POSTAL REGN. NO. MP/IDC/412/2021-2023

35th YEAR OF PUBLICATION

# Tax Law Decisions

A UNIQUE AND BEST MONTHLY MAGAZINE ON

GST, VALUE ADDED TAX AND ALLIED LAWS

IN TWO VOLUMES PER YEAR

FOUNDER EDITOR : DINESH GANGRADE

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Volume 66 Part - 3 March 2021

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# अभिनय

उसने कहा
तुम कुछ बोलो या न बोलो
उजागर तो हो ही जाते हो
बोलता है तुम्हारा चेहरा
बोलती है तुम्हारी आंखें
मैंने ये किया
कोरोना को धन्यवाद दिया
चेहरे पर लगा लिया मास्क
आँखों पर लगा लिया चश्मा
किसी को गमजदा देखकर
अब मैं खुश हो लेता हूँ
किसी की मय्यत में भी
हँस लेता हूँ
अब अभिनय की जरुरत नहीं
जैसा हूँ वैसा रह लेता हूँ

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

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## (26) Notification u/s 25(6D) of CGST Act, 2017 superceeding No. 17/2020-CT dated 23-3-2020 notifying persons to whom provisions of sub-section (6B) or sub-section (6C) of section 25 of CGST Act will not apply

**No. 03/2021-Central Tax**

**G.S.R. 132(E). New Delhi, Dated 23rd February, 2021 -** In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 17/2020-Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 200(E), dated the 23rd March, 2020, except as respects things done or omitted to be done before such supersession, hereby notifies that the provisions of sub-section (6B) or sub-section (6C) of section 25 of the said Act shall not apply to a person who is, -

(a) not a citizen of India; or

(b) a Department or establishment of the Central Government or State Government; or

(c) a local authority; or

(d) a statutory body; or

(e) a Public Sector Undertaking; or

(f) a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

[*Published in the Gazette of India dated 23-2-2021*]

❑

## (27) Notification u/s 44(1) of CGST Act, 2017 amending No. 95/2020 - CT dated 30-12-2020 extending the time limit for furnishing of the annual return for the financial year 2019-20 till 31-3-2021

**No. 04/2021-Central Tax**

**G.S.R. 142(E). New Delhi, Dated 28th February, 2021 -** 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 amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 95/2020 - Central Tax, dated the 30th December, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 809(E), dated the 30th December, 2020, namely:-

In the said notification, for the figures "**28-2-2021**", the figures "**31-3-2021**" shall be substituted.

**Note:** The principal notification No. 95/2020 - Central Tax, dated the 30th December, 2020, was published in the Gazette of India, Extraordinary, *vide* number 809(E), dated the 30th December, 2020.

[*Published in the Gazette of India dated 28-2-2021*]

❑

## (28) Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017

**Circular No. 145/01/2021-GST**

**CBEC-20/06/01/2021-GST**

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

New Delhi, dated the 11th February, 2021

**Subject:** Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017 – regarding

As you are aware that vide notification No. 94/2020-Central Tax, dated 22-12-2020, sub-rule (2A) has been inserted to rule 21A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules). The said provision provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue.

**2.1** Sub-rule (2A) of rule 21A is reproduced hereunder:

"(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in **FORM GSTR-1**; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1,**

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in **FORM GST REG-31**, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.";

**2.2** Till the time an independent functionality for **FORM REG-31** is developed on the portal, in order to ensure uniformity in the implementation of the provisions of above rule across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby provides the following guidelines for implementation of the provision of suspension of registrations under the said rule.

**3.** On the recommendation of the Council, the registration of specified taxpayers shall be suspended and system generated intimation for suspension and notice for cancellation of registration in **FORM GST REG-31,** containing the reasons of suspension, shall be sent to such taxpayers on their registered e-mail address. Till the time functionality for **FORM REG-31** is made available on portal, such notice/intimation shall be made available to the taxpayer on their dashboard on common portal in **FORM GST REG-17**. The taxpayers will be able to view the notice in the "View/Notice and Order" tab post login.

**4.** The taxpayers, whose registrations are suspended (hereinafter referred to as "the said person") under the above provisions, would be required to

furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/anomalies, if any, and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled:

a. The said person would be required to reply to the jurisdictional officer against the notice for cancellation of registration sent to them, in **FORM GST REG-18** online through Common Portal withing the time limit of thirty days from the receipt of notice/ intimation.

b. In case the intimation for suspension and notice for cancellation of registration is issued on ground of non -filing of returns, the said person may file all the due returns and submit the response. Similarly, in other scenarios as specified under **FORM GST REG-31**, they may meet the requirements and submit the reply.

**5.1** Post issuance of **FORM GST REG-31** via email, the list of such taxpayers would be sent to the concerned Nodal officers of the CBIC/ States. Also, the system generated notice can be viewed by the jurisdictional proper officers on their Dashboard for suitable actions. Upon receipt of reply from the said person or on expiry of thirty days (reply period), a task would be created in the dashboard of the concerned proper officer under **"Suo moto cancellation proceeding**".

**5.2** Proper officer, post examination of the response received from the said person, may pass an order either for dropping the proceedings for suspension/ cancellation of registration in **FORM GST REG-20** or for cancellation of registration in **FORM GST REG-19**. Based on the action taken by the proper officer, the GSTIN status would be changed to "Active" or "Cancelled Suo-moto" as the case maybe.

**5.3** Till the time independent functionality for **FORM GST REG-31** is fully ready, it is advised that if the proper officer considers it appropriate to drop a proceeding anytime after the issuance of **FORM GST REG-31**, he may advise the said person to furnish his reply on the common portal in **FORM GST REG-18**.

**5.4** It is advised that in case the proper officer is prima-facie satisfied with the reply of the said person, he may revoke the suspension by passing an order in **FORM GST REG-20**. Post such revocation, if need be, the proper officer can continue with the detailed verification of the documents and recovery of short payment of tax, if any. Further, in such cases, after detailed

verification or otherwise, if the proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in **FORM GST REG-17**.

**6.** Difficulties, if any, in implementation of these instructions may be informed to the board (gst-cbec@gov.in). Hindi version follows.

(Sanjay Mangal)

Commissioner (GST)

❑

## (29) Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020

**Circular no. 146/02/2021-GST**

**F.No. CBEC-20/16/38/2020-GST**

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

New Delhi, dated the 23rd February, 2021

**Subject:** Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020-Central Tax dated 21st March, 2020 - Reg.

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 1-12-2020. Further, vide Notification No. 89/2020-Central Tax, dated 29th November 2020, penalty has been waived for non-compliance of the provisions of Notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 31st March, 2021, subject to the condition that the said person complies with the provisions of the said Notification from 01st April, 2021.

**2.** Various references have been received from trade and industry seeking clarification on applicability of Dynamic Quick Response (QR) Code on B2C (Registered person to Customer) invoices and compliance of Notification No. 14/2020-Central Tax, dated 21st March, 2020 as amended. The issues have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise

of its powers conferred under section 168(1) of the CGST Act, 2017, hereby clarifies the issues in the table below:

**Issue-1 : To which invoice is Notification No 14/2020-Central Tax dated 21st March, 2020 applicable? Would this requirement be applicable on invoices issued for supplies made for Exports?**

**Clarification :** This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases:

i. Where the supplier of taxable service is:
   a) an insurer or a banking company or a financial institution, including a non-banking financial company;
   b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;
   c) supplying passenger transportation service;
   d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens

ii. OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person.

As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of Notification no. 13/2020-Central Tax, dated 21st March, 2020 treating them as Business to Business (B2B) supplies, Notification no. 14/2020-Central Tax, dated 21st March, 2020 will not be applicable to them.

**Issue-2 : What parameters/ details are required to be captured in the Quick Response (QR) Code?**

**Clarification :** Dynamic QR Code, in terms of Notification No. 14/2020-Central Tax, dated 21st March, 2020 is required, inter-alia, to contain the following information: -

i. Supplier GSTIN number

ii. Supplier UPI ID

iii. Payee's Bank A/C number and IFSC

iv. Invoice number & invoice date,

v. Total Invoice Value and

vi. GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc.

Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.

**Issue-3 : If a supplier provides/displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice?**

**Clarification :** If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements.

In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: -

i. Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice ; or

ii. In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash , along with date of such payment on the invoice;

The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.

**Issue-4 : If the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?**

**Clarification :** In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code.

However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

**Issue-5 : Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre-paid invoices i.e. where payment has been made before issuance of the invoice?**

**Clarification :** If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code.

In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

**Issue-6 : Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?**

**Clarification :** The provisions of the notification shall apply to each supplier/ registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the Ecommerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

**3.** It is requested that suitable trade notices may be issued to publicize the contents of this circular.

**4.** Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal) Commissioner

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## (30) CBIC provides facilitation for exporters having IGST refund issues

Press Information Bureau
Government of India, Ministry of Finance

22-February-2021, 7:05 PM

The Central Board of Indirect Taxes and Customs (CBIC) has extended the time limit for sanction of pending IGST refunds in such cases where records have not been transmitted to ICEGATE due to GSTR1 and GSTR3B mismatch error. This overcomes the problem of refund blockage by allowing refunds subject to undertakings/submission of CA certificates by the exporters and post refund audit scrutiny. This facilitation was issued Vide Circular 04/2021 and would be applicable to all shipping bills filed up to 31-3-2021.

The CBIC hasalso extended the facility for resolving invoice mismatch errors (classified as SB-005 error) through customs officer interface on permanent basis vide Circular 05/2021. Earlier this facility was provided for a limited period i.e. in respect of shipping bills filed up to 31-12-2019.

The exporter may avail the facility of correction of Invoice mis-match errors (error code SB-005) in respect of all past shipping bills, irrespective of its date of filing subject to payment of a nominal fee.

The CBIC has continuously taken a proactive approach to resolve issues faced by the trade. It is seen that a considerable number of exporters have been facing difficulties in getting their IGST refund sanctioned either due to lack of facility to amend GST 3B return or bona-fide clerical/human errors while filing the documents. With the endeavor of resolving all such pending IGST refund claims, CBIC has issued Circular 04/2021-Customs dated 16-2-2021 and Circular 05/2021-Customs dated 17-2-2021.

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## (31) निर्यातकों की आईजीएसटी रिफंड की समस्या को देखते हुए सीबीआईसी ने सुविधा दी

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

22 फरवरी, 2021, 7:05 आईएसटी

केंद्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड (सीबीआईसी) ने निर्यातकों की आईजीएसटी रिफंड में आ रही समस्याओं को देखते हुए लंबित मामलों को मंजूरी देने की समय सीमा बढ़ा

दी है। यह सुविधा उन मामलों में मिलेगी जिनमें जीएसटीआर-1 और जीएसटीआर-3बी में रिकॉर्ड मिलान नहीं होने से मामले आइसगेट को स्थानांतरित नहीं हो पाए हैं। समय सीमा बढ़ाने से रिफंड रुकने की समस्या नहीं रह जाएगी। यह निर्यातकों द्वारा चार्टर्ड अकाउंटेट से हलफनामा / प्रमाणपत्र और रिफंड जमा करने और रिफंड के बाद ऑडिट जांच पर निर्भर करेगा। यह सुविधा 04/2021 को जारी किए गए परिपत्र के जरिए लागू कर दी गई है। जो कि 31 मार्च 2021 तक सभी शिपिंग बिल पर लागू होंगे।

सीबीआईसी ने इनवॉयस मिलान में आने वाली 'एसबी-005 त्रुटि' की दिक्कतों को देखते हुए, सीमा शुल्क अधिकारी के इंटरफेस के जरिए मिलान की सुविधा स्थायी रूप से कर दी है। इसके लिए 5/2021 के परिपत्र में जारी किया गया। अभी तक शिपिंग बिल के लिए सीमा शुल्क अधिकारी के जरिए मिलान की सुविधा 31 दिसबंर 2019 तक ही उपलब्ध थी।

निर्यातक इनवॉयस के मिलान में आ रहे त्रुटि (त्रुटि कोड एसबी-005) को ठीक करने के लिए दी जाने वाली नई सुविधा को सभी शिपिंग बिल के लिए हासिल कर सकते हैं। यह सुविधा किसी भी तिथि पर मिलेगी। इसके लिए निर्यातकों को नाम मात्र का शुल्क देना होगा।

सीबीआईसी, बिजनेस में आ रही दिक्कतों को हल करने के लिए लगातार सक्रिय नजरिया अपना रहा है। यह देखा जा रहा है कि जीएसटी-3बी रिटर्न फाइल करते समय दस्तावेजों में लिपिकीय/मानवीय रुप से हुई त्रुटियों को संशोधित करने की सुविधा नहीं है। इस कारण कई निर्यातकों को आईजीएसटी रिफंड को हासिल करने में कठिनाइयों का सामना करना पड़ रहा है। ऐसे सभी लंबित आईजीएसटी रिफंड दावों को हल करने के लिए, सीबीआईसी ने एक परिपत्र 04/2021-सीमा शुल्क दिनांक 16-2-2021 और दूसरा परिपत्र 05/2021-सीमा शुल्क दिनांक 17-2-2021 को जारी किए हैं।

❑

## (32) Due date for furnishing of GSTR-9 and GSTR-9C for the financial year 2019-20 extended further to 31-3-2021

Press Information Bureau
Government of India, Ministry of Finance

28-February-2021, 6:40 PM

It may be noted that the due date for furnishing of the Annual returns (GSTR-9 and GSTR-9C) specified under section 44 of the CGST Act read with rule 80 of the CGST rules for the financial year 2019-20 was earlier extended from 31-12-2020 to 28-2-2021 vide Notification No. 95/2020-Central Tax dated 30-12-2020. In view of the difficulties expressed by the taxpayers in meeting this time limit, Government has decided to further extend

the due date for furnishing of GSTR-9 and GSTR-9C for the financial year 2019-20 to 31-3-2021 with the approval of Election Commission of India. This press note is being issued to keep taxpayers informed so that they may plan their return filing accordingly. Suitable notification to give effect to this decision is being issued.

