investigation and interrogation

under the provisions of Foreign Exchange Regulations Act 1973 and Customs Act, a prayer was made for assistance of the lawyer. Hon. Supreme Court denying such a prayer had held that:-

> "11- We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering question it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. Mr. Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a noncooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the 'just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us."

**11.** The same issue came up before the Delhi High Court in reference to the GST Act in the matter of **Sudhir Kumar Aggarwal Vs. Directorate General of GST Intelligence 2019 SCC OnLine Del 11101** and the Delhi High Court placing reliance upon the earlier judgments of the Supreme Court on this point has held that:-

"21- Perusal of the above case law reveals that presence of a lawyer cannot be allowed at the time of examination of a person under the Customs Office. The petitioner in the present case has been summoned by the Officers under GST Act who are not Police Officers and who have been conferred with the power to summon any person whose attendance they consider necessary to give evidence or to produce a document. The presence of the lawyer, therefore, is not required during the examination of the petitioner as per the law laid down by Hon'ble Supreme Court in Pool Pandi's case (supra). So far as apprehension of petitioner that he may be physically assaulted or manhandled is concerned, this Court is of the opinion that it is a well settled law now that no inquiry/investigating officer has a right to use any method which is not approved by law to extract information from a witness/suspect during examination and in case it is so done, no one can be allowed to break the law with impunity and has to face the consequences of his action. The order dated 20-9-2019 which is against the judgment passed by Hon;'ble supreme Court in 'Pool Pandi V. Superintendent, Central Excise (1992) 3 SCC 259 : 1992 AIR 1795 (SC), therefore, stands modified and it is clarified that presence of a lawyer cannot be allowed to the petitioner at the time of questioning or examination by the officers of the respondent."

**12.** Having regard to the above position in law and the fact that no such legal right has been pointed out, the submission of the counsel for petitioner to carry out the search and seizure operation in the presence of the petitioner cannot be accepted.

**13.** Counsel for petitioner has placed reliance upon the judgment of Punjab & Haryana High Court dated 15-11-2019 in CWP No.24195/2019 in the case of **Akhil Krishan Maggu & another Vs. Dy. Director, Directorate General and GST Intelligence and others**, but the part of the judgment relied upon by counsel for petitioner relates to need for arrest whereas in the present case, there is no issue of arrest is involved nor any action of the respondents relating to the arrest of the petitioner has been questioned.

**14.** Having regard to the aforesaid analysis, we are of the opinion that no case for interference in the present writ petition at this stage is made out. The petition is accordingly **dismissed**.

❑

**(2020) 65 TLD 337**

In the High Court of Karnataka
Hon'ble S.R. Krishna Kumar, J.

**Thoppil Agencies**

**Vs.**

**The Asst. Commissioner of Commercial Taxes (Enforcement-2)**

Writ Petition No. : 116528/2019 (T-RES)

August 12, 2020

***Deposition : In favour of Petitioner***

**Natural justice - In absence of sufficient and reasonable opportunity of hearing to the petitioner the order passed was clearly in contravention of the principles of natural justice, therefore set aside by the High Court.**

**Writ petition allowed**

Sri Arvind Kamath, Sr. Advocate & Sri S.M. Kalwad for the petitioner.
Sri Shivaprabhu Hiremath, AGA for the respondents.

**:: ORDER ::**

This petition is filed seeking quashing of the impugned penalty order at Annexure-E bearing No. No. ACCT/ENF-2/HBL/ORD 04/2019-20 dated 25-11-2019 in Form GST OV 09 by the respondent No. 1 under section 129 (3) of the Central Goods and Services Act, 2017 (for short 'the Act') and for other relief's.

**2.** I have heard Sri Arvind Kamath, learned Senior Counsel appearing on behalf of the petitioner and learned AGA for the respondents and perused the material on record.

**3.** In addition to making submissions with regard to the various contentions urged by the petitioner in the petition with reference to the documents and the impugned order, learned Senior counsel also submitted that the impugned order is violative of principles of natural justice. He points out that a perusal of the show cause notice at Annexure-B4 dated 13-11-2019 will indicate that only certain documents have been referred to by the respondent No. 1 and that the same has been duly replied to by the petitioner *vide* Annexures-C and C1. However, without giving any personal hearing to the petitioner and without affording sufficient and reasonable opportunity to the petitioner, the respondent No.1 has proceeded to pass the impugned order at Annexure-E placing reliance upon several documents which were never

brought to the notice of the petitioner prior to passing of the impugned order. It is therefore, contended that apart from other legal and factual infirmities contained in the impugned order, the same is in total contravention of the principles of natural justice and that the same is liable to be quashed on this ground alone.

**4.** Per contra, learned AGA appearing for the respondents would support the impugned order and contend that there is no merit in the petition, particularly in the light of the remedy by way of appeal available to the petitioner and as such, the writ petition is liable to be dismissed.

**5.** Having heard both sides and perused the material on record, I am of the considered opinion that without going into the legal and factual aspects of the matter, it can be seen from the impugned order at Annexure-E that several documents and circumstances which were neither referred to nor enumerated in the show cause notice at Annexure-B4 have been relied upon by the respondent No. 1 in the i mpugned order. It is not in dispute that no opportunity of personal hearing was given to the petitioner before passing the impugned order. The material on record also indicates that several documents relied upon by the respondent No. 1 in the impugned order at Annexure-E were neither brought to the notice of the petitioner nor was he permitted to cross-examine the witnesses with reference to the said documents. Further, no opportunity to produce additional documents was given to the petitioner.

**6.** The aforesaid facts and circumstances will indicate that in the absence of sufficient and reasonable opportunity being granted in favour of the petitioner, the impugned order is clearly in contravention of principles of natural justice and that the same deserves to be *set aside* on this ground alone and the matter deserves to be remitted back to the respondent No. 1 to consider and dispose off the same afresh in accordance with law after providing sufficient and reasonable opportunity to the petitioner to put forth his contentions and documents and to hear the petitioner before passing suitable orders.

**7.** In the result, I pass the following;

**ORDER**

(i) The impugned order at Annexure-E dated 25-8-2019 is hereby quashed;

(ii) The matter is remitted back to the respondent No. 1 - Assistant

Commissioner for fresh disposal in accordance with law after hearing the petitioner on all aspects of the matter including the documents relied upon by the respondents and by affording sufficient and reasonable opportunity to the petitioner to contest the proceedings;

(iii) The respondent No. 1 is directed to furnish copies of all the documents relied upon by him in the impugned order and all other documents he wishes to rely upon to the petitioner;

(iv) The respondent No. 1 is also directed to dispose off the matter afresh bearing in mind the circular dated 31-12-2018 issued by the Government of India under section 168 of the Act;

(v) The petitioner is also at liberty to cross-examine any witness with reference to any of the documents relied upon by the respondents;

(vi) The petitioner is also at liberty to produce the additional documents in support of his contentions;

(vii) Having regard to the Covid-19 pandemic exigency, the respondent No. 1 is directed to permit the petitioner to contest the proceedings online by Video Conferencing. However, all arrangements in this regard are directed to be made by the petitioner at his own cost;

(viii) Having regard to the fact that the goods involved are perishable items, the respondent No. 1 is directed to dispose off and conclude the proceedings within a period of one month from today;

(ix) All rival contentions are kept open.

In view of the disposal of the petition, pending applications, if any, do not survive for consideration.