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

**S.O. 964(E). New Delhi, Dated 26th February, 2021 -** 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 makes the following amendments in the notification of the Government of India, Ministry of Finance, (Department of Revenue), number 85/2020, dated the 27th October, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), *vide* number S.O. 3847(E), dated 27th October, 2020, namely:-

In the said notification,-

(i) in clause (a), for the figures, letters and words "28th day of February, 2021" the figures, letters and words "31st day of March, 2021" shall be substituted;

(ii) in clause (b), for the figures, letters and words "31st day of March, 2021" the figures, letters and words "30th day of April, 2021" shall be substituted; and

(iii) in clause (c), for the figures, letters and words "1st day of April, 2021" the figures, letters and words "1st day of May, 2021" shall be substituted.

**Note**: The principal notification was published in the Gazette of India, Extraordinary, Part-II Section 3, Sub-section (ii) dated the 27th October, 2020 *vide* No. S.O. 3847(E), dated 27th October, 2020 and was subsequently amended by Noti. No. S.O. 4804(E), dated 31st December, 2020 published in the Gazette of India, Extraordinary, Part-II Section 3, Sub-section (ii) dated the 31st December, 2020 and Noti. No. S.O. 471(E), dated 31st January, 2021 published in the Gazette of India, Extraordinary, Part-II Section 3, Subsection (ii) dated the 31st January, 2021.

[*Published in the Gazette of India dated 26-2-2021*]

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## (34) Copy of letter submitted by Ahilya Chamber of Commerce and Industry to FM

**अहिल्या चेम्बर ऑफ कॉमर्स एण्ड इण्डस्ट्री**

13-2-2021

द्वारा : माननीय श्री कैलाश विजयवर्गीय,
राष्ट्रीय महासचिव भारतीय जनता पार्टी, इंदौर.

**विषय- बजट में जीएसटी से संबंधित कुछ प्रस्तावित प्रावधानों का दुष्प्रभाव तथा न्याय उचित सुझाव ।**

महोदया,

नए बजट प्रावधान में ऐसे कई प्रावधान किए गए हैं जिसको माना जा सकता है की पिछले वर्षों में कुछ व्यक्तियों द्वारा जीएसटी की व्यवस्था का जिस तरह का दुरुपयोग किया जा रहा है उसे रोकने के लिए किया गया है । परंतु कुछ सीमित व्यक्तियों द्वारा दुरुपयोग को रोकने के लिए पूरे जनसामान्य पर कड़े नियम और प्रावधान बनाने पर ना सिर्फ जन आक्रोश बढ़ रहा है बल्कि कुछ व्यक्तियों द्वारा जीएसटी की व्यवस्था का सरकारी तंत्र को लालफीताशाही तथा भ्रष्टाचार को बढ़ावा देंगे ।

हमारी एसोसिएशन के सदस्य मध्य प्रदेश के लगभग सभी व्यापारिक एसोसिएशन हैं तथा हमारी एसोसिएशन ने गत 13 फरवरी को बजट के प्रावधानों के संबंध में एक सामूहिक बैठक की है तथा उस बैठक में, बजट के कुछ प्रावधानों के संबंध में अर्थव्यवस्था पर प्रभाव तथा न्याय उचित सुझाव सुझाए गए थे । ज्यादातर सुझाव से राजस्व को कोई नुकसान नहीं होगा तथा उससे जनता में सरकार तथा नए कानून के प्रति विश्वास बढ़ेगा ।

1) **वर्तमान कानून** - वर्तमान कानून के तहत अगर कोई संस्था अपने सदस्य को कोई वस्तु या सेवाएं देती हैं तो सर्वोच्च न्यायालय के कोलकाता क्लब के निर्णय अनुसार वह सप्लाई नहीं मानी जाती हैं तथा उस पर कोई कर दायित्व नहीं आता है ।

**बजट प्रस्तावित संशोधन** - बजट प्रावधान के तहत धारा 7 में बदलाव प्रस्तावित है जिसके तहत अगर कोई संस्था इत्यादि अपने सदस्यों को कोई कार्य करके देती हैं तो वह सप्लाई मान ली जाएगी तथा उस पर जीएसटी का दायित्व आएगा तथा यह प्रावधान 1 जुलाई 2017 यानि कि जब से जीएसटी लागू हुआ है से लागू माना जाएगा ।

**प्रभाव** - इस प्रावधान के चलते बहुत सारी संस्थाएं जिन्होंने अभी तक कर नहीं वसूला है उनको भी 1 जुलाई 2017 से कर का बोझ आ जाएगा क्योंकि जीएसटी अप्रत्यक्ष कर है । अतः अब वह संस्थाएं अपने मेम्बर से इसे वसूल भी नहीं पाएगी ऐसी दशा में कई संस्थाएं

बंद होने की कगार पर आ जाएंगे। इसके अलावा इस तरह का प्रावधान जन आक्रोश भी पैदा करेगा क्योंकि सरकार पहले भी कई बार यह स्पष्ट कर चुकी है कि कोई भी कानून में बदलाव पिछली तारीख से नहीं किया जाएगा।

**सुझाव** - अगर सरकार इस तरह की क्रियाओं को भी टैक्स के दायरे में लाना चाहती है तो वह सर्वोच्च न्यायालय का सम्मान करते हुए आगामी दिनांक से इसको लागू करें।

2) **वर्तमान कानून** - धारा 74 के एक्सप्लेनेशन में यह प्रावधान है कि अगर एक मुद्दे पर एक से अधिक व्यक्ति पर कार्रवाई होती है तथा मुख्य व्यक्ति कर इत्यादि का भुगतान कर देता है तो अन्य व्यक्ति पर पेनल्टी तथा धारा 129 और 130 की कार्रवाई स्वतः पूर्ण मान ली जाएगी।

**बजट प्रस्तावित संशोधन** - प्रस्तावित संशोधन में अन्य व्यक्तियों पर धारा 129 और 130 की कार्रवाई को स्वतः पूर्ण मानने का प्रावधान हटा दिया जा रहा है।

**प्रभाव** - अर्थव्यवस्था में ऐसे कई उदाहरण सामने आ रहे हैं कि अगर एक व्यक्ति ने कर नहीं चुकाया है अथवा दस्तावेजों में कमी है तो उससे संबंधित कई व्यक्ति जैसे कि ट्रक ऑपरेटर इत्यादि जांच के दायरे में आ रहे हैं ऐसी दशा में अगर मुख्य व्यक्ति अपनी कमी पूर्ण भी कर लेता है तो भी अन्य व्यक्तियों पर धारा 129, 130 की कार्यवाही जारी रहेगी। यह न्याय उचित नहीं है।

**सुझाव** - इस प्रावधान को पूर्ववत रखा जाना चाहिए।

3) **वर्तमान प्रावधान** - वर्तमान कानून की धारा 83 के तहत कर निर्धारण, जांच, सर्च जैसी कार्रवाई के दौरान अगर कमिश्नर को लगता है की राजस्व के हित में ऐसा करना आवश्यक होगा तो वह संबंधित व्यक्ति के संपत्ति, बैंक इत्यादि को प्रोविजनली अटैच कर सकता है।

**बजट प्रावधान** - नए प्रावधान के तहत इस अधिकार का दायरा बढ़ा लिया जा रहा है तथा अब रिटर्न की स्क्रूटनी, गिरफ्तारी, समन, अधिकारी को मदद ना करने, कर के भुगतान में देरी इत्यादि कई प्रावधानों के तहत भी अटेचमेंट किया जा सकेगा।

**प्रभाव** - इस तरह के अधिकार व्यापार जगत में डर का माहौल उत्पन्न करता है तथा कभी इस तरह के स्वतंत्र दंडात्मक प्रावधान तंत्र द्वारा व्यापार जगत पर अनुचित दबाव भी बनाएगा।

**सुझाव** - इस प्रावधान को पूर्ववत रखा जाना चाहिए।

4) **वर्तमान प्रावधान** - धारा 129 के तहत अगर वाहन के साथ में निर्धारित दस्तावेज नहीं पाए जाते हैं अथवा कानून के किन्हीं प्रावधानों का उल्लंघन होता है तो माल सहित वाहन रोककर जप्त किया जा सकता है तथा ऐसी दशा में कर राशि का 100% पेनल्टी लगाई जाएगी। अगर अगले 14 दिन के अंदर भुगतान नहीं किया जाता है तो ऐसे माल को राजसात करने

की कार्यवाही धारा 130 में की जा सकती है ।

**बजट प्रस्तावित संशोधन -** प्रस्तावित प्रावधान में सर्वप्रथम तो पेनल्टी की राशि को 200% करना प्रस्तावित है, बल्कि यह भी प्रस्तावित है की इस राशि को अगले 15 दिन के अंदर जमा ना करने पर अधिकारी द्वारा माल और वाहन को बेच कर वसूली की जाएगी। अगर वह व्यक्ति अपील भी करना चाहता है तो उसे पेनल्टी की राशि का 25% पहले जमा करना होगा ।

**प्रभाव -**

1. इस सेक्शन के तहत पेनल्टी की राशि तय कर दी गई है तथा अधिकारी को कोई विवेकाधिकार नहीं है एक छोटी सी त्रुटि जैसे कि ट्रक नंबर का गलत लिखा जाना जैसी बातों के लिए भी विभाग कार्यवाही कर रहा है तथा पेनल्टी की राशि को त्रुटि की कैटेगरी के आधार पर कम करने का कोई विवेकाधिकार भी अधिकारी को नहीं है। किसी सामान्य त्रुटि के लिए 200% पेनल्टी की राशि बहुत अधिक है तथा इसको लेकर एक जन आक्रोश है की यह कानून टैक्स वसूलने की वजह भारतीय दंड संहिता जैसा बन पड़ा है। साथ ही इस तरह का कड़ा कानून स्वतंत्र दुरुपयोग का कारण भी बन सकता है ।

2. यह हो सकता है कि किसी भी जरुरी और उचित कारणों की वजह से व्यापारी 200% पेनल्टी ना चुका पाए ऐसी दशा में तुरंत माल बेच देने का अधिकार व्यापार जगत के लिए बहुत भारी पड़ने वाला है तथा इस अधिकार का विभाग द्वारा दुरुपयोग के उदाहरण आने वाले समय में देखने को मिलेंगे। **वैसे भी संवैधानिक रूप से किसी भी माल अथवा वाहन को राजसात किए बगैर बेचना सरकार के लिए भी गैरकानूनी हो जाएगा तथा आने वाले समय में ऐसी कार्रवाई के विरुद्ध बहुत सारे वाद कोर्ट तक पहुंचेंगे ।**

3. कई बार विभाग के अधिकारी की असंतुष्टि की वजह से बहुत ऊंची पेनल्टी की राशि का निर्धारण हो जाता है तथा उसका 25% भरे बगैर वह अपील भी नहीं कर सकेगा। इससे जनता उचित न्याय से वंचित रहेगी ।

**सुझाव -** इस प्रावधान को पूर्ण रूप से पुनः लिखने की आवश्यकता है आज भी जितने भी विवाद जीएसटी में चल रहे हैं उसमें 25% से अधिक धारा 129 से संबंधित है। सामान्य त्रुटि के लिए साफ तौर पर यह प्रावधान होना चाहिए कि इस धारा को उपयोग ना किया जाए तथा धारा 125 के तहत रु. 25000 तक की सामान्य पेनल्टी लगाने के अधिकार का ही उपयोग हो ।

**5) वर्तमान नियम -** कानून की धारा 151 के तहत अधिसूचना के आधार पर कमिश्नर को अधिकार है कि कुछ संख्यिकी एकत्र की जा सके ।

**बजट प्रस्तावित संशोधन** - नए प्रावधान के तहत कमिश्नर अथवा अन्य किसी भी उचित अधिकारी द्वारा एक आदेश मात्र से किसी भी व्यक्ति से कोई जानकारी एकत्रित किया जाना प्रस्तावित है ।

**प्रभाव** - इस तरह का स्वतंत्र अधिकार सरकारी तंत्र द्वारा दुरुपयोग किया जा सकता है तथा साथ ही किसी भी व्यक्ति पर इस तरह के आदेश जारी होने पर जनता में डर का माहौल पैदा करेगा ।

**सुझाव** - इस तरह का अधिकार सिर्फ कमिश्नर तक ही सीमित रखना चाहिए ताकि आवश्यक होने पर इसका उपयोग हो सके ।

6) **वर्तमान कानून** - आईजीएसटी की धारा 16 के तहत निर्यातक द्वारा टैक्स भुगतान करके निर्यात करने के विकल्प चुनने पर निर्यात होते ही टैक्स की राशि उसके बैंक खाते में पहुंच जाती है ।

**बजट प्रस्तावित संशोधन**- निर्यातकों को यह विकल्प अब कुछ भी दशा में मिलेगा अन्य सभी परिस्थिति में उसे पहले बगैर करके निर्यात करना होगा तथा बाद में उससे संबंधित आईटीसी का रिफंड लेने के लिए आवेदन करना होगा ।

**प्रभाव** - इससे ना सिर्फ निर्यातकों की क्रियाशील पूंजी प्रभावित होगी बल्कि आवेदन करके रिफंड लेने की कार्रवाई के तहत लालफीताशाही और भ्रष्टाचार को बढ़ावा मिलेगा ।

**सुझाव** - वर्तमान अर्थव्यवस्था की स्थिति को देखते हुए निर्यात से संबंधित इस प्रावधान को पूर्ववत ही रखा जाना चाहिए ।

7) **वर्तमान परिस्थिति** - वर्तमान परिस्थिति में पिछले साढ़े 3 साल में जीएसटी के तहत व्यापारी द्वारा बहुत सारी छोटी-छोटी त्रुटियां हो चुकी हैं जिसको सुधार करने की दशा में ना सिर्फ उसे 18 प्रतिशत का ब्याज बल्कि विभाग द्वारा ध्यान दिलाए जाने पर पेनल्टी का भी सामना करना पड़ रहा है ।

**प्रभाव** - कानून नया होने की वजह से, समझ की कमी की वजह से इस तरह की दंडात्मक ब्याज और पेनल्टी छोटे और मझोले उद्योग और व्यापार को लगातार बंद कर रहा है अथवा डिमोटिवेट कर रहा है ।

**सुझाव** - क्योंकि कानून नया है तथा बहुत सारी त्रुटियां हो भी चुकी हैं अगर विभाग भी कार्रवाई शुरू करेगा तो पिछले साढ़े 3 साल के सभी रिटर्न को जांच करके गलतियां निकालने में कम से कम अगले 5 वर्ष लगा देगा । ऐसे में छोटे और मझोले व्यापार को एक बार मौका दिया जा सकता है की वह एक निर्धारित समय में स्वतः अपनी भूल और गलतियों को सुधार ले तथा उस पर कोई ब्याज नहीं लगेगा ना कोई पेनल्टी की कार्यवाही की जाएगी । इस तरह

की व्यवस्था लाने पर ना सिर्फ जनता में इस कानून तथा सरकार के प्रति विश्वास बढ़ेगा बल्कि विभाग पर भी पुराने कार्यों का बोझ नहीं रहेगा ।

**आशा है हमारे सभी सुझाव व्यावहारिक पाए जायेंगे एवं प्रधानमंत्री जी के' इज ऑफ डूइंग बिज़नस' का परिपालन करने हेतु, आप आवश्यक निर्देश देकर जीएसटी का अपेक्षित सरलीकरण कर व्यापार उद्योग को रहत प्रदान करेंगी ।**

सधन्यवाद,

रमेश खंडेलवाल, अध्यक्ष सुशील सुरेका, महामंत्री

❑

## (35) वित्त वर्ष 2019–20 के लिए जीएसटीआर–9 और जीएसटीआर–9सी भरने की नियत तिथि बढ़ाकर 31–3–2021 की गई

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

28 फरवरी, 2021, 6:40 आईएसटी

उल्लेखनीय है कि सीजीएसटी अधिनियम के अंतर्गत धारा 44 में, सीजीएसटी नियमों में नियम 80 के साथ पढ़े जाने वाले, निर्दिष्ट वार्षिक रिटर्न (जीएसटीआर-9 और जीएसटीआर-9 सी) भरने की नियत तिथि अधिसूचना संख्या केंद्रीय कर 95/2020 तिथि 30-12-2020 के माध्यम से पहले दिनांक 31-12-2020 से बढ़ा कर 28-2-2021 की गई थी । इस समय सीमा को पूरा करने में करदाताओं द्वारा व्यक्त की गई कठिनाइयों को देखते हुए सरकार ने भारत निर्वाचन आयोग की मंजूरी से वित्त वर्ष 2019-20 के लिए जीएसटीआर-9 और जीएसटीआर-9सी को प्रस्तुत करने की नियत तिथि को आगे बढ़ाकर 31-3-2021 करने का निर्णय लिया है । करदाताओं को सूचित करने के लिए यह प्रेस नोट जारी किया जा रहा है ताकि वे तदनुसार अपनी रिटर्न फाइलिंग की योजना बना सकें । इस निर्णय को प्रभावी बनाने के लिए उपयुक्त अधिसूचना जारी की जा रही है ।

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## (36) Relevant extract from Budget Speech of FM Madhya Pradesh

### व्यवसायियों को राहत एवं प्रोत्साहन

**153.** वाणिज्यिक करों के लंबित विवादों से व्यवसायियों को राहत प्रदान करने के उद्देश्य से बकाया समाधान योजना लागू की गई । इस योजना के अंतर्गत माह जनवरी, 2021 तक कुल 22 हजार 517 आवेदन प्राप्त हुए एवं रुपये 146 करोड़ 52 लाख की कर राशि जमा कर पात्र प्रकरणों में राहत दी गई ।

**154.** डीजल, पेट्रोल के अनेक व्यवसायियों द्वारा जीएसटी के तहत पंजीयन करा लिया गया था, परंतु भूलवश वैट अधिनियम के तहत पंजीयन नहीं कराया, जिसके कारण दोहरे करारोपण की स्थिति निर्मित हुई। वैट अधिनियम में संशोधन कर यह सुनिश्चित किया गया कि उपभोक्ताओं पर दोहरा करारोपण न हो ।

**155.** प्रदेश में पूर्व से प्रचलित भामाशाह योजना को जी.एस.टी. व्यवस्था के परिप्रेक्ष्य में नये स्वरुप में लाया जाकर राजस्व संग्रहण में उल्लेखनीय योगदान करने वाले व्यवसायियों को प्रोत्साहित किया जायेगा ।

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## (37) कराधान अधिनियमों की पुरानी बकाया राशि का समाधान अध्यादेश, 2020 के अधीन उद्‌भूत होने वाले अपील प्रकरणों के निर्वतन हेतु

**कार्यालय आयुक्त, वाणिज्यिक कर मध्यप्रदेश**

क्रमांक /वाक/17/वसूली/04/2020/63 इंदौर, दिनांक 24-2-2021

:: **आदेश** ::

मध्यप्रदेश कराधान अधिनियमों की पुरानी बकाया राशि का समाधान अध्यादेश, 2020 की धारा-8 (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये मैं, राघवेन्द्र कुमार सिंह, वि.क.अ.-सह-आयुक्त, वाणिज्यिक कर, मध्यप्रदेश, इंदौर कराधान अधिनियमों की पुरानी बकाया राशि का समाधान अध्यादेश, 2020 के अधीन उद्‌भूत होने वाले अपील प्रकरणों को निम्न सारिणी के कॉलम (4) के अनुसार सारणी के कॉलम (3) मे उल्लेखित क्षेत्राधिकार के अपील प्रकरणों के निर्वतन हेतु कॉलम (2) में विनिर्दिष्ट अधिकारी को अधिकृत करता हूँ :

:: **सारणी** ::

| अ. क्र. | अधिकारी का नाम एवं पदनाम | अधिकार क्षेत्र, जिसकी अपीलों का निराकरण किया जाना हैं, | विवरण |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| 1. | श्री धर्मपाल शर्मा, संभागीय उपायुक्त, इंदौर संभाग-02 इंदौर | इंदौर संभाग-03 | समाधान अध्यादेश, 2020 के अन्तर्गत प्राप्त अपील आवेदन |

| | | | |
|---|---|---|---|
| 2. | श्री गोपाल पोरवाल, संभागीय उपायुक्त, उज्जैन संभाग, उज्जैन | रतलाम संभाग | समाधान अध्यादेश, 2020 के अन्तर्गत प्राप्त अपील आवेदन |
| 3. | श्री आर.पी.श्रीवास्तव, संभागीय उपायुक्त, भोपाल संभाग-01 भोपाल | भोपाल संभाग-02 | समाधान अध्यादेश, 2020 के अन्तर्गत प्राप्त अपील आवेदन |
| 4. | श्री नारायण मिश्र, संभागीय उपायुक्त जबलपुर संभाग-01 जबलपुर | जबलपुर संभाग-02, सतना संभाग, सागर संभाग | समाधान अध्यादेश, 2020 के अन्तर्गत प्राप्त अपील आवेदन |

**(राघवेन्द्र कुमार सिंह)**

वि.क.अ.-सह-आयुक्त, वाणिज्यिक कर, मध्यप्रदेश

❑

## (38) Notification u/s 168A of M.P. GST Act, 2017 extending the validity of e-way bills till 31-5-2020 for those e-way bills which expire during the period from 20-3-2020 to 15-4-2020 and generated till 24-3-2020

**No. F A 3-35-2020-1-V-(01). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Section 168A of the Madhya Pradesh Goods and Services Tax Act, 2017, (19 of 2017), (hereafter in this notification referred to as the said Act), the State Government, on the recommendations of the Council, hereby makes the following amendment in this department's notification No. FA-3-31-2020-1-V-(67), Bhopal dated 5th December 2020 namely:-

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

"Provided that where an e-way bill has been generated under rule 138 of the Madhya Pradesh Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and its period of validity expires during the period 20th day of March, 2020 to the 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 31st day of May, 2020.".

**2.** This notification shall be deemed to have come into force with effect from the 5th day of May, 2020

❑

## (39) Notification u/s 168A of M.P. GST Act, 2017 amending Notification No. (67) dated 5-12-2020 in respect of extension of validity of e-way bill generated on or before 24-3-2020 (whose validity has expired on or after 20th day of March 2020) till the 30-6-2020

**No. F A 3-37-2020-1-V(03). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Section 168A of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), (hereafter in this notification referred to as the said Act), the State Government, on the recommendations of the Council, hereby makes the following further amendment in this department's Notification, No. F A 3-31-2020-1-V-(67), Bhopal, dated 5th December 2020, namely:-

In the said notification, in the first paragraph, in clause (ii), for the proviso, the following proviso shall be substituted, namely:-

"Provided that where, an e-way bill has been generated under rule 138 of the Madhya Pradesh Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and whose validity has expired on or after the 20th March, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th day of June, 2020.".

**2.** This notification shall deemed to have come into force with effect from the 31st day of May, 2020.

❑

## (40) Notification u/s 168A of M.P. GST Act, 2017 amending Notification No. (67) dated 5-12-2020 extending due date of compliance which falls during the period from "20-3-2020 to 30-8-2020" till 31-8-2020 w.e.f. 27-6-2020

**No. F A 3-38-2020-1-V-(04). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Section 168A of the Madhya Pradesh Goods and Services Tax Act, 2017, (19 of 2017), the State Government, on the recommendations of the Council, hereby makes the following further amendment in this department's notification No. FA-3-31-2020-1-V-(67), Bhopal Dated 5th December 2020 namely:-

In the said notification, in the first paragraph in clause (i), -

(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020", shall be substituted.

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020", shall be substituted.