❑

**(2020) 65 TLD 339**

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.
**M.S. Steel and Pipes**
**Vs.**
**Asst. State Tax Officer & Other**
W.P(C). No.: 16356 of 2020
August 12, 2020

***Deposition : In favour of Petitioner***

**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.**

**Writ petition allowed**

Sri. Harisankar V. Menon, Adv. & Smt. Meera V. Menon, Adv. for the petitioner.
Smt. Dr. Thushara James, Government Pleader for the respondent/s.

**:: JUDGMENT ::**

The petitioner has approached this Court challenging Ext.P4 series of notices of detention, whereby a consignment of goods transported at the instance of the petitioner was detained by the respondent on the allegation that there was a discrepancy in the e-way bill that accompanied the transportation of the goods. On a perusal of Ext.P4 series of notice, I find that the reason for detention was that, while the consignment was supported by an invoice which contained the details of the goods transported as also the tax paid in respect of the goods, there was no mention of the tax amounts separately in the e-way bill that accompanied the goods. The respondents therefore detained the goods on the ground that there was no valid e-way bill, supporting the transportation in question.

**2.** The learned counsel for the petitioner would point out that there is no requirement under the Act and Rules for mentioning the tax amount separately in the e-way bill in FORM GST EWB-01 that the petitioner was obliged to use to cover the transportation in question. It is further pointed that there is no dispute that the transportation was covered both by a tax invoice, as also an e-way bill in FORM GST EWB-01, and when both the documents are perused together, it is amply clear that the transportation was covered by documents that clearly indicated the fact of payment of tax on the goods that were being transported. It is contended therefore that there was no justification for the detention under Section 129 of the Act.

**3.** Per contra, it is the submission of the learned Government Pleader that as per Section 33 of the GST Act, there is an obligation on every person, who makes a supply for consideration and who is liable to pay tax for such supply, to prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made. She reads the said provision in juxtaposition with Section 129 of the Act which deals with the power to detain goods in transit. Referring to the provisions of Section 129, it is contended that the goods in question were being transported under cover of documents

that had been raised in contravention of the provisions of Section 33. It is argued that, the e-way bill being a document akin to a tax invoice, in relation to an assessment to tax, and not having carried the details regarding the tax amount, the transportation itself had to be viewed as in contravention of the Act and Rules for the purposes of Section 129.

**4.** On a consideration of the rival submissions, I am of the view that the submissions of the learned Government Pleader cannot be accepted. The power of detention under Section 129 is to be exercised only in cases where a transportation of goods is seen to be in contravention of the provisions of the Act and Rules and not simply because a document relevant for assessment does not contain details of tax payment. As per the statutory provisions applicable to the instant case, a person transporting goods is obliged to carry only the documents enumerated in Rule 138(A) of GST Rules, during the course of transportation. The said documents are (i) the invoice or bill of supply or delivery challan, as the case may be and (ii) the copy of e-way bill in physical form or e-way bill Number in electronic form etc. A reading of the said Rule clearly indicates that the e-way bill has to be in FORM GST EWB-01, and in that format, there is no field wherein the transporter is required to indicate the tax amount payable in respect of the goods transported. If the statutorily prescribed form does not contain a field for entering the details of the tax payable in the e-way bill, then the non-mentioning of the tax amount cannot be seen as an act in contravention of the rules. In the instant case, it is not in dispute that the transpiration was covered by a valid tax invoice, which clearly showed the tax collected in respect of the goods and an e-way bill in the prescribed format in FORM GST EWB-01. Since there was no contravention by the petitioner of any provision of the Act or Rule for the purposes of Section 129, the detention in the instant case cannot be said to be justified.

In the result, I allow the writ petition by quashing Ext.P4 series of detention notices and directing the respondents to release the goods forthwith to the petitioner on the petitioner furnishing a copy of this judgment before the respondents. The learned Government Pleader shall communicate a gist of the directions in this judgment to the respondents for enabling an expeditious clearance of the goods and the vehicle.

❑

**(2020) 65 TLD 342** Before the National Anti-Profiteering Authority
Shri B.N. Sharma, Chairman,
Shri J.C. Chauhan & Shri Amand Shah, Technical Member

**Pawan Kumar & Others**

**Vs.**

**S3 Buildwell LLP, Delhi**

Case No. : 57/2020

August 27, 2020

***Deposition : In favour of Petitioner***

**NAA - Anti-profiteering measure - Penalty - Since no penalty provisions were in existence between the period w.e.f. 1-7-2017 to 31-12-2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively.**

None for the Applicants.
None for the Respondent.

**:: ORDER ::**

**1.** The brief facts of the present case are that the Applicant No. 72 (here-in-after referred to as the DGAP) vide his Report dated 4-6-2019, furnished to this Authority under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, had submitted that he had conducted an investigation on the complaints of the Applicant Nos. 1 to 71 and found that the Respondent had not passed on the benefit of input tax credit (ITC) in respect of the flats purchased by them in the project "Floridaa" situated at Bhatola, Sec-82, Faridabad, Haryana of the Respondent on introduction of the GST w.e.f. 1-7-2017, as per the provisions of Section 171 (1) of the CGST Act, 2017. Vide his above Report the DGAP had also submitted that the Respondent had denied the benefit of ITC to the above Applicants and other buyers amounting to Rs. 2,69,77,661/ pertaining to the period from 1-7-2017 to 31-12-2018 and had thus indulged in profiteering and violation of the provisions of Section 171 (1) of the above Act.

**2.** This Authority after careful consideration of the Report dated 4-6-2019 had issued notice dated 12-6-2019 to the Respondent to show cause why the Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 (1) should not be fixed. After

hearing the concerned parties at length this Authority vide its Order No. 67/2019 dated 09.12.2019 had determined the profiteered amount as Rs. 2,69,77,661/- as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 pertaining to the period from 1-7-2017 to 31-12-2018 and also held the Respondent in violation of the provisions of Section 171 (1).

**3.** It was also held that the Respondent had denied the benefit of ITC by not reducing prices of the flats commensurately and had also compelled the buyers to pay more price and GST on the additional amount realised from them between the period from 1-7-2017 to 31-12-2018 and therefore, he had apparently committed an offence under Section 171 (3A) of the CGST Act, 2017 and hence, he was liable for imposition of penalty under the provisions of the above Section

**4.** The Respondent was issued notice dated 17-1-2020 asking him to explain why the penalty mentioned in Section 171 (3A) read with Rule 133 (3) (d) should not be imposed on him.

**5.** The Respondent vide his submissions dated 19-6-2020 has interalia, averred that the penal provisions under Section 171 (3A) of the Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be invoked and penalty should not be imposed on him as the Central Government vide Notification No. 01/2020- Central Tax dated 1-1-2020 has appointed the 1st day of January, 2020 as the date on which the provisions of Section 92 to 112 of the Finance (No. 2) Act, 2019 shall come into force. He has further submitted that provisions of Section 171 (3A) inserted vide Section 112 of the Finance Act, 2019 are effective prospectively from 1-1-2020 and they cannot have retrospective operation. He has inter-alia also made a number of other submissions for non-imposition of penalty. The main submission he has made is that penalty should not be imposed on him as the provisions of Section 171 (3A) have come into force from 1-1-2020 and they cannot have retrospective operation. He has also submitted that penalty should only be imposed when there is mens rea and deliberate attempt to violate the provisions of law.

**6.** We have carefully considered the submissions of the Respondent and all the material placed before us and it has been revealed that the Respondent has not passed on the benefit of ITC to his buyers w.e.f 1-7-2017 to 31-12-2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.

**7.** It is also revealed from the perusal of the CGST Act and the Rules framed under it that the Central Government vide Notification No. 01/2020-Central Tax dated 1-1-2020 has implemented the provisions of the Finance (No. 2) Act, 2019 from 1-1-2020 vide which sub-section 171 (3A) was added in Section 171 of the CGST Act, 2017 and penalty was proposed to be imposed in the case of violation of Section 171 (1) of the CGST Act, 2017.

**8.** Since no penalty provisions were in existence between the period w.e.f. 1-7-2017 to 31-12-2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 17-1-2020 issued to the Respondent for imposition of penalty under Section 171 (3A) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

**9.** Copy of this order be supplied to both the parties. File be consigned after completion.

❑

**(2020) 65 TLD 344** In the High Court of M.P.

Hon'ble S.A. Dharmadhikari & Vishal Mishra, JJ.

**Gurukripa Lubricants**

**Vs.**

**Union of India and Others**

W.P. No. 12184-2020

August 27, 2020

***Deposition : In favour of Petitioner***

**TRAN-1 - The petitioner filed writ petition seeking Court's direction to allow it to avail the short transitioning of ITC or to revise Form GST TRAN-1 - The High Court directed the petitioner to file a fresh representation annexing all the judgments before the Jurisdictional Commissioner.**

**Writ petition disposed of**

**Cases referred :**

* Adfert Technologies Pvt. Ltd. Vs. Union of India, reported in, 2019 TIOL-2519HC-P&H-GST

* Brand Equities Treaties Ltd and Others Vs. Union of India reported as 2020 TIOL-900-HC-Del. GST

Shri Prashant Sharma, counsel for the petitioner.
Shri Vivek Khedkar, Assistant Solicitor General, for the respondent No.1 on advance notice & Shri M.P.S.Raghuvanshi, Addl.A.G for the respondents/ State on advance notice.

**:: ORDER ::**

Heard on the question of admission.

By filing this petition, the petitioner has invoked Article 226 of the Constitution of India seeking a writ of mandamus directing respondents to allow it to avail the short transitioning of input tax credit ("ITC) by either updating electronic credit ledger at their back end, in accord with the details of credit submitted by the petitioner or allowing them to revise form GST TRAN-1, in conformity with the returns filed under the existing laws that stand repealed by the Central Goods and Service Tax Act 2017 ("CGST").

Brief facts of the case are that the petitioner firm is sole proprietorship firm engaged in the business of lubricants. The GST was brought into force with effect from 1st July, 2017. GST replaced various indirect taxes in India. The petitioner firm also got itself registered under the GST Portal and GST No.23AEIPJ9886MJZP. The authorities with a view to shift from the old regime to the new regime and for doing smooth transaction, framed certain provisions under the GST Act. The provisions prescribe for utilization of input tax credit accumulated under the earlier tax law in the new taxation regime.

It is further submitted that the entire tax regime had itself watershed moment with the advent of GST. GST laws framed by the Parliament and State Legislature recognized the fact that the taxpayer had ITC under the existing laws and provide for elaborate transitional arrangement to save pending as well as the future claims relating to existing law made before it or after appointed day. In order to achieve this objective, GST laws permit registered persons to migrate the amount of CENVAT credit that was carried forward in the returns under the existing laws in the electronic credit ledger under GST laws. The petitioner was facing technical difficulty in uploading the form, then TRAN-I, therefore, the petitioner relentlessly raised the grievance before the respondent authorities but of no avail. Various representations were submitted to the authorities which are marked as Annexure P/3. The grievance raised by the petitioner fell on deaf ears and

no action was taken by the respondent authorities.

Learned counsel for the petitioner has contended that the issue involved is squarely covered by the judgment of Punjab and Haryana High Court in the case of **Adfert Technologies Pvt. Ltd. Vs. Union of India, reported in, 2019 TIOL-2519HC-P&H-GST.** The SLP was filed against aforesaid decisions but the same was also dismissed. Learned counsel has further relied upon the judgment rendered by Delhi High Court in the case of **Brand Equities Treaties Ltd and Others Vs. Union of India reported as 2020 TIOL-900-HC-Del. GST** wherein, following the decisions of P&H High Court and various other High Courts, the respective petitioners were permitted to file TRAN-I before or after appointed day. The case of petitioner is covered with the aforesaid decisions.

Taking into considering the fact that the issue has been decided by various High Courts as well as by the Apex Court, this court deems it proper to direct the petitioner to file a fresh representation annexing all the judgments cited before this court within a period of seven days before the Jurisdictional Commissioner from the date of receipt of certified copy of the order. In case, the petitioner files representation within the aforesaid period, the Jurisdictional Commissioner is directed to decide the same in the light of various judgments passed by the High Courts and the Apex Court and pass a reasoned and speaking order within a period of four weeks thereafter. Decision taken be communicated to the petitioner forthwith.

With the aforesaid, this petition stands disposed of.

❑

**(2020) 65 TLD 346** In the M.P. Commercial Tax Appellate Board

K.S.Thakur, Judicial Member and A.K. Shukla, Accountant Member

**Prachi Construction**

**Vs.**

**Commissioner, Commercial Tax, M.P., Indore**

Appeal Case No. : A-272/CTAB/I.N.D./16 (Vat)

Period : 1-4-2010 to 31-3-2011

February 12, 2020

**TDS Certificate - The M.P. Commercial Tax Appellate Board accepted the second copy of the TDS certificates and remanded the case for verification of facts to the Assessing Officer to verify the**

**correctness of the certificate and for accepting the TDS certificates on verification if it is found proper.**

**Appeal allowed**

**Cases referred :**

* Kriti Industries (India) Ltd., TNIC Division, Indore Vs. CCT, M.P., Indore (2009) 42 TLD 707 (Board)

Shri Ramesh Shah, CA. for the Appellant
Shri M.P. Chaurasia, Special Govt. Advocate for the Respondent

**:: ORDER ::**

**द्वारा - के.एस. ठाकुर, न्यायिक सदस्य**

**1.** अपीलार्थी द्वारा यह द्वितीय अपील, म.प्र. वेट अधिनियम, 2002 (जिसे आगे वेट अधिनियम कहा जाएगा) के अधीन उपायुक्त वाणिज्यिक कर, लार्ज टैक्स पेयर यूनिट एवं अपीलीय प्राधिकारी संभाग-3 इन्दौर द्वारा प्रथम अपील प्रकरण क्रमांक 332/झाबुआ/वेट (एए141314002933) में पारित आदेश दिनांक 24-11-2014 से व्यथित होकर प्रस्तुत की गई है।

**2.** मामले के संक्षेप में तथ्य यह हैं कि अपीलार्थी का व्यवसाय संकर्म संविदा के कार्य का है। अवधि 2010-11 के लिए म.प्र. वेट अधिनियम के तहत कर का निर्धारण किया गया। कर निर्धारण के समय अपीलार्थी ने कोई टी.डी.एस. प्रमाण पत्र पेश नहीं किए। विगत वर्ष के आगत कर रिबेट के कैरीफारवर्ड का कर निर्धारण आदेश भी प्रस्तुत नहीं किया था। कर निर्धारक अधिकारी ने रु. 89,956/- का मानकर सूचना पत्र जारी किया। इस आदेश की अपील उपायुक्त, वाणिज्यिक कर, लार्ज टैक्स पेयर यूनिट एवं अपीलीय प्राधिकारी संभाग-3 इन्दौर के समक्ष की गई।