**2.** This notification shall be deemed to have come into force with effect from the 27th day of June, 2020.

❑

## (41) Notification u/s 168A of M.P. GST Act, 2017 amending Notification No. (65) dated 5-12-2020 extending period to pass order under Section 54(7) of M.P. GST Act till 31-8-2020 w.e.f. 27-6-2020

**No. F A 3-39-2020-1-V-(05). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Section 168A of the Madhya Pradesh Goods and Services Tax Act, 2017, (19 of 2017), the State Government, on the recommendations of the Council, hereby makes the following amendment in this department's notification No. FA-3-32-2020-1-V-(65), Bhopal dated 5th December 2020 namely:-

In the said notification, in the first paragraph,-

(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020", shall be substituted;

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020", shall be substituted.

**2.** This notification shall be deemed to have come into force with effect from the 27th day of June, 2020.

❑

## (42) Notification u/s 168A of M.P. GST Act, 2017 amending Notification No. (67) dated 5-12-2020 extending due date of compliance under Section 171 which falls during the period from "20-3-2020 to 29-11-2020" till 30-11-2020

**No. F A 3-41-2020-1-V(06). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Section 168A of Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government, on the recommendations of the Council, hereby makes the following further

amendment in this department's notification, No. F A 3-31-2020-1-V-(67), Bhopal, dated 5th December, 2020, namely:-

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

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

**2.** This notification shall come into force w.e.f. 1st day of September, 2020. ❑

## (43) Notification u/s 168A of M.P. GST Act, 2017 amending Notification No. (67) dated 5-12-2020 giving one time extension for the time limit provided under Section 31(7) of the M.P. GST Act 2017 till 31-10-2020 w.e.f. 21-9-2020

**No. F A 3-42-2020-1-V(07). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Section 168A of Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government, on the recommendations of the Council, hereby makes the following further amendment in this department's notification, No. F A 3-31-2020-1-V-(67), Bhopal, dated 5th December, 2020, namely:-

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

"Provided further that where, any time limit for completion or compliance of any action, by any person, has been specified in, or prescribed or notified under sub-section (7) of Section 31 of the said Act in respect of goods being sent or taken out of India on approval for sale or return, which falls during the period from the 20th day of March, 2020 to the 30th day of October, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall stand extended up to the 31st day of October, 2020.".

**2.** This notification shall come into force with effect from the 21st day of September, 2020. ❑

## (44) Notification u/s 148 of M.P. GST Act, 2017 amending No. (88) dt. 22-11-2019 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. F A 3-42-2019-1-V(08). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by section 148 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), (hereinafter referred to as the said Act), the State Government, on the recommendations of the Council, hereby makes the following amendment in this department's notification No. F A 3-42-2019-1-V(88), Bhopal, date 22nd November 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.

**2.** This notification shall be deemed to have come into force from the 15th day of October, 2020.

❑

## (45) Notification u/s 128 of M.P. GST Act, 2017 waiving penalty payable for noncompliance of the provisions of notification No. (31) dated 4-5-2020 w.e.f. 29-11-2020

**No. F A 3-48-2019-1-V(09) Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Section 128 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), (hereafter in this notification referred to as the said Act), the State Government, on the recommendations of the Council, hereby waives the amount of penalty payable by any registered person under Section 125 of the said Act for non-compliance of the provisions of this department's notification No. F A 3-48-2019-1-V(31), dated 4th May 2020, between the period from the 01st day of December 2020 to the 31st day of March 2021, subject to the condition that the said person complies with the provisions of the said notification from the 01st day of April 2021.

**2.** This notification shall be deemed to come into force with effect from the 29th day of November, 2020.

❑

## (46) Notification u/r 46 of M.P. GST Rules, 2017 amending Notification No. (68) dated 3-7-2017

**No. F A 3-49/2017/1/V(10) Bhopal, Dated 23rd February 2021 -** In exercise of the powers conferred by the first proviso to rule 46 of the Madhya Pradesh Goods and Services Tax Rules, 2017, the State Government, on the recommendations of the Council, hereby makes the following amendment in this department's notification No. FA-3-49/2017/I/V(68) Dated the 03rd July, 2017, namely:-

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

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

| S. No. | Chemical name | HSN Code |
|---|---|---|
| (1) | (2) | (3) |
| 1. | Mixture of (5-ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate (CAS RN 41203-81-0) and Bis [(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate (CAS RN42595-45-9) | 38249100 |
| 2. | Dimethyl propylphosphonate | 29313200 |
| 3. | (5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate | 29313600 |
| 4. | Bis[(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate | 29313700 |
| 5. | 2,4,6-Tripropyl-1,3,5,2,4,6-trioxatriphosphinane 2,4,6-trioxide | 29313500 |
| 6. | Dimethyl methylphosphonate | 29313100 |
| 7. | Diethyl ethylphosphonate | 29313300 |

| | | |
|---|---|---|
| 8. | Methylphosphonic acid with ( aminoiminomethyl) urea ( 1: 1) | 29313800 |
| 9. | Sodium 3-(trihydroxysilyl) propyl methylphosphonate | 29313400 |
| 10. | 2,2-Diphenyl-2-hydroxyacetic acid | 29181700 |
| 11. | 2-(N,N-Diisopropylamino) ethylchloride hydrochloride | 29211400 |
| 12. | 2-(N,N-Dimethylamino) ethylchloride hydrochloride | 29211200 |
| 13. | 2-(N,N-Diethylamino) ethylchloride hydrochloride | 29211300 |
| 14. | 2-(N,N-Diisopropylamino) ethanol | 29221800 |
| 15. | 2-(N,N-Diethylamino) ethanethiol | 29306000 |
| 16. | Bis (2-hydroxyethyl) sulfide | 29307000 |
| 17. | 2-(N,N-Dimethylamino) ethanethiol | 29309092 |
| 18. | Product from the reaction of Methylphosphonic acid and l,3,5-Triazine-2,4,6-triamine | As applicable |
| 19. | 3-Quinuclidinol | 29333930 |
| 20. | R-(- )-3-Quinuclidinol | 29333930 |
| 21. | 3,9-Dimethyl-2,4,8,10-tetraoxa-3,9-diphosphaspiro [5.5] undecane 3,9- dioxide | 29313900 |
| 22. | Propylphosphonic dichloride | 29313900 |
| 23. | Methylphosphonic dichloride | 29313900 |
| 24. | Diphenyl methylphosphonate | 29313900 |
| 25. | O-(3-chloropropyl)O-[4-nitro-3-(trifluoromethyl) phenyl] methylphosphonothionate | 29313900 |
| 26. | Methylphosphonic acid | 29313900 |
| 27. | Product from the reaction of methylphosphonic acid and 1,2-ethanediamine | As applicable |
| 28. | Phosphonic acid,methyl-, polyglycol ester (Exolit OP 560 TP) | 38249900 |

| | | |
|---|---|---|
| 29. | Phosphonic acid,methyl-,polyglycol ester (Exolit OP 560) | 38249900 |
| 30. | Bis (polyoxyethylene) methylphosphonate | 39072090 |
| 31. | Poly(1,3-phenylene methyl phosphonate) | 39119090 |
| 32. | Dimethylmethylphosphonate, polymer with oxirane and phosphorus oxide | 38249900 |
| 33. | Carbonyl dichloride | 28121100 |
| 34. | Cyanogen chloride | 28531000 |
| 35. | Hydrogen cyanide | 28111200 |
| 36. | Trichloronitromethane | 29049100 |
| 37. | Phosphorus oxychloride | 28121200 |
| 38. | Phosphorus trichloride | 28121300 |
| 39. | Phosphorus pentachloride | 28121400 |
| 40. | Trimethyl phosphite | 29202300 |
| 41. | Triethyl phosphite | 29202400 |
| 42. | Dimethyl phosphite | 29202100 |
| 43. | Diethyl phosphite | 29202200 |
| 44. | Sulfur monochloride | 28121500 |
| 45. | Sulfur dichloride | 28121600 |
| 46. | Thionyl chloride | 28121700 |
| 47. | Ethyldiethanolamine | 29221720 |
| 48. | Methyldiethanolamine | 29221710 |
| 49. | Triethanolamine | 29221500 |

**2.** This notification shall be deemed to come into force with effect from the 1st day of December, 2020.

❑

## (47) Notification u/s 168A of M.P. GST Act, 2017 amending Notification No. (67) dated 5-12-2020 extending due date of compliance under Section 171 which falls during the period from "20-3-2020 to 30-3-2021" till 31-3-2021

**No. F A 3-31-2020-1-V(11). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Section 168A of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government, on the recommendations of the Council, hereby makes the following further amendment in this department's notification no. F-A-3-31-2020-1-V (67), dated 05th December, 2020, namely:-

In the said notification, in the first paragraph, in the proviso to clause (i),-

(i) for the words, figures and letters "29th day of November, 2020", the words, figures and letters "30th day of March, 2021" shall be substituted.

(ii) for the words, figures and letters "30th day of November, 2020", the words, figures and letters "31st day of March, 2021" shall be substituted.

**2.** This notification shall be deemed to have come into force with effect from 1st day of December, 2020.

❑

## (48) Notification u/s 1(2) of M.P. GST (Amendment) Act, 2020 appointing 1-1-2021 to bring into force Sections 3, 4, 5, 6, 7, 8, 9, 10 and 14 of said Act (19 of 2020)

**No. F-A 3-01-2021-1-V(12). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by sub-section (2) of Section 1 of the Madhya Pradesh Goods and Services Tax Act (Amendment) Act, 2020 (19 of 2020), (hereafter referred to as the said Act), the State Government, hereby appoints the 1st day of January, 2021, as the date on which the provisions of Sections 3, 4, 5, 6, 7, 8, 9, 10 and 14 of the said Act shall come into force.

❑

## (49) Notification u/s 9(3) & (4), 11(1), 15(5) and 148 of M.P. GST Act, 2017 extending exemption on services by way of transportation of goods by air or by sea from customs station of clearance in India to a place outside India, by one year i.e. upto 30-9-2021 w.e.f. 1-10-2020

**No. F A 3-42-2017-1-V-(13). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by sub-section (3) and (4) of section

9, sub-section (1) of Section 11, sub-section (5) of section 15 and section 148 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State 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 this department's notification No. FA-3-42-2017-1-V-(53), Bhopal dated 30th June 2017 namely:-

In the said notification, in the Table, -

(i) against serial number 19A, in the entry in column (5), for the figures "2020", the figures "2021" shall be substituted.

(ii) against serial number 19B, in the entry in column (5), for the figures "2020", the figures "2021" shall be substituted;

**2.** This notification shall come into force with effect from the 1st day of October, 2020.

❑

## (50) Notification under Section 20 (8) of M.P. Vat Act, 2002 amending Notification No. (64) dated 27-9-2019 and (91) dated 29-11-2019 extending the date of completion of assessments and reassessment proceedings for the period 1-4-2017 to 30-6-2017 and for all remaining cases which has not completed upto 28-02-2021 to 31-05-2021

**No. F A-3-40-2018-1-V (14). Bhopal, Dated 23rd February 2021-** In exercise of the powers conferred by Sub-section (8) of Section 20 of the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002), the State Government hereby, makes the following further amendment in this department's Notification No. FA 3-40-2018-1-V-(64) Bhopal, dated 27th September, 2019 and Notification No. F A 3-46-2019-1-V-(91) Bhopal, dated 29th November, 2019 read with Notification No. F A 3-40-2018-1-V-(86) Bhopal, dated 29th December, 2020 namely:-

**AMENDMENT**

In the said notifications, for the word and figure "28th February, 2021", the word and figure "31st May, 2021" shall be substituted.

❑

## (51) Interest u/s 50 (1) on GST Payment delay and Covid-19 Relief By : CA. J.P. Saraf

Interest u/s 50(1) of CGST Act calculations for delay in payment of GST are based on due date of filing of GSTR 3B (prescribed or extended). Recently due to Covid19 various relief measures for interest announced initially vide Notification 31/2020 Dt. 3.4.2020 which got amended later vide Notification 51/2020 Dt. 24.6.2020, created some confusions for eligible persons to whom reliefs extended in interest u/s 50 etc. Circular No. 141/11/2020 dt. 24-6-2020 illustrated these issues for ease of users. To overcome such issues a chart has been prepared to get, at a glance information of period of relief in charging of interest u/s 50(1) whether by extending dates of GSTR 3B or special relief during covid-19 period without extending due dates of GSTR 3B. Further since inception of GST dates of extension in GSTR3B with relevant notification has been given. Though GST has various other returns apart from GSTR 3B but for the sack of general purpose where GSTR-3B is commonly used, I have complied this information based on due dates of GSTR 3B.

**Interest u/s 50 (1) in MP/CG for delay in payment of GST (FY 2017-18 to FY 2020-21)**

**Months where relaxation of period due to extention of GST Return/ Specific relief**

| Fin year | Month | Due Date | Ext Days | Ext Date | Notification Ref. | Interest @ 18% PA From |
|---|---|---|---|---|---|---|
| 2017-18 | JUL 2017 | 20-08-2017 | 5DAYS | 25-08-2017 | 24/2017/21.8.17 | 26-08-2017 |
| 2017-18 | DEC 2017 | 20-01-2018 | 2DAYS | 22-01-2018 | 02/2018/20.1.18 | 23-01-2018 |
| 2018-19 | APR 2018 | 20-05-2018 | 2DAY | 22-05-2018 | 23/2018/18.5.18 | 23-05-2018 |
| 2018-19 | JULY 2018 | 20-08-2018 | 4DAYS | 24-08-2018 | 35/2018/21.8.18 | 25-08-2018 |
| 2018-19 | SEPT 2018 | 20-10-2018 | 5DAYS | 25-10-2018 | 55/2018/21.10.18 | 26-10-2018 |
| 2018-19 | JAN 2019 | 20-02-2019 | 2DAYS | 22-02-2019 | 09/2019/20.2.19 | 23-02-2019 |
| 2018-19 | MAR 2019 | 20-04-2019 | 3DAYS | 23-04-2019 | 19/2019/22.4.19 | 24-04-2019 |
| 2019-20 | JULY 2019 | 20-08-2019 | 2DAYS | 22-08-2019 | 37/2019/21.8.19 | 23-08-2019 |
| 2019-20 | NOV 2019 | 20-12-2019 | 3DAYS | 23-12-2019 | 73/2019/23.12.19 | 24-12-2019 |

(Status as on 8th March, 2021)

| Fin year | Month | Due Date | Ext Days | Ext Date | Notification Ref. | Interest From | | | Details |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | @0% | @9%(24 June) | @18% | |
| | ATO OVER 5 CRORE | | | | | | | | |
| 2019-20 | FEB 2020 | 20-03-2020 | - | None | 51/2020/24.6.20 | 4th April<br>15 days | 24th June<br>81 days | Fr 25th Jun<br>All | Nil for 15days/@9% till 24June |
| 2019-20 | MAR 2020 | 20-04-2020 | - | None | 51/2020/24.6.20 | 5th May<br>15 days | 24thJune<br>50 days | Fr 25th Jun<br>All | Nil for 15days/@9% till 24June |
| 2020-21 | APR 2020 | 20-05-2020 | - | None | 51/2020/24.6.20 | 4th June<br>15 days | 24thJune<br>20 days | Fr 25th Jun<br>All | Nil for 15days/@9% till 24June |
| | ATO UPTO 5 CRORE | | | | | | | | |
| | | | | | | @0% | @9%(30Sept) | @18% | |
| 2019-20 | FEB 2020 | 22-03-2020 | - | None | 51/2020/24.6.20 | 30-Jun<br>100 days | 30-Sep<br>92 days | Fr 01 Oct<br>All | Nil upto 30June/@9% till 30Sept |
| 2019-20 | MAR 2020 | 22-04-2020 | - | None | 51/2020/24.6.20 | 03-Jul<br>72 days | 30-Sep<br>89 days | Fr 01 Oct<br>All | Nil upto 3 July/@9% till 30Sept |
| 2020-21 | APR 2020 | 22-05-2020 | - | None | 51/2020/24.6.20 | 06-Jul<br>45 days | 30-Sep<br>86 days | Fr 01 Oct<br>All | Nil upto 6 July/@9% till 30Sept |
| 2020-21 | MAY 2020 | 22-06-2020 | - | None | 51/2020/24.6.20 | 12-Sep<br>82 days | 30-Sep<br>18 days | Fr 01 Oct<br>All | Nil upto 12 Sept/@9% till 30Sept |
| 2020-21 | JUNE 2020 | 22-07-2020 | - | None | 51/2020/24.6.20 | 23-Sep<br>63 days | 30-Sep<br>7 days | Fr 01 Oct<br>All | Nil upto 23 Sept/@9% till 30Sept |
| 2020-21 | JULY 2020 | 22-08-2020 | - | None | 51/2020/24.6.20 | 27-Sep<br>36 days | 30-Sep<br>3 days | Fr 01 Oct<br>All | Nil upto 27 Sept/@9% till 30Sept |
| 2020-21 | AUG 2020 | 22-09-2020 | 9 days | 01-10-2020 | 54/2020/24.6.20 | NA | NA | 02-Oct-20 | Extension |

## (52) Notification u/r 48(4) of CGST Rules, 2017 implementing e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 50 Cr. from 1st April 2021

**No. 05/2021–Central Tax**

**G.S.R. 160(E). New Delhi, the 8th March, 2021 -** In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

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

[F. No. CBEC-20/13/01/2019-GST]
PRAMOD KUMAR, Director

**Note**: The principal notification No. 13/2020–Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 196(E), dated 21st March, 2020 and was last amended *vide* notification No. 88/2020-Central Tax, dated the 10th November, 2020, published *vide* number G.S.R. 704(E), dated the 10th November, 2020.

[*Published in the Gazette of India dated 8-3-2021*]

❑

## (53) Notification u/s 15-B(1) of C.G. Vat Act, 2005 extending time limit for FORM-18 Part-C, Year 2016-17 upto 10-2-2021

**No. F 10-59/2020/CT/V (1) Dated 29th January 2021 -** In exercise of the powers conferred by clause (ii) of sub-section (1) of section 15-B of the Chhattisgarh Value Added Tax Act, 2005 (No. 2 of 2005), the State Government, hereby, makes the following amendment in this departments notification No. F-10-59/2020/CT/V (135), dated 24-12-2020, namely :-

**AMENDMENT**

In the said notification,-

For the figures and punctuation "31-01-2021", wherever they occur the figures and punctuation "10-02-2021" shall be substituted.

[*Published in Chhattisgarh Rajpatra Dated 1-2-2021*]

❑

## (54) Notification u/s 15-B(1) of C.G. Vat Act, 2005 extending of time limit for FORM-18 ,Year 2016-17 upto 10-2-2021

**No. F 10-59/2020/CT/V (2) Dated 29th January 2021 -** In exercise of the powers conferred by clause (ii) of sub-section (1) of section 15-B of the Chhattisgarh Value Added Tax Act, 2005 (No. 2 of 2005), the State Government, hereby, makes the following further amendment in this departments notification No. F-10-59/2020/CT/V (136), dated 24-12-2020, namely :-

**AMENDMENT**

In the said notification,-

For the figures and punctuation "31-01-2021", wherever they occur the figures and punctuation "10-02-2021" shall be substituted.

[*Published in Chhattisgarh Rajpatra Dated 1-2-2021*]

❑

## (55) Chhattisgarh Goods and Services Tax (Amendment) Rules, 2021

**No. 01/2021 - State Tax**

**No. F10-01/2021/CT/V(04) Dated 9th February 2021-** In exercise of the powers conferred by section 164 of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017), the State Government, on the recommendations of the Council, hereby makes the following rules further to amend the Chhattisgarh Goods and Services Tax Rules, 2017, namely:

**1. Short title and commencement. -**

(l) These rules may be called the Chhattisgarh Goods and Services Tax (Amendment) Rules, 2021.

(2) These rules shall be deemed to have come into force on lst day of January, 202l.

**2.** In the Chhattisgarh Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), in rule 59, after sub-rule (5),

the following sub-rule shall be inserted namely:-

"(6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;

(b) a registered person, required to fumish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-I or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-I or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.".

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (56) Notification u/s 168A of Chhattisgarh GST Act, 2017 extending the validity of e-way bills till 31-5-2020 for those e-way bills which expire during the period from 20-3-2020 to 15-4-2020 and generated till 24-3-2020

**No. 40/2020 – State Tax**

**No. F 10-02/2021/CT/V(05) Dated 9th February 2021 -** In exercise of the powers conferred by section 168A of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017) (hereafter in this notification referred to as the said Act), the State Government, on the recommendations of the Council, hereby makes the following amendment in the Notification No. 35/2020-State Tax, No. F 10-83/2020/CT/V(118), Chhattisgarh Commercial Tax Department, dated the 19th November, 2020, published in the Gazette (Extraordinary) of Chhattisgarh, No. 615, dated the 1st December, 2020, namely:–

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

"Provided that where an e-way bill has been generated under rule 138 of the Chhattisgarh Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and its period of validity expires during the period 20th day of March, 2020 to the 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 31st day of May, 2020.".

**2.** This notification shall be deemed to have come in to force on 5th May, 2020.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (57) Notification u/s 168A of Chhattisgarh GST Act, 2017 amending No. 35/2020 – State Tax (118) dated 19-11-2020 in respect of extension of validity of e-way bill generated on or before 24-3-2020 (whose validity has expired on or after 20th day of March 2020) till the 30th day of June

**No. 47/2020 – State Tax**

**No. F 10-02/2021/CT/V (06) Dated 9th February 2021 -** In exercise of the powers conferred by section 168A of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017) (hereafter in this notification referred to as the said Act), the State Government, on the recommendations of the Council, hereby makes the following further amendment in the Notification No. 35/2020-State Tax, No. F 10-83/2020/CT/V(118), Chhattisgarh Commercial Tax Department, dated the 19th November, 2020, published in the Gazette (Extraordinary) of Chhattisgarh, No. 615, dated the 1st December, 2020, namely:–

In the said notification, in the first paragraph, in clause (ii), for the proviso, the following proviso shall be substituted, namely: -

"Provided that where an e-way bill has been generated under rule 138 of the Chhattisgarh Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and whose validity has expired on or after the 20th March, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30st day of June, 2020.".

**2.** This notification shall come into force with effect from the 31st day of May, 2020.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*] ❑

## (58) Noti. u/s 168A of Chhattisgarh GST Act, 2017 amending Noti. No. 35/2020 – State Tax (118) dated 19-11-2020 extending due date of compliance which falls during the period from "20-3-2020 to 30-8-2020" till 31-8-2020

**No. 55/2020 – State Tax**

**No. F 10-02/2021/CT/V (07) Dated 9th February 2021 -** In exercise of the powers conferred by section 168A of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017), the State Government, on the recommendations of the Council, hereby makes the following further amendment in the Notification No. 35/2020-State Tax, No. F 10-83/2020/CT/V(118), Chhattisgarh Commercial Tax Department, dated the 19th November, 2020, published in the Gazette (Extraordinary) of Chhattisgarh, No. 615, dated the 1st December, 2020, namely:–

In the said notification, in the first paragraph, in clause (i),-

(i) or the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be substituted;

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020" shall substituted.

**2.** This notification shall be deemed to have come in to force on 27th June, 2020.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (59) Notification u/s 168A of Chhattisgarh GST Act, 2017 amending Notification No. 46/2020 – State Tax (120) dated 19-11-2020 extending period to pass order under Section 54(7) of Chhattisgarh GST Act till 31-8-2020 or in some cases upto fifteen days thereafter

**No. 56/2020 – State Tax**

**No. F 10-02/2021/CT/V (08) Dated 9th February 2021 -** In exercise of the powers conferred by section 168A of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017), the State Government, on the recommendations of the Council, hereby makes the following amendment in the Notification No. 46/2020-State Tax, No. F 10-83/2020/CT/V(120), Chhattisgarh Commercial Tax Department, dated the 19th November, 2020, published in the Gazette (Extraordinary) of Chhattisgarh, No. 615, dated the 1st December, 2020, namely:–

In the said notification, in the first paragraph,—

(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be substituted;

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020" shall substituted.

**2.** This noti. shall be deemed to have come in to force on 27th June, 2020.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (60) Notification u/s 168A of Chhattisgarh GST Act, 2017 amending Notification No. 35/2020 – State Tax (118) dated 19-11-2020 extending due date of compliance under Section 171 which falls during the period from "20-3-2020 to 29-11-2020" till 30-11-2020

**No. 65/2020 – State Tax**

**No. F 10-02/2021/CT/V (09) Dated 9th February 2021 -** In Exercise of the powers conferred by section 168A of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017), the State Government, on the recommendations of the Council, hereby makes the following further amendment in the Notification No. 35/2020-State Tax, No. F 10-83/2020/CTN(118), Chhattisgarh Commercial Tax Department, dated the 19th November, 2020, published in the Gazette (Extraordinary) of Chhattisgarh, No. 615, dated the 1st December, 2020, namely:–

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

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

**2.** This noti. shall be deemed to have come in to force on 1st Sept., 2020.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (61) Notification u/s 168A of Chhattisgarh GST Act, 2017 amending Notification No. 35/2020 – State Tax (118) dated 19-11-2020 giving one time extension for the time limit provided under Section 31(7) of the CGST Act 2017 till 31-10-2020 w.e.f. 21-9-2020

**No. 66/2020 – State Tax**

**No. F 10-02/2021/CT/V (10) Dated 9th February 2021 -** In exercise of the powers conferred by section 168A of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017), the State Government, on the recommendations of the Council, hereby makes the following further amendment in the Notification No. 35/2020-State Tax, No. F 10-83/2020/CTN(118), Chhattisgarh Commercial Tax Department, dated the 19th November, 2020, published in the Gazette (Extraordinary) of Chhattisgarh, No. 615, dated the 1st December, 2020, namely:–

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

"Provided further that where, any time limit for completion or compliance of compliance of any action, by any person, has been specified in, or prescribed or notified under sub-section (7) of section 31 of the said Act in respect of goods being sent or taken out of India on approval for sale or return. which falls during the period from the 20th day of March, 2020 to the 30th day of October, 2020 and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall stand extended upto the 31st day of October, 2020."