**3.** अपील के समय अपीलार्थी ने रु. 72,673/- के टी.डी.एस. प्रमाण पत्र की प्रति पेश की, जो स्वीकार कर, कर में छूट दी गई। शेष राशि रु. 1,95,398/- तथा रु. 13,982/- के टी.डी.एस. प्रमाण पत्र की प्रति अथवा चालान कार्यालय में जमा नहीं कराया था। इसलिए उक्त टी.डी.एस. राशि स्वीकार नहीं की गई। वर्ष 2009-10 के कर निर्धारण आदेश की प्रति भी नहीं दी गई। इसलिए फारवर्ड किया गया आगत कर रिबेट भी स्वीकार नहीं किया गया। यह अपील आंशिक रूप से स्वीकार की गई और आदेश दिनांक 24-11-2014 को पारित किया गया।

**4.** उक्त आदेश के विरुद्ध यह द्वितीय अपील इन आधारों पर पेश की गई है कि टी.डी.एस. घोषणा पत्र रु. 1,95,398/- एवं रु. 13,982/- के मूल प्रमाण पत्र की द्वितीय प्रति पेश

की जा रही है । इसलिए उसे स्वीकार कर, कर में कटौती की जाए । अपीलार्थी ने गत वर्ष 2009-10 से कर निर्धारण की प्रति भी पेश की है, जिसमें आगत कर को कैरीफारवर्ड किया गया है ।

**5.** विभाग की ओर से उपस्थित विद्वान शासकीय अभिभाषक द्वारा व्यक्त किया गया कि टी.डी.एस. प्रमाण पत्र की मूल प्रति पेश नहीं करने के कारण उसे मुजराई नहीं दी गई । इसी प्रकार वर्ष 2009-10 के कैरीफारवर्ड आई.टी.आर. के क्लेम के संबंध में कर निर्धारण आदेश की प्रति पेश नहीं की गई थी । इसलिए क्लेम अस्वीकार किया गया ।

**6.** तर्क सुने गए । अभिलेख का अवलोकन किया गया ।

**7.** अपीलार्थी की ओर से मूल टी.डी.एस. प्रमाण पत्र की द्वितीय प्रति राशि रु. 1,95,398/ तथा रु. 13,982/- की फोटोप्रति लिखित तर्क के साथ पेश की गई है । अपीलार्थी के अनुसार मूल प्रमाण पत्र की द्वितीय प्रति उनके पास है । अपीलार्थी की ओर से **मे. कृति इण्डस्ट्रीज़ लि., इन्दौर विरुद्ध सी.सी.टी. एम.पी. (2009) 42 टीएलडी 707 (बोर्ड);** (2009) 15 एसटीजे 14 के निर्णय की फोटोप्रति पेश की गई है । जिसमें टी.डी.एस. प्रमाण पत्र की प्रमाणित प्रति भी स्वीकार की गई है और यह बताया गया है कि वेट नियम 42 (3) में मूल प्रमाण पत्र पेश करने की आवश्यकता नहीं है । क्योंकि ऐसा कोई प्रावधान नहीं है ।

**8.** चूंकि अपीलार्थी द्वारा मूल टी.डी.एस. प्रमाण पत्र की द्वितीय प्रति पेश की गई है, जो कि मूल प्रति के समान है । अतः सत्यापन के बाद उन्हें स्वीकार किया जा सकता है । इसलिए दोनों टी.डी.एस. प्रमाण पत्र स्वीकार किए जाते हैं ।

**9.** अपीलार्थी की ओर से वर्ष 2009-10 के कर निर्धारण आदेश दिनांक 26-6-2012 की प्रति पेश की गई है । जिसमें रु. 6,69,721/- की राशि अगले वित्तीय वर्ष के लिए कैरीफारवर्ड की गई है । अतः इस कर निर्धारण आदेश के प्रकाश में आगत कर के कैरीफारवर्ड के संबंध में पुनः प्रकरण कर निर्धारक अधिकारी की ओर विधि अनुसार आदेश पारित करने के लिए भेजा जाना उचित होगा ।

**10.** इस प्रकार यह अपील स्वीकार की जाती है और प्रकरण कर निर्धारक अधिकारी की ओर इस निर्देश के साथ प्रत्यावर्तित किया जाता है कि अपीलार्थी द्वारा मूल टी.डी.एस. प्रमाण पत्र की द्वितीय प्रति पेश करने और सत्यापन के पश्चात तथा कर निर्धारण आदेश वर्ष 2009-10 के प्रकाश में भी पुनः उन पर विचार कर विधि अनुसार आदेश पारित करें ।

**उक्तानुसार अपील स्वीकार की जाती है ।**

❑

**(2020) 65 TLD 349** Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members

**Jabalpur Hotels Pvt. Ltd.**

Case No. : 27/2019

Order No. : 10/2020

June 08, 2020

**AAR-MP - Input tax credit - Input tax credit of tax paid on Lifts procured and installed in hotel building shall not be available as the same is blocked in terms of section 17(5)(d) of the CGST Act, 2017 become an integral part of the building.**

CA. Neeraj Agrawal, Accounts Officer on bahalf of the applicant

**:: PROCEEDINGS ::**

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

**1.** M/s JABALPUR HOTELS PRIVATE LIMITED (hereinafter referred to as the Applicant) was established with an object to construct Hotel in Jabalpur at Mauza Ghana Khasara No 195/14, 195/2, 194 Nagpur Road. Jabalpur. The Applicant is having a GST registration with GSTIN 23AADCM7397N1ZU.

**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 MP GST Act would be mentioned as being under the GST Act.

**3. BRIEF FACTS OF THE CASE -**

**3.1** The company Jabalpur Hotels Private Limited was incorporated on 13th March 2018. With 5000000 Share Holders Holding 4970000 shares of Rs. 10/- each.

**3.2** The company was established with an object to construct Hotel in Jabalpur at Mauza Ghana Khasara No 195/14, 195/2, 194 Nagpur Road, Jabalpur.

**3.3** Company started construction of Hotel and completed a major part of

its work.

**3.4** The Hotel is in construction stage and the promoters of the hotel have some doubt on the issues of Input Tax Credit under GST hence preferred to file Advance Ruling before the Authority.

**3.5** This application sort advance ruling for input credit on Lift used in hotel.

**4. QUESTION RAISED BEFORE THE AUTHORITY -**

Input credit on Purchase of Lift would be available to Hotel as it has been used in the course or for the furtherance of business.

**5. DEPARTMENT VIEW POINT -** The concerned office in his view stated that under section 17(5)(*d*) no input tax credit is eligible on the lift on the instant case.

**6. RECORD OF PERSONAL HEARING -**

**6.1** CA Neeraj Agrawal, Accounts Officer appeared for personal hearing on and they reiterated the submission already made in the application and attached additional submission which goes as follows -

**6.2** Jabalpur Hotel Private Limited is constructing a Hotel at Mauza Ghana Khasara No. 195/14, 195/2, 194 Nagpur Road, Jabalpur.

**6.3** The hotel will be multi storied hotel and will have approx. 100 rooms.

**6.4** The hotel will be equipped with other facilities such as gym, spa, swimming pool, restaurant, Banquet Hall, Marriage Lawn and Garden etc.

**6.5** As there will be some rooms of the hotel which have declared tariff of more than Rs. 7500 and hence the restaurant of the hotel will be chargeable to GST @ 18% against 5% and would be eligible for GST credit of items used in the course or for the furtherance of restaurant services.

**6.6** As the hotel is multi storied, hence to provide facility to guest we would be requiring lift in the hotel premises.

**6.7** Section 16 Chapter V of CGST Act 2017 lay down the conditions specified for claiming Input Tax Credit. Lift that will be purchased will full fills all the conditions of section 16.

**6.8** Section 1 7 Lay downs certain conditions for Apportionments of credit and block credits.

**6.9** Section 17(5) blocks credit of works contract and goods or services received by a taxable person for construction of an immovable property (other than plant and machinery).