**2.** This notification shall be deemed to have come in to force on 21st September, 2020.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (62) Notification u/s 164 of Chhattisgarh GST Act, 2017 giving effect to the provisions of Rule 67A for furnishing a nil return in FORM GSTR-3B by SMS w.e.f. 8-6-2020

**No. 44/2020 – State Tax**

**No. F 10-03/2021/CT/V (11) Dated 9th February 2021 -** In exercise of the powers conferred by section 164 of the Chhattisgarh Goods and

Services Tax Act, 2017 (7 of 2017) read with rule 3 of the Chhattisgarh Goods and Services Tax (Fifth Amendment) Rules, 2020 (hereinafter referred to as the rules), made vide notification No. 38/2020 – State Tax, No. F-10-56/2020/CTN(69) dated 08-05-2020 of the Commercial Tax Department, the Government, hereby appoints the 8th day of June, 2020, as the date from which the said provisions of the rules, shall be deemed to have come into force.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (63) Notification u/s 128 r/w Sec. 148 of Chhattisgarh GST Act, 2017 amending No. 76/2018-State Tax (123) dated 31-12-2018 in order to provide conditional waiver of late fees for the period from July, 2017 to July, 2020.

**No. 57/2020 – State Tax**

**No. F 10-04/2021/CT/V(12) Dated 9th February 2021 -** In exercise of the powers conferred by section 128 of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendments in the Notification No. 76/2018-State Tax, No. F-10-65/2018/CT/V(123), Chhattisgarh Commercial Tax Department, dated the 31st December, 2018, published in the Gazette (Extraordinary) of Chhattisgarh, No. 523, dated the 31st December, 2018-

In the said notification, after the third proviso, the following provisos shall be inserted, namely: –

"Provided also that for the class of registered persons mentioned in column (2) of the Table of the above proviso, who fail to furnish the returns for the tax period as specified in column (3) of the said Table, according to the condition mentioned in the corresponding entry in column (4) of the said Table, but furnishes the said return till the 30thday of September, 2020, the total amount of late fee payable under section 47of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of state tax payable in the said return is nil:

Provided also that for the taxpayers having an aggregate turnover of

more than rupees 5 crores in the preceding fmancial year, who fail to furnish the return in FORM GSTR-3B for the months of May, 2020 to July, 2020, by the due date but furnish the said return till the 30th day of September, 2020, the total amount of late feeunder section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of state tax payable in the said return is nil."

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

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (64) Notification u/s 128 of Chhattisgarh GST Act, 2017 amending No. 14/2020-State Tax (38) dated 31-3-2020 waiving penalty payable for noncompliance of the provisions w.e.f. 29-11-2020

**No. 89/2020 – State Tax**

**No. F 10-05/2021/CT/V (13) Dated 9th February 2021 -** In exercise of the powers conferred by section 128 of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017) (hereafter in this notification referred to as the said Act), the State Government, on the recommendations of the Council, hereby waives the amount of penalty payable by any registered personunder section 125 of the said Act for non-compliance of the provisions of notification No. 14/2020-State Tax, No. F-10-35/2020/CT/V(38), Chhattisgarh Commercial Tax Department, dated the 31st March, 2020, published in the Gazette (Extraordinary) of Chhattisgarh, No. 178, dated the 31st March, 2020, between the period from the 1st day of December, 2020 to the 31st day of March, 2021, subject to the condition that the said person complies with the provisions of the said notification from the 01st day of April, 2021.

**2.** This notification shall be deemed to have come in to force on 29th November 2020.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

❑

## (65) Notification u/s 1(2) of Chhattisgarh GST (Amendment) Act, 2020 appointing 1-1-2021 to bring into force Sections 3, 4, 5, 6, 7, 8, 9, 10 and 14 of said Act (17 of 2020)

**No. 92/2020 – State Tax**

**No. F 10-07/2021/CT/V (15) Dated 9th February 2021 -** In exercise of the powers conferred by proviso to sub-section (2) of section 1 of the The Chhattisgarh Goods and Services Tax (Amendment) Act, 2020 [Chhattisgarh Act (No 17 of 2020) ] (hereinafter referred to as the said Act), the State Government hereby appoints the 1st day of January, 2021, as the date on which the provisions of sections 3, 4, 5, 6, 7, 8, 9, 10 and 14 of the said Act shall be deemed to have come into force.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

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## (66) Notification u/s 44(1) of Chhattisgarh GST Act, 2017 extending the time limit for furnishing of the annual return for the financial year 2019-20 till 28-2-2021

**No. 95/2020 – State Tax**

**No. F 10-08/2021/CT/V (17) Dated 9th February 2021 -** In exercise of the powers conferred by sub-section (1) of section 44 of the Chhattisgarh Goods and Services Tax Act, 2017 (7 of 2017) (hereafter in this notification referred to as the said Act), read with rule 80 of the Chhattisgarh Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), State Government, on the recommendations of the Council, hereby extends the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, for the fmancial year 2019-20 till 28-02-2021.

**2.** This notification shall be deemed to have come in to force on 30th December 2020.

[*Published in Chhattisgarh Rajpatra Dated 22-2-2021*]

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# (67) Rate of tax on Petrol and Diesel

SHABBIR HASHMI ADVOCATE

## RATE OF PETROL AND DIESEL AT A GLANCE

Vallue Added Tax

Tax Sec.9AA

**Period 01-04-2017 to 31-03-2018**

| Commodity | Period | Rate | Period | Rate per lt. |
|---|---|---|---|---|
| Diesel | 01-04-17/13-10-17<br>F-A-3-78-2014-1V(64)19-12-14 | 27% | 01-04-17/13-10-17<br>F-A-3-60-2015-1V(11) 22-01-2016 | 1.5 |
| | 14-10-17/31-03-18<br>A-3-60-2015-1V(119)13-10-17 | 22% | 14-10-17/31-03-18<br>A-3-60-2015-1V(119A)13-10-17 | 0 |
| Petrol | 01-04-17/13-10-17<br>F-A3-78-2014-1-V(64)19-12-14 | 31% | 01-04-17/31-03-18<br>A-3-60-2015-19V(39)16-08-16 | 4 |
| | 14-10-17/31-03-18<br>A-3-60-2015-1V(119)13-10-17 | 28% | | |

**Period 01-04-2018 to 31-03-2019**

| | | | | |
|---|---|---|---|---|
| Diesel | 01-04-18/04-10-18<br>A-3-60-2015-1V(119)13-10-17 | 22% | 01-04-18/31-03-19<br>A-3-60-2015-1V(119A)13-10-17 | 0 |
| | 05-10-18/31-03-19<br>A-3-60-20151-V(93)04-10-18 | 18% | | |
| Petrol | 01-04-18/31-03-19<br>A-3-60-2015-1V(119)13-10-17 | 28% | 01-04-18/04-10-18<br>A-3-60-2015-19V(39)16-08-16 | 4 |
| | | | 05-10-18/31-03-19<br>A-3-60-2015-1-V(94)04-10-18 | 1.5 |

**Period 01-04-2019 to 31-03-2020**

| | | | | |
|---|---|---|---|---|
| Diesel | 01-04-19/22-09-19<br>A-3-60-20151-V(93)04-10-18 | 18% | 01-04-19/05-07-19<br>A-3-60-2015-1V(119A)13-10-17 | 0 |
| | 23-09-19/31-03-20<br>A-3-58-2015-1V(62)19-09-19 | 23% | 06-07-19/31-03-20<br>A-3-60-2015-1V(55)05-07-19 | 2 |
| Petrol | 01-04-19/22-09-19<br>A-3-60-2015-1V(119)13-10-17 | 28% | 01-04-19/05-07-19<br>A-3-60-2015-1-V(94)04-10-18 | 1.5 |
| | 23-09-19/31-03-20<br>A-3-58-2015-1V(62)19-09-19 | 33% | 06-07-19/31-03-20<br>A-3-60-2015-1V(55)05-07-19 | 3.5 |

**Period 01-04-2020 TO----------**

| | | | | |
|---|---|---|---|---|
| Diesel | 01-04-20 TO----<br>A-3-58-2015-1V(62)19-09-19 | 23% | 01-04-20/12-06-20<br>A-3-60-2015-1V(55)05-07-19 | 2 |
| | | | 13-06-20/-----<br>A-3-60-2015-1-V(41)12-06-20 | 3 |
| Petrol | 01-04-20 TO -----<br>A-3-58-2015-1V(62)19-09-19 | 33% | 01-04-20/12-06-20<br>A-3-60-2015-1V(55)05-07-19 | 3.5 |
| | | | 13-06-20/-----<br>A-3-60-2015-1-V(41)12-06-20 | 4.5 |

**(2021) 66 TLD 121** Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members

**Khatwani Sales and Services LLP**

Case No. : 02/2020

Order No. : 13/2020

July 23, 2020

**AAR-MP - Input tax credit - Applicant is not eligible for Input Tax Credit on Demo vehicles purchased for furtherance of business, in view of barring provisions of clause (a) of sub-section (5) of Section 17 of GST Act 2017.**

*Whether Input tax credit on the Demo vehicle purchased can be availed as the same will be capitalized in books.*

*Considering the Arguments and submissions made by the Applicant in respect of the Question raised before this authority, it is ruled that the Applicant is not eligible for Input Tax Credit on Demo vehicles purchased for furtherance of business, in view of barring provisions of clause (a) of sub-section (5) of Section 17 of GST Act 2017, as they are not covered by any of the exceptions given in clause (A), (B) or (C) of Sec. 17(5)(a).* [Para 8.1]

Shri Deepak Asrani, CA on behalf of the applicant

**:: PROCEEDINGS ::**

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

**1.** M/s. Khatwani Sales And Services LLP (hereinafter referred to as the Applicant) are authorised dealer of KIA for sales & services of vehicles in Jabalpur, at 1121/2, Pandit Bhawani Prasad Tiwari Colony, Ward No. 32, Jabalpur, Madhya Pradesh (482001). The Applicant is having a GST registration with GSTIN 23AAUFK1834E1ZE.

**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 application has been filed u/s 97 of MP GST Act 2017 and CGST Act 2017 (hereinafter referred to as the SGST Act and CGST Act) by the M/s. Khatwani Sales and Services LLP.

**3.2** We Khatwani Sales and Services LLP GST No. 23AAUFK1834E1ZE are authorised dealer of KIA for sales & services of vehicles.

**3.3** We are filling GST Advance ruling seeking "Whether Input tax credit on the Motor vehicle purchased for demo purpose can be availed".

**3.4** Applicant purchases, the vehicles from the supplier against tax invoices after paying tax and capitalizes the demo vehicles in the books of accounts.

**3.5** We are of the view that in accordance with the submission. The demo vehicles which are used in the course or furtherance of business, may therefore, be entitled for Input lax Credit (ITC).

**4. Question Raised before the Authority -**

**4.1** whether Input lax credit on the Demo vehicle purchased can be availed as the same will be capitalized in books.

**5. Department View Point -** The Joint Commissioner (Tech), CGST & Central Excise Hqrs. Jabalpur vide letter F.No. IV(16)02/Misc.Corres./Hq/JBP/Tech/2020-21/1562 dated 9-7-2020 submitted the view that the input tax credit on the motor vehicle purchased for demo purpose can not be availed as the same is hit by barring provisions of clause (a) of sub-section (5) of Section 15 of the CGST Act, 2017.

**6. Record of Personal Hearing -** Due to Pandemic of COV1D-19 virtual hearing was conducted on request of Shree Deepak Asrani, CA on behalf of the Applicant. At the time of hearing he reiterated the arguments attached with the application.

**6.1** The applicant submitted that Section 16(1) of the CGST Act. 2017 clearly states that "Every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of his business".