**6.10** As Lift is a machinery and hence in our opinion does not fall in the restriction of section 17(5) of COST Act 2017.

**6.11** The company Jabalpur Hotels Private Limited is constructing Hotel Containing approx. 100 numbers of Rooms.

**6.12** Lift is an essential part in a hotel and without which it very difficult to provide best services to our guest.

**6.13** Section 17(5) blocks credit of works contract and goods or services received by a taxable person for construction of an immovable property (other than plant and machinery).

**6.14** As Lift/escalator is a machine and it falls under HSN 8428 and hence excluded form block credit as specified in section 17(5).

**6.15** As a machine and especially, in view of usage and function it can be inferred that it is an absolutely must for providing Renting of Immovable Property Services. I think it conforms to the condition of "in business or furtherance of business" It does not fall under any exclusion clause. So in our view, ITC is allowed.

**6.16** QUESTION RAISED BEFORE THE AUTHORITY -

Input credit on Purchase of Lift would be available to Hotel as it has been used in the course or for the furtherance of business.

**6.17** FURTHER THE ASSESSEE BEGS TO SUBMIT AS UNDER:

**1. Object for Incorporation of Company**

a. As per Memorandum of Association the company Jabalpur Hotels Private Limited was incorporated with the following object. Copy of Relevant part of Memorandum of Association is enclosed as per **Annexure N/1**.

**i.** To carry on the business of hotel, restaurant, cafes, motel, resort, rest house, guest house, coffee house, recreation rooms, bars, conference center, leisure center, beer house, night club, boathouse, taverns, lodging-housekeeping, inn owners, boathouse, shikara, holiday-hut business and game room owners, grounds and place of amusements, recreation and entertainment and to carry on business as hotel manager and operators, refreshment contractors.

**ii.** To carry on the business as professional caterers, bakers, confectioners, cooks, restaurant keepers, refreshment rooms proprietors, milk and snack bar proprietors, pastry shop owners,

cafe and tavern proprietors, boarding & lodging house proprietors, ice cream merchants, sweetmeat merchants.

**2. Company is constructing Hotel**

Company is constructing a 100 room hotel in the name of Royal Orbit at Jabalpur. The hotel will be a multi storied Hotel with various amenities and facilities including Restaurant, swimming pool, spa, Marriage Lawn *etc*.

**3. Meaning of words Plant and Machinery**

a. The word plant and machinery is defined in explanation to section 17 as the expression "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 but excludes.

   i. land, building or any other civil structures;

   ii. telecommunication towers; and

   iii. pipelines laid outside the factory premises.

b. **As per Oxford References** "The equipment required to operate a business. Capital allowances are available for plant and machinery although neither is defined in the tax legislation. This defines plant and machinery as whatever apparatus is used by a businessman for carrying on his business - not his stock in trade which he buys or makes for resale: but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in the business. Subsequent cases have been largely concerned with the distinction between plant actively used in a business, and so qualifying for capital allowances, and expenditure on items that relate to the setting up of the business, which do not so qualify".

c. **Definition under legal dictionaries:**

   i. As per Law Lexicon. "Plant" means the fixtures, machinery, tools, apparatus, appliances etc., necessary to carry on any trade or mechanical business, or any mechanical operation or process.

   ii. As per Law Lexicon, "Machinery" means something more than a collection of ordinary tools. It means more than a solid structure built upon the ground, whose parts either do not move at all or if they do move, do not move the one with or upon the other in interdependent action with the object of producing specific and

definite result.

**4. Eligibility of Credit**

a. Company is eligible for input tax credit as per provisions contains in section 16 of CGST Act, 2019.

b. However certain credits of the company related to construction activity are blocked as per section 17(5)(d) of CGST Act 2017 which specifies goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

c. Excluding the above referred credit under section 17(5)(d) company is eligible for all other credit of inputs, input services and capital goods used in the course or furtherance of business.

d. Lift in a hotel is also used in the course or furtherance of business, as it approximately impossible to run a multi storied hotel without a lift in the present scenario.

e. Section 17(5)(d) of CGST Act 2017 also blocks credit of only construction of immovable property other than **plant or machinery**, hence it is the clear intent of the law makers that they do not wish to block credits of **plant or machinery**.

f. The good. "Lift" falls under HSN 8428 1011/8428 1019. ITC is admissible. Not hit by section 17(5) of CGST Act, 2017.

g. Further the lift so purchased is being capitalized in the books of the company and depreciation as per the provisions of income Tax Act, 1961 is charged on the cost of lift less eligible credit of GST. Hence no depreciation is being applied on the GST portion credit of which is eligible in accordance with the provisions of section 16 of CGST Act 2017 without controverting the provisions of section 16(3) of CGST Act 2017.

h. Having established the above, with specific regard to the eligibility of credits, the Applicant would like to draw attention to certain judicial pronouncements where it has been held that CENVAT Credit of services used for construction is admissible input. Although these judgments have been pronounced under the erstwhile CENVAT Credit laws, the analogy can be adopted to understand the eligibility of the same

under the GST laws.

i) M/s. Rattha Holding Co. Pvt. Ltd. Vs. Commissioner of Central Services Tax, Chennai (2018 (9) TMI 1722) - wherein the Hon'ble Chennai Tribunal held that disallowance of credit of input service used for Construction of buildings is unjustified.

ii) Commissioner of Central Excise. Vishakhapatnam-II Vs. M/s. SaiSamhmita Storages (p) Ltd. (2011 (2) TMI 400) - wherein the Hon'ble Andhra Pradesh High Court held that the assessee used cement and TMT bar for providing storage facility without which storage and warehousing services could not have been provided and the finding of the original authority as well as the appellate authority are clearly erroneous.

iii) Commissioner of Central Excise, Salem Vs. Ashok Agencies (2016 (5) TMI 782) wherein the Hon'ble Chennai Tribunal held that Commissioner (Appeals) has not committed any error to grant Cenvat credit to the respondent on those input services which are not disintegrated from providing output service. It is strange that how without bringing out an edifice Revenue shall realize its dues towards rental service.

i. Further, the following judicial pronouncements permit claim of CENVAT credit on goods or services or both used in fabrication of parts, components, accessories of the plant and machinery. It has been consistently held that the parts, components, accessories come into existence before the installation of the machinery and credit of taxes paid on the same cannot be denied even if they become part of the immovable property after installation of the plant and machinery.

i) Commissioner of Central Excise & Service Tax Vs. India Cements Ltd. 2014 (310) E.L.T. 636 (Mad).

ii) Commissioner of Central Excise Jaipur Vs. Rajasthan Spinning & Weaving Mils Ltd. 2010 (255) ELT 481 (S.C.)

iii) Saraswati Sugar Mill Vs. Commissioner of Central Excise Delhi III 2011 (270) E.L.T. 465(S.C.)

j. Further, these installations are recorded in the books of accounts under separate heads as per Indian Accounting Standards (i.e. independent of building or civil structure) which is sufficient justification that these installations are distinct from the land and building. Hence, the same do

not form a part of the exclusion portion of the Explanation to Chapter V and Chapter VI of the CGST Act, 2017 and are accordingly, not excluded from the definition of 'Plant and Machinery'.

The Applicant submits that, basis the above, although the Installations are fixed to the building/earth, they qualify as 'Plant' or 'Machinery' under the CGST Act, 2017 and accordingly, the taxes paid on procurement of LIFT should not be regarded as blocked credits in terms of section 17(5)(d) of the CGST Act, 2017 read with Explanation to Chapter V and Chapter VI of the CGST Act, 2017.

## 7. DISCUSSIONS AND FINDINGS

**7.1** We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing and the Department's view provided by the jurisdictional officer.

**7.2** We find that the extant application seeks Ruling specifically on solitary question, "Whether input credit on purchase of lift would be available to hotel as it has been used in the course for furtherance of business". Since the question is squarely covered under section 97(2)(d) of the CGST Act 2017, we admit the application and take up the matter for pronouncing ruling.

**7.3** The applicant is a Private Limited Company which has started construction of a Hotel in Jabalpur, as already discussed in the foregoing paras. It has been mentioned that the proposed hotel would have more than 100 rooms along with other facilities like gym, spa, swimming pool, banquet, restaurant etc. The applicant has mentioned that the hotel is a multi-storeyed building and, thus, the provision of lift is essential for running the business. It has been mentioned that the room tariff of some of the rooms is proposed to be more than Rs. 7500/- and therefore the restaurant would be paying GST @18% and availing input tax credit on goods and services used in course or for furtherance of business.

**7.4** The applicant have sought ruling on availability of input tax credit of tax paid on Lift purchased and installed by the applicant in the hotel building, particularly with reference to blocked credit as defined under the provisions of section 17(5) of the GST Act. The application, interalia, mentions that the said Lift is being capitalized in the books of the company and depreciation as per the provisions of income Tax Act, 1961 is charged on the cost of lift less eligible credit of GST. Hence no depreciation is being applied on the

GST portion credit of which is eligible in accordance with the provisions of section 16 of CGST Act, 2017 without controverting the provisions of section 16(3) of CGST Act 2017. It is therefore pleaded that the lift in question be termed as "Plant & machinery" and hence out of purview of blocked credit in terms of section 17(5)(d) in as much as "Plant & Machinery" has been excluded from the definition of immovable property.

**7.5** Now, we observe that section 17(5)(d) reads as under:

SECTION 17(5) Notwithstanding anything contained in Sub-section (1) of Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of the following, namely

(a) .....

(b) .....

(c) .....

(d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

**7.6** Thus, the intent of the legislature is clear to the extent that it intends to restrict input tax credit on any goods or services which are used or intended to be used in construction of an immovable property, even when such goods or services or both are used in the course of furtherance of business. We don't see any ambiguity in the words of the statute to this extent. We feel that the applicant is also on the same page with us that any goods or services used in construction of an immovable property shall not qualify for availment of input tax credit in terms of this sub-section 17(5).

**7.7** To avoid the event of blocking of credit in terms of section 17(5)(d), the applicant have argued that the impugned item 'Lift' merits classification as 'Plant and Machinery' and since 'Plant and Machinery' is excluded from the term 'immovable property', for the purpose of section 17(5)(d), the applicant shall be entitled to input tax credit of tax paid on such Lifts. It appears that in pursuit of input tax credit on lifts, the applicant has travelled beyond the designated route. Let us put it in perspective. The applicant essentially seeks to avail input tax credit on lifts which are purchased and installed in the building which would be used as a Hotel for providing taxable service. Thus, the lifts are sought to be considered as 'input' for hotel building. That being the case, the input tax credit is blocked unambiguously in terms

of section 17(5)(d), even when 'such goods or services or both are used in the course or furtherance of business'. To be more precise, hotel building being an immovable property, any input or input service going into its construction shall not be available for availment of input tax credit.

Further, a lift comprises of components or parts (goods) like lift car motors, ropes, rails, etc. and each of them has its own identity prior to installation and they are assembled/installed to create the working mechanism called lift. The installation of these components/parts with immense skill is rendition of service and without installation in the building, there is no lift. Lifts are assembled and manufactured to suit the requirement in a particular building and are not something sold out of shelf and, in fact, the value of goods and the cost of the components used in the manufacturing and installation of a lift are subject to taxation while the element of labour and service involved cannot be treated as goods. Parts of the lift are assembled at the site in accordance with its design and requirement of the building which may include the floor levels and the lift has to open on different floors or otherwise depending upon the requirement. It has to synchronize with the building and each door has to open on the level of each floor.

**The lift therefore becomes part of the building and is not a separate thing per se. A lift does not have an identity when removed from the Building. Therefore, the lift cannot be said to be separate from a Building. Also, it has to be borne in mind that a lift is not an item that is purchased and sold. It is a customized mechanism for transportation, designed to suit a specific building. Upon piece by piece installation, it becomes an integral part of the building.**

**7.8** Now, considering the alternate argument adduced by applicant to treat such lift as plant and machinery, we find that this scenario would merit consideration when the lift is being manufactured by someone and inputs or input services going into manufacture of the lift are in question. In the instant case, the applicant has procured the customized lift and gotten it installed piece by piece in the building resulting in the mechanized transportation system called lift.

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". This apparent contradiction 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.

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'.

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.

In the instant case, the lift has become part of the building and thus falls under the exclusion from plant and machinery and accordingly, we do not find any reason to interfere with the clear provisions of statute.

**7.9** The judicial citations relied upon by the applicant have been duly perused and considered by us. However, we find that all these cases pertain to pre-GST era and since section 17(5) of the CGST Act 2017 has put to rest all such issues in unambiguous terms, the legal citations adduced by applicant do not come to his rescue. On the contrary, we find that the identical issue has been decided by the learned Authority for Advance Ruling, Karnataka in the matter of M/s. Tarun Realtors Pvt. Ltd., Bangaluru vide

order dtd.30-9-2019. Even though an Advance Ruling does not have any precedential value, there is a lot persuasive value of the ratio decidendi in the matter of this AAR. The learned AAR, Karnataka has ruled that Lift, along with, several other such items, shall not be entitled for input tax credit when used in construction of immovable property since they take the character of Building itself. We thus hold that the applicant in the instant case shall not be entitled to avail input tax credit of tax paid on procuring the lift to be installed in the hotel building which in turn is intended to be used for providing taxable service, in terms of section 17(5)(d) of the CGST Act 2017.

## 8. Ruling

**8.1** In respect of solitary Question, we hold that the input tax credit of tax paid on Lifts procured and installed in hotel building shall not be available to the applicant as the same is blocked in terms of section 17(5)(d) of the CGST Act, 2017 become an integral part of the building.

**8.2** 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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**(2020) 65 TLD 359** Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members

**V E Commercial Vehicles Ltd.**

Case No. : 25/2019
Order No. : 09/2020
June 02, 2020

**AAR-MP - Fabrication of body - Fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.**

CA P.D. Nagar, Authorised Representative on bahalf of the applicant.

**:: PROCEEDINGS ::**

**(Under Section 98(4) 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 & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017

(hereinafter also referred to CGST Act and SGST Act respectively) by M/s. V E Commercial Vehicles Ltd. (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 or MPGST Act would be mentioned as being under the GST Act.

**3. BRIEF FACTS OF THE CASE:**

**3.1** The applicant is engages in the various business including manufacturing of chassis trucks & buses, engines, bus body and automotive components. The applicant has different manufacturing units/manufacturing verticals in the State of Madhya Pradesh registered separately under the GST Act. Relevant details are as under:-

| Particulars | GST Registration No. | Location of the unit |
|---|---|---|
| Manufacturing chassis for buses along with other products, | 23AABCE9378F3ZI | Sector-I, Pithampur |
| Engaged in fabrication of body on chassis | 23AABCE9378F1ZK | Village Baggad (Dist - Dhar) distance from Pithampur unit 10 K.m. |

**3.2** When the body fabrication is completed at the applicant's fabrication unit (GST No. 23AABCE9378F1ZK) and the built up vehicle is sold, GST is collected and deposited @ 28% as a composite sale of bus under HSN 87021022 by claiming input tax credit of GST paid on various raw material.