**6.2** It was also argued that the provisions of Section 2(19) of the CGST

Act, 2017 are as follows - "Capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business".

**6.3** Applicant also quoted Section 17(5)(a) of the CGST Act, 2017 and argued that Input tax credit will not be available in respect of motor vehicles and other conveyances except.-

(i) When such motor vehicles or other conveyances are supplied further, or

(ii) Used for transportation of passengers or

(iii) Giving training on driving, flying, navigating such vehicles or conveyances or are used for transportation of goods.

**6.4** According to the Applicant considering the above definition in his situation:-

The Demo vehicles are used for furtherance of business and are used for imparting training about the features of the car and training on driving such vehicles to the prospective buyer & same would be used for test drive of the similar vehicle model which will generate taxable revenue & helps in furtherance of business. As sole condition for determining the eligibility of ITC on demo cars is based on Section 17(5) of CGST Act, 2017, ITC should be allowed as it satisfies the criteria mentioned in section 17(5)(a)(i) as demo vehicles is used for furtherance of supply of business by increasing the sales of similar vehicles, Section (17)(5)(a)(iii) As demo vehicles are used for imparting training about the features of the car, training on driving such vehicles to the prospective buyer and used for test drive after which sales can be generated easily. As when sold in future will be sold at reduced price, also same will generate revenue by helping us to increase the sale of other similar units which will increase tax revenue.

The capital goods which are used in the course or furtherance of business, is entitled for input tax credit. As the impugned purchase of demo car is in the course or furtherance of business. applicant should be eligible for input tax credit.

**6.5** The Applicant in support of his argument said that - recently few advance rulings were pronounced which endorses the view that ITC is allowed on capital goods being demo cars : –

1. A.M. Motors (2018) (AAR, Kerala)
2. Chowgule Industries (P.) Ltd. (2019) (AAR, Goa)
3. Chowgule Industries Private Limited (GST AAR Maharashtra)

**6.6** The Applicant also gave following declaration -

"a) That we have purchased the vehicle against tax invoice which are reflecting in hooks of accounts as capital assets under head Demo Cars.

b) These Demo Vehicles are used for providing Trial Run to customers to understand the features of vehicle amid essential part of marketing & sales promotion to facilitate supply of cars.

c) Every model of cars are used for demonstration for a limited period that usually replaced every two years or 40000 kms. or upto continuation of model, whichever is earlier.

d) The activity does not come under the negative clause, as after the limited period of use of demo car, the vehicle are sold at WDV.

e) That the manner of utilization of ITC is provided as per the provisions of section 49 of the CGST Act. Section 18 of the CGST Acts deals with availability of credit in special circumstances. As per Section 18(6) of the CGST Act when there is supply of capital goods on which ITC has been taken, as in the subject case then the applicant shall pay an amount equal to the ITC taken on the said Demo vehicle reduced by such percentage points as may be prescribed or the tax on the transaction value of such Demo vehicle, whichever is higher.

f) That our firm will not Claim depreciation on tax component on the Capitalized Assets.

g) That our firm will pay the taxes as applicable at the time of sale".

**7. Discussions and Findings -**

**7.1** We have carefully considered the submissions made by the applicant.

**7.2** The Applicant is an authorized dealer of KIA for sales & services of their motor vehicles. Applicant purchases demo vehicles from the supplier against tax invoices after paying tax, and capitalizes the said demo vehicles in his books of accounts.

According to the Applicant, Demo Vehicles are used for furtherance of business and are used for imparting training about the features of the vehicle

and training on driving such vehicles to the prospective buyer, and the same are used for test drive of the similar vehicle model which will generate taxable revenue and help the applicant in furtherance of their business.

The Applicant submitted that every model of the car is used for demonstration for a limited period and is usually replaced every two years or 40000 kms. or up to continuation of model, whichever is earlier.

It is also submitted that the vehicles used for demo purpose are sold in subsequent year at WDV. The Applicant also submitted that they will abide with the provisions of Section 18(6) of GST Act at the time of sale of the Demo Vehicle.

The Applicant declared that they will not claim depreciation on tax component of the capitalized Demo Vehicles.

**7.3** From the submissions made by the applicant, we observe that the Applicant has relied upon the provisions of Sec. 17(5)(a) which were in fact applicable prior to Amendment Act, 2018.

Now w.e.f. 1-2-19 the provisions of Sec. 17(5) reads as under:

"(5) Notwithstanding anything contained in sub-section (1) of Sec. 16 and sub-section (1) of Sec. 18, input tax credit shall not be available in respect of the following, namely:

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles"

We do appreciate that as a dealer in motor vehicle, the applicant is required to have demo vehicles for providing trial run to customers and to enable them to understand the features of the vehicle. Thus, the Demo Vehicles are essential for promoting the sale of motor vehicles. But, that is not relevant for deciding eligibility of Input tax credit on Demo vehicles.

The provisions of Sec. 17(5) are exception to Sec. 16. This is very clear from the initial para of Sec. 17(5) which says – "Notwithstanding anything contained in sub-section (1) of Sec. 16 ……..".

Therefore, for deciding the eligibility of Input tax credit on Demo Vehicles, the provisions of Section 17(5)(a) of GST Act, 2017 are relevant which debars the applicant from taking input tax credit, except in the situations described in Clause (A), (B) and (C).

A reading of Section 17(5)(a) indicates that Input tax credit shall be available in respect of motor vehicles which are further supplied as such, or which are used for transportation of passengers, or which are used for imparting training on driving of such vehicles.

By subsequent sale of Demo Vehicle after one or two year, it can not be said that the Demo Vehicle is for further supply. The sale in the subsequent year of Demo vehicle on which deprecation has been charged is to be treated as a sale of used/ second-hand vehicle, and not sale of a new vehicle.

We find that the Demo vehicles used for Demo and trial to the customers are not covered in the exception Clause (A), i.e. for further supply of such vehicle: or in clause (B) i.e. for transportation of passengers: or in Clause (C) i.e. for imparting training for driving.

Hence though the Demo vehicles are for furtherance of business of the applicant, even then they are not eligible for Input Tax credit in view of provisions of Section 17(5)(a) of GST Act.

**7.4** The Applicant has submitted that the firm will not claim depreciation on the tax component of Demo Vehicles which are capitalized in the books of accounts. We find that not charging depreciation on the tax component, is as per other relevant provisions of the GST Act. But, that can not affect the applicability of provisions of Section 17(5)(a) of GST Act, according to which the applicant is not eligible for Input tax credit on Demo Vehicles, as the same are not covered by any of the exceptions given clause (A), (B) or (C) of Sec. 17(5)(a).

We also find that the eligibility for inputs tax credit on Demo Vehicles can not be decided on the basis of their capitalisation, or payment of GST at the time of their sale in the subsequent year.

**7.5** Thus, we find that there is clear provision in law for admissibility of Input tax credit on motor vehicles in any of the three conditions prescribed in clause (A), (B) and (C) of section 17(5)(a) of GST Act. As the applicant's Demo vehicles do not comply any of the said conditions, therefore, the applicant is not eligible for Input tax credit on Demo vehicles in view of provisions

of Section 17(5)(a) of GST Act in spite of the fact that the Demo Vehicles are used by the applicant for furtherance of their business.

**8. RULING**

**8.1** Considering the Arguments and submissions made by the Applicant in respect of the Question raised before this authority, it is ruled that the Applicant is not eligible tor Input Tax Credit on Demo vehicles purchased for furtherance of business, in view of barring provisions of clause (a) of sub-section (5) of Section 17 of GST Act 2017, as they are not covered by any of the exceptions given in clause (A), (B) or (C) of Sec. 17(5)(a).

**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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**(2021) 66 TLD 127** Authority for Advance Ruling, Madhya Pradesh
Manoj Kumar Choubey & Virendra Kumar Jain, Members

**Dee Vee Projects Ltd., Indore**

Case No. : 05/2020

Order No. : 14/2020

August 28, 2020

**AAR-MP - Notification - Applicability - Notification No. 20/2017-Central Tax (Rate) dated 22-8-2017 and Notification No. 24/2017-Central Tax (Rate) dated 21-9-2017 - Effected from the date of publication of the Notifications in the Official Gazette.**

*What is rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of Central Goods and Service Tax Act, 2017 (The Act), undertaken by the supplier (applicant) i.e., whether the GST rate 18% or 12% is to be charged by the supplier?*

*Effective date of the amendments to Notification no. 11/2017-Central Tax (Rate) vide Notification No. 20/2017-Central Tax (Rate) and Notification No. 24/2017-Central Tax (Rate) asked by the applicant shall be the date of publication of the Notifications in the Official Gazette.*

Mr. Singal Sushil Kumar, CA on behalf of the applicant

**:: PROCEEDINGS ::**

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

**1.** M/s. DEE VEE PROJECTS LIMITED (hereinafter referred to as the Applicant) is engaged in works contract. The Applicant is having a GST registration with GSTIN 23AAECD4519B1Z8.

**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 -**

The applicant is engaged in works contract by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration.

**4. Question Raised Before the Authority –**

1. What is rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of Central Goods and Service Tax Act, 2017 (The Act), undertaken by the supplier (applicant) i.e., whether the GST rate 18% or 12% is to be charged by the supplier?
2. If the GST rate 18% (9% CGST+ 9% SGST) as prescribed in serial no. 3, against heading no. 9954 (construction services), specified in Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017, is the rate applicable to the nature of works contract undertaken by the applicant, kindly clarify the following related aspects also:

   The Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 has been amended by:

   I. Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017

   II. Notification No. 24/2017-Central Tax (Rate), dated 21st September, 2017

Wherein the GST rate of 12% (6% CGST + 6% SGST) has been notified in respect of works contract as defined in clause (119) of Section 2 of the Act.

if so, whether the amendment through Notification No. 20/2017 and 24/2017 will be effective from the date of Notification no. 11/2017 and whether it would be in order for the applicant (supplier) to charge GST at the rate of 12% (6% CGST+6% SGST) or is the GST rate 18% (9% CGST 9% SGST) applicable to the nature of works contract undertaken by the applicant?

**5. Department View Point –** The concerned officer has opined that no specific works contract has been mentioned in the application hence the first question cannot be answered and the said amendment will be applicable from the date of publication of the notification in the official gazette.

**6. Record of Personal Hearing -**

**6.1.** Mr. Singal Sushil Kumar, CA appeared for personal hearing and reiterated the submissions already made in the application. They reiterated the facts submitted along with the application. The Applicant states that -

**6.2.** The applicant is engaged in works contract by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

a) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment.

b) a road, bridge, tunnel, or terminal for road transportation for use by general public;

c) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction/enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;

d) railways, excluding monorail and metro;

e) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act. 2017.

**6.3.** Subsequently, the Notification no. 11/2017-Central Tax (Rate) dated 28th June 2017 was amended by the following notifications:

i) Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017

ii) Notification No. 24/2017-Central Tax (Rate)te), dated 21st September, 2017 Based on aforesaid notification the applicant has charged and paid CGST at the rate of six percent. Similarly the SGST was also charged at the rate of six percent on the services provided in between July to September, 2017.

**6.4.** Question is what will be the date of effectiveness of Notification No. 20/2017 and Notification No. 24/2017 reducing the tax rate to 12% instead of 18%. As it mentioned in both the notifications that "In the said notification, in the Table, against serial number 3, for item (vi) in column (3) and the entries relating thereto columns (3), (4) and (5), the following shall be Substituted, namely ……"

**6.5.** Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is :

(i) The serial number 3 of Notification no. 11/2017 dated 28th June, 2017 relating to Construction Services was amended by Central government on recommendation of Council in public interest through Notification No. 20/2017 dated 22nd August, 2017 and 24/2017 dated 21st September, 2017.

(ii) Through this amendment notification the rate of tax for Works contract supplied to Central Government, State Government, Governmental authority, Local Authority was reduced from 18% (CGST 9% and SGST 9%) to 12% (CGST 6% and SGST 6%). However as per the wording of the amended notification (i.e. 20/2017 and 24/2017) it substitutes notification no. 11/2017 substituting rate of tax from 18% to 12%, so it is interpreted that the rate of GST is 12% w.e.f. 1st July, 2017.

(iii) Based on the said notifications, the applicant has charged the tax Component and collected and discharged GST Liability at Rate 12% (CGST 6% and SGST 6%) on invoices issued from 01st July, 2017 itself, with the presumption, that the rate of GST has been amended w.e.f. 1st, July 2017, as the intention of the Honourable GST Council.