**3.3** Some customers after having purchased the vehicle from our manufacturing unit in chassis form, approach the applicant to carry out body fabrication work on the chassis owned by them by another unit. Similarly, the owners of vehicle in chassis from other manufacturers have also approached the applicant to carry out body fabrication work on the chassis so purchased and owned by them.

**3.4** The body fabrication unit of the applicant will fabricate the body on

chassis supplied by customer and charge GST @ 18% on such supply being job work on chassis carried out by fabrication unit of the company.

**3.5** On the aforesaid facts, the issue raised before the Authority for Advance Ruling, if the Authority relates to incidence of tax in the circumstances when customer approaches our body fabrication unit after purchasing the chassis from our another manufacturing unit of the chassis located at Pithampur.

## 4. QUESTIONS RAISED BEFORE THE AUTHORITHY:-

The following questions have been posted before the Authority in the application:-

Whether the supply towards provision of services in respect of activity of mounting/fabrication of bodies on chassis provided by customer should be treated as supply of bus or provision of services in respect of activity of mounting/fabrication of bus body on the chassis wherein the said activity of mounting/fabrication is outsourced to the Applicant by owner/provider of chassis in following two scenarios:-

**4.1** The chassis is originally manufactured by one of the unit of the applicant registered separately as distinct person under GST Act and sold to provider of chassis receiving the chassis for fabrication of body.

**4.2** The chassis is originally manufactured by some other OEM and sold to provider of chassis before receiving the chassis for fabrication of body.

## 5. CONCERNED OFFICER'S VIEW POINT:

The concerned officer is of the view that in both the cases for which the applicant has asked for advance ruling will be taxes by 18% (9% CGST and 9% SGST) under services falling under SAC 998881 – "Motor vehicle and trailer manufacturing services" and under Entry No. 26(ii) as "Manufacturing services on physical inputs (goods) owned by other".

## 6. RECORD OF PERSONAL HEARING:

**6.1** CA, P.D. Nagar, Authorised Representative of the applicant for personal hearing the submissions already made in the application. The applicant states that -

**6.1.1** The bus chassis manufactured by the vehicle assembly plant are either:

(a) Sold in chassis form to the dealer at 28% GST upon which the dealer further sales to end customer charging GST @ 28%. End customer takes the vehicle to a body builder of his choice. The body builder

fabricates the body on chassis so provided and supplies the body, charging 18% GST as job work, in terms of Circular No. 52/26/2018-GST, dated 9th August, 2018 or

(b) Stock transferred to a depot and then sold in chassis form to the dealer at 28% GST upon which the dealer appoints an independent bus body builder to fabricate the body; the body builder supplies the body to dealer and dealer sales the complete bus to its customer, or

(c) Sent to the Bus Body Plant after paying GST @ 28% for fabrication of the bus body. The bus plants avails input credit of GST paid on chassis, fabricates the body on chassis and after that the complete bus is sold/supplied to the dealer/customer/Depot at 28% GST.

**6.1.1** Currently the bus body plant is manufacturing bus Bodies owned by VECV only. Now some of our customers/dealers have approached the applicant to fabricate bodies on chassis being purchased by them from dealers of VECV and also on chassis purchased by them by other chassis manufacturers.

**6.1.2** There could be following scenarios for customer after purchasing chassis, as owner of chassis approaching our bus manufacturing plant for fabrication of body.

(i) The potential customer has purchased the chassis from another chassis manufacturer and is approaching applicant for fabrication of body. While sending the chassis to applicant, the customer owns the chassis and asks applicant to fabricate the bus body on chassis owned by him. The chassis and body will continue to be owned by customer who has provided the chassis for body fabrication after body fabrication.

(ii) The chassis manufactured by vehicle assembly plant is sold to its dealer. The dealer has further sold it to customer and the customer is approaching applicant for fabrication of body. While sending the chassis to applicant, the customer owns the chassis and asks applicant to fabricate the bus body on chassis owned by him. The chassis and body will continue to be owned by customer who has provided the chassis for body fabrication after body fabrication.

(iii) The chassis manufactured by vehicle assembly plant is sold to its dealer. The dealer is approaching applicant for fabrication of body. While sending the chassis to applicant, the customer owns the chassis and asks applicant to fabricate the bus body on chassis owned by him. The

chassis and body will continue to be owned by dealer who has provided the chassis for body fabrication after body fabrication. Apart from this the applicant will continue to receive the chassis from vehicle manufacturing plant as being done currently and supply the complete bus charging 28% GST.

**6.1.3** Applicant understands that in the situations described in above Para, the chassis is owned by person desirous to get the body fabricated and applicant is not owner of chassis. The chassis owner has full liberty to go to any body builder for getting the body fabrication work carried out. The applicant is one of the choices for owner of chassis to get the body fabrication.

**6.1.4** Applicant understands that such situations are covered under the Circular No. 52/26/2018-GST, dated 9th August, 2018. The relevant para of circular is reproduced below.

"12.1 Applicable GST rate for bus body building activity: Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

12.2 Buses [motor vehicles for the transport of ten or more persons, including the driver] fall under headings 8702 and attract 28% GST. Further, chassis fitted with engines [8705] and whole bodies (including cabs) for buses [8707] also attract 28% GST. In this context, it is mentioned that the services of bus body fabrication on job work basis attracts 18% GST on such service. Thus, fabrication of buses may involve the following two situations:

(a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

(b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

12.3 In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST @28%. In the case as mentioned at Para 12.2(b) above, fabrication of body on chassis provided by the

principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly."

**6.1.5** The Applicant understands that the situations described in Para 6.1.3 are squarely in Para 12.2(b) of the aforesaid Circular and hence in terms of Para 12.3 of the circular the fabrication of body in such situations would merit classification as service and GST applicable in terms of Notification No. 20/2019-Central tax (Rate), dated 30th September, 2019 would be applicable, which is currently 18%.

**6.1.6** In view of aforesaid submissions and recent notification being No. 20/2019, dated 30-9-2019, there should not be any discrimination for levy and collection of tax on bus body fabrication unit being carried on by the applicant at Village Baggad vis-a-vis bus body manufacturing activity carried on by another fabricator who will collect and deposit GST @ 18% only as per said circular dated 9th Aug., 2018 read with Notification dated 30-9-2019.

**6.2** In the matter produced before us for advance ruling, the ruling has been sought on the question that Whether the supply towards provision of services in respect of activity of mounting/fabrication of bodies on chassis by the customer should be treated as supply of bus or provision of services in respect of activity of mounting/fabrication of bus body on the chassis, wherein said activity of mounting/fabricating is outsourced to the applicant by the owner/provider of chassis -

**6.2.1** The chassis is originally manufactured by one of the unit of the applicant registered separately as distinct person under GST Act and sold to provider of chassis before receiving the chassis for fabrication of body.

**6.2.2** As mention in the question that the chassis is manufactured by one of the unit of the applicant registered separately as distinct person and as mandate by the Motor Vehicles Act, the chassis is delivered to the customer by raising a separate invoice, paying road tax and after issuing the insurance policy in the name of customer. By this act, it may be concluded that the supply of chassis, by one of the unit of applicant, is complete once the chassis is handed over to the customer and on such hand over, the customer becomes absolute owner of such chassis.

**6.2.3** After purchasing the chassis, customer is free to get the mounting/fabrication of bus body from anywhere. Such fabrication/mounting work is separate supply than supply of chassis manufactured by one of the unit of

applicant.

**6.2.4** As per the term defined u/s 2(68) of the CGST Act and as per para 3 of the Schedule II of the CGST Act any treatment or process which is applied to goods of another persons is a supply of service".

**6.2.5** As per section 2(68) of the CGST Act/SGST Act. The term job worker means "any treatment or process undertaken by a persons on goods belonging to another registered persons and the expression job worker shall be construed accordingly".

**6.2.6** The Motor vehicle is not complete without a body. A chassis is semi-finished goods and any treatment done by any other party on the chassis is the activity of job work. Therefore it is supply of service and covered under HSN-9988 which attracts tax 18% GST.

**6.2.7** The ownership of chassis always remains with the customer who has given chassis to applicant for building and mounting of body on job work. Because it fulfils the main important condition of the definition of job work i.e. process undertaken on goods belonging to another registered persons. The whole process of body building and mounting is performed on the goods (chassis) belonging to the customer, therefore, it is purely job work.

**6.2.8** Once it is established that it is a job work then it is supply of service. In this case the principal supply is supply of service. Thus, it should be classified as services and tax is @ 18% under CGST Act.

**6.2.9** Here it is also important to note that principal is charging @ 28% GST under HSN Code 8707 on supply of a complete vehicle but body building for him is a receipt of service and duly covered under HSN Code 9988 where the rate of tax is applicable @ 18% under GST Law.

**6.2.10** Reliance is placed on the following judgments:-

(a) The Hon'ble Goa Authority for Advance Ruling in the case of Automobile Corporation of Goa Ltd. Sattari (2018) 33 GSTJ 581 has held that the activity of building and mounting of the body on the chassis provided by the principal under FOC challan will result in supply of services under HSN 9988 and hence, should be taxed @ 18% GST.

(b) There is a judgment of Authority for Advance Ruling- Madhya Pradesh in the case of Arpijay Fabricators Pvt. Ltd. 2018 33 GSTJ 211 where it was held that if the predominant element to be the service part, then the principal supply would be classified under Heading No. 9988.

(c) As per the process of body building, some goods are used by job worker. Therefore it is composite supply consisting of small part of supply of goods and major part of supply of services. As per the provision of section 8(a) of CGST Act the same should be classified as supply of services under HSN-9988 which attracts Tax @ 18% GST.

**7. DISCUSSIONS AND FINDINGS:**

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

**7.2** Now we come to the question raised by the Applicant as Whether mounting of Bus/Truck Body by the job worker on the chassis supplied by the principle for which the applicant charged fabrication charges including cost of certain material that was consumed during the process of job work would be classified as supply of service under HSN 9988.

**7.3** We Find that the activity and question raised before us has been suitably clarified and dealt with Circular No. 52/26/2018-GST issued by Government of India, Ministry of Finance, Department of Revenue dated 9th August, 2018.

**7.4** The following Para's of the above mentioned circular the issue has been dealt with which are as follow -

1. Applicable GST rate for bus body building activity: Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

2. Fabrication of body may involve the following two situations:

   (a) A vehicle body builder builds a vehicle, working on the chassis owned by him and supplies the built-up vehicle to the customer, and charges the customer for the value of the bus. In this scenario the chassis is being manufactured by the one of the unit of applicant registered separately as distinct person under GST Act and Sold to provider of chassis before receiving the chassis for fabrication of body. In this situation, as per facts and information produced, the ownership of chassis is transferred by one unit of applicant to the customer and then customer provides such chassis to the applicant for mounting/fabrication

of bodies on it. As the customer is taking supplies from both unit of same company separately, which do not have bearing on each other's supply Hence no transaction is taking place between the two distinct persons. Taxability of the supply between customer and the applicant is completely different from the supply taking place between customer and the other unit of applicant.

(b) The chassis is originally manufactured by some other OEM and sold to provider of chassis before receiving the chassis for fabrication of body. The Applicant builds body on chassis provided by the principal, the owner of chassis for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work). Nowhere the ownership of chassis is transferred to the Applicant i.e. the body builder.

3. In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of vehicle, and accordingly supply would attract the GST applicable to the vehicle @28%. In the case as mentioned at Para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

**7.5** The submission by the applicant with the application and during time of argument clearly shows that the nature of the work for which ruling on the rate of Tax has been sought in the question clearly falls under Para 12.2(b) of the above mentioned circular fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

## 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 the question raised by the applicant we hold that the supply towards provision of services in respect of activity of mounting/fabrication of bodies on chassis provided by Customer should be treated as supply of bus or provision of services in respect of activity of mounting/fabrication of bus body on the chassis wherein the said activity of mounting/fabrication is outsourced to the Applicant by owner/provider of chassis, in no case the

ownership of the chassis belongs to the applicant, hence in both the scenarios mentioned in the question will be taxable under SAC 998881 – "Motor vehicle and trailer manufacturing services" and under Entry No. 26(ii) as "Manufacturing services on physical inputs (goods) owned by other" it is taxable @18% (9% under CGST and 9% under SGST Act).

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

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**(2020) 65 TLD 368** Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members

**V E Commercial Vehicles Ltd.**

Case No. : 25/2019

Rectification Order of Order No. : 09/2020

June 09, 2020

**AAR-MP - Fabrication of body - Rectification Order - In para number 5 and para number 8.1 for the words and number "under entry No. 26(ii)" read as under entry No. 26(iv)".**

CA P.D. Nagar, Authorised Representative on bahalf of the applicant.

**:: PROCEEDINGS ::**

**(Rectified order of order No. 9/2020, dated 2-6-2020 u/s 102 of CGST Act, 2017 and the M.P. Goods & Services Tax Act, 2017)**

**1.** Order was passed under above mentioned case on dated 2-6-2020 and it was ruled that tax leviable on the services on which applicant has sought ruling would be 18% (9% CGST and 9% SGST) under GST.

**2.** After perusal of the said order it was found that there was error in para number 5 and para number 8.1 in typing the entry number. Hence in exercise of the powers under Section 102 of GST Act a rectification is being made in the said order dated 2-6-2020.

**3.** In para number 5 and para number 8.1 for the words and number "under entry No. 26(ii)" read as under entry No. 26(iv)".

**4.** Rest of the order/ruling will be same as in the original order.

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# कर सलाहकार परिषद, जावरा के चुनाव सम्पन्न

अध्यक्ष

यश जैन

सचिव

संदीप जैन

कोषाध्यक्ष

दीपेश जैन

कर सलाहकार परिषद शाखा जावरा की मीटिंग बोर्डिया कुँवा त्रिमूर्ति हनुमान मंदिर में रखी गई। जिसमें जीएसटी और आयकर के नए नियमों और संशोधन पर चर्चा कर विचार विमर्श किया गया और साथ अध्यक्ष नगीन सकलेचा की अध्यक्षता में नवीन अध्यक्ष एवं कार्यकारिणी 2 वर्ष हेतु नियुक्ति की गई जिसमें अध्यक्ष के रूप में श्री यश जैन एडवोकेट एवं सचिव श्री संदीप जैन साथ ही कोषाध्यक्ष दीपेश जैन सीए. उपाध्यक्ष श्री राधेश्याम पोरवाल की नियुक्ति की गई। चयन प्रक्रिया के दौरान सदस्य उपस्थित थे। संस्था के संरक्षक श्री फखरुद्दीन जी बोहरा, मुकेश जी चंडालिया और साथ में कार्यकारिणी के अजय चपडोद, मोइज बोहरा, किशन सैनी, सतीश सैनी, गौरव परिहार, दर्शन कोलन आदि सदस्य उपस्थित थे। सभी ने नए पदाधिकारियों की नियुक्ति पर शुभकामनाएं दी।



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