(iv) As it is nowhere mentioned in the notifications itself the date of changes in Rate of GST or effectiveness of the Notification and the rate of GST be applicable, but with the conclusion of the 20th GST council meeting on 5th August, 2017 (a copy of the details of Decision taken is being enclosed herewith for your kind perusal (ANNEXURE-E) and it was announced that the Tax Rate of GST on the above services is being reduced from 18% to 12%.

**6.6** The applicant further submits that, again the 21st GST Council Meeting Held on 9th September, 2017 and corrected a lacuna left in the 20th GST Council Meeting regarding Works Contract Services as defined in clause 119 of Section 2 of the GST Act.

**6.7** The Applicant in summary is of opinion that, it is the presumption and interpretation taken from the above episode that the intention of the Honourable GST Council was only to reduce Tax rate from very beginning from 18% to 12%.

**6.8** Hence the applicant has approached before the authority with the details narrated above for the judicious interpretation of the ambiguity raised due to the above notifications.

**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 on two questions even though the questions have been placed in para 13 of the application instead of para 14 of the application:

1. What is rate of tax applicable to the Composite supply of works contract as defined in clause (119) of Section 2 of Central Goods and Services Tax Act, 2017 (The Act), undertaken by the supplier (applicant) i.e., whether the GST rate 18% or 12% is to be charged by the supplier?
2. If the GST rate 18% (9% CGST + 9% SGST) as prescribed in serial No. 3, against heading no. 9954 (construction services), specified in Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017, is the rate applicable to the nature of works contract undertaken by the applicant. Kindly clarify the following related aspect also:

The Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 has been amended by:

I. Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017

II. Notification No. 24/2017-Central Tax (Rate), dated 21st September, 2017

Wherein the GST Rate of 12% (6% CGST + 6% SGST) has been notified in respect of works contract as defined in clause (119) of Section 2 of the Act.

if so. whether the amendment through Notification No. 20/2017 and 24/2017 will be effective from the date of Notification No. 11/2017 and whether it would be in order for the applicant (supplier) to charge GST at the rate of 12% (6% CGST+6% SGST) or is the GST rate 18% (9% CGST 9% SGST) applicable to the nature of works contract undertaken by the applicant?

**7.3** Regarding the rate of GST on the Composite Supply of Works Contract, it may be noted that the rate applicable is dependent on the nature of the supply. The amendments made by Notification No. 20/2017-Central Tax (Rate) and 24/2017-Central Tax (Rate) have notified different rates for different nature of works. In Notification No. 20/2017-Central Tax (Rate) Entry No. (iii) of the Notification has specified the recipient of the supply for which the rate is applicable. Entry No. (iv) and (v) are for specific type of supply within the four corners of a Composite Supply of Works Contract.

Again, in Entry No. (vi) in Notification No. 24/2017-Central Tax (Rate), service as well as the recipient has been specified.

Thus the notifications clearly state the rate applicable on satisfaction of twin condition of the nature of the supply and the recipient.

The applicant has neither given the particulars of the specific nature of the work done by the applicant nor the particulars of the recipient of the supply. Copies of Work Orders are also not on record. Therefore, in the absence of the relevant and necessary information, we are unable to answer the first query of the applicant relating to the rate of tax applicable to the Composite Supply of Works Contract provided by the applicant.

**7.4.** Regarding the effective date of Notification relating to the applicable rate of tax on a supply, we refer to Section 9(1) and 2(80) of the Act, which states as under:

**Notification of rate of tax**

**SECTION 9. Levy and collection. -** (1) Subject to the provisions of sub-section (2). there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be ***notified*** by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

**The term "notified" has been defined under the Act. The text of the provision is as under:**

Section 2(80) "notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

**7.5** In Civil Appeal No. 6071 of 1999, Union of India Versus M/s. Ganesh Das Bhojraj the Honorable Supreme Court has held that the effective date of a notification is the date of the publication in the official gazette. The Hon'ble Supreme Court has upheld the decision in Pankaj Jain Agencies Vs. UOI & Other (1994) 5 SCC 198 and have reiterated the decision in B.K. Srinivasan & Others Vs. State of Karnataka & Other (1987) 1 SCC 658, 672, that notification will take effect only when it is published through the customarily recognized official channel viz. the official gazette.

**7.6.** A combined reading of the provisions of Section 9(1), 2(80) of the Act and the Apex Court order in the matter of Ganesh Das Bhojraj leads to the conclusion that the effective date of a Notification is the date of its publication in the Official Gazette.

**7.7.** However, it may be noted that the provisions and the judgement of the Honorable Apex Court is with respect to a Notification, in which the effective date has not been specifically mentioned. Where the date on which notification is to take effect is mentioned in the body of the notification itself, the effective date shall be such date.

**7.8.** In case of a notification in the body of which the effective date is not written, the effect of the amending notification thus shall be the date on which the amending notification is published in the Official Gazette. Therefore, the effective date for the levy of the amended rate of tax as per amended Notification no. 11/2017-Central Tax (Rate) shall be the date on which Notification No. 20/2017-Central Tax (Rate) and Notification No. 24/2017-Central Tax (Rate) were published in the Official Gazette.

**8. Ruling**

**8.1** In respect of Question regarding the rate of tax applicable on the Composite Supply of Works Contract, we are unable to answer the question on account of insufficient information provided by the applicant.

**8.2** In respect of the effective date of the amendments to Notification No. 11/2017-Central Tax (Rate) vide Notification No. 20/2017-Central Tax (Rate) and Notification No. 24/2017-Central Tax (Rate) asked by the applicant shall be the date of publication of the Notifications in the Official Gazette.

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

❑

**(2021) 66 TLD 134** In the High Court of M.P.

Hon'ble Mohammad Rafiq, CJ. & Vijay Kumar Shukla, J.

**Robbins Tunnelling and Trenchless Technology (India) Pvt. Ltd.**

**Vs.**

**The State of M.P. and others**

W.P. No.: 12913/2020

February 4, 2021

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

**E-way Bill - Imposition of penalty, in case of minor discrepancies in the details mentioned in the E-way bill, although there are no major lapses in the invoices accompanying the goods in movement - Penalty order quashed by the High Court and directed for imposition of minor penalty.**

**Writ petition allowed**

*It is clarified that in case, a consignment of goods is accompanied with an invoice or any other specified documents and not with an E-way bill, proceedings under Section 129 of the GST Act may be initiated. Para 5 of the Circular further clarifies, that in case a consignment of goods is accompanied with an invoice or any other specified document and also with an E-way bill, proceedings under Section 129 of the GST Act may not be initiated. It is strenuously urged that the respondent/ Appellate Authority is not justified in rejecting the appeal on the ground that the petitioner has not discharged its liability of payment of IGST Tax at the time of import. It is put forth that the point raised on behalf of the respondents, is totally incorrect because at the time of making of a Bill of Entry for home consumption, vide No.8870378, dated 15-11-2018, the IGST for a sum of Rs.1112134/- was paid accordingly along with Custom Duty.*

*Regard being had to the pleadings advanced on behalf of the parties, and bestowing our anxious consideration on the relevant provisions of the GST Act, we find that the respondents are not justified in rejecting the appeal of the petitioner on the ground that the mistake committed while generating the E-way bill, was not a clerical error or a small mistake. Accordingly, the impugned orders passed by the respondents, dated 28-9-2019 (Annexure-P/14) and 14-12-2018 (Annexure-P/12) confirming the tax and penalty to the tune of Rs.2224268/-, are hereby quashed. The respondents are directed to consider the case of the petitioner for imposition of a minor penalty, treating it to be a clerical mistake, as per Circular, dated 14-9-2018 No.CBEC/20/16/03/2017-GST issued by the Ministry of Finance.*

*Ex-consequenti, the writ petition is allowed.*

Shri Abhishek Kumar Dhyani, Advocate for the petitioner.
Shri B.D. Singh, Govt. Advocate for the respondents/State.

**:: ORDER ::**

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

**Hearing convened through video conferencing mode.**

The present petition has been filed under Articles 226/227 of the Constitution of India, challenging the order dated 28-9-2019, whereby the

appellate authority, respondent No.3 herein, has confirmed the imposition of tax to the extent of Rs.1112134/- and penalty of Rs.11,12,134/- against the petitioner.

**2.** The facts of the case, adumbrated in a nutshell, are that the petitioner is a registered tax-payer under the Goods and Service Tax (GST) and it has imported boring machine cutter parts from its parent company from the United States of America (USA). Its clearing agent while shipping the goods from Custom Station, Mumbai to the Registered Office of the petitioner, situated in District Katni (MP), generated E-way bill in which by mistake erroneously entered its own name in the column of consignee. During the movement of goods the State Tax Officer of Anti Evasion Bureau, detained the vehicle and levied tax and penalty against the petitioner. Being aggrieved by the said order an appeal was preferred before the Joint Commissioner S.G.S.T. (Appeals), Bhopal and the concerned officer affirmed the order of tax and penalty levied by the State Tax Officer and rejected the appeal.

**3.** The petitioner is a company and a registered dealer bearing GST Identification No. 23AADCR1345K1ZJ, providing services of tunnel boring and related activities therein. Since the Bank Canal Project of Narmada Valley Development Authority is going on, the petitioner is doing excavation work by tunnel boring machine and for the purpose of procurement, it has imported tunnel boring machine cutter parts etc., from the Robbins Company (a parent company from the USA). After placement of purchase order, the Robbins Company, situated at 5866, South 194 Street Kent, WA98032 USA, has raised a commercial invoice in the name of the petitioner – Robbins Tunnelling & Trenchless Technology (India) Pvt. Ltd., Shub City, House No.C03, near Mansarovar Colony, Amirganj Road, Madhav Nagar, Katni – 483 501 (MP), Invoice No.LSN0009039, dated 13-9-2018, for supply of disc, cutter ring & retainer etc..

**4.** The petitioner has entered into an agreement with Titan Sea & Air Services Pvt. Ltd. and appointed the said company as its clearing and forwarding agent. At the time of import the bill of entry, bearing No.8870378, dtd. 15-11-2018 for home consumption of the above mentioned purchase was made. Subsequently, the Custom Duty assessed with IGST to the tune of Rs.1112134/- was paid as applicable on this import. The clearing and forwarding agent, M/s Titan Sea & Air Services Pvt. Ltd., cleared the goods and prepared the documents for movement of goods from NHVA SHEVA,

Mumbai Port to the petitioner's Registered Office, situated at C-3 Madhav Nagar, Katni (MP) and raised tax invoice, bearing number SIC/1136/18-19, dated 30-11-2018 for the services provided to the petitioner.

**5.** The clearing and forwarding agent, Titan Sea & Air Services Pvt. Ltd., in compliance of Section 68 of the Central Goods & Services Tax Act, 2017 (for short, "the GST Act) read with Rule 138-A of the Goods and Service Tax Rules, 2017 generated an E-way bill by logging into its own login ID for movement of the goods from Mumbai to Katni on 28-11-2018 at 06:03 hrs, E-way bill No.231061028418. The clearing and forwarding agent filed all the related details of the transaction as required in the E-way bill, but by mistake generated the E-way bill on its own name, GST No.27AACT2359N1ZY as recipient of the goods, in stead of the petitioner. The said goods was transported from Mumbai to Katni by the vehicle bearing registration No.MP-04-GA7780 along with all related documents. The vehicle was detained by the Sales Tax Officer, Anti Evasion, Bhopal on 5-12-2018 due to wrong shipping address in the E-way bill.

**6.** The petitioner submitted a reply on 12-12-2018 before the State Tax Officer along with an affidavit given by the clearing and forwarding agent, M/s Titan Sea & Air Services Pvt. Ltd., stating that the mistake was not committed intentionally or with malafide intention. The State Tax Officer did not accept the reply and raised the demand of Rs.1112134/- as tax and penalty of Rs.1112134/- against the petitioner by the impugned order dated 14-12-2018, to be paid under the IGST head.

**7.** It is asserted that the petitioner was left with no other option for release of the vehicle, and therefore, paid the tax and penalty, as levied, vide Challan No.SBIN122300132855, dated 14-12 2018 at 08:55:51 hrs. Thereafter the said vehicle was released by the State Tax Officer. Being aggrieved by the order of the State Tax Officer, the petitioner preferred an appeal under Section 107 of the GST Act before the Joint Commissioner, SGST (Appeals), Bhopal seeking relief of the tax and penalty levied against it.

**8.** The Joint Commissioner, SGST (Appeals) in his order, stated that in the E-way bill name and address of the recipient, while matching with the Bill of Entry No.LSN00090393, dated 13-9-2018 and Bill of Lading No.BOCLEWR00108720, is not the same and such a mistake cannot be treated to be a clerical mistake. The Appellate Authority in his order stated that by entering the name of the clearing and forwarding agent, Titan Sea

& Air Services Pvt. Ltd. in the E-way bill, in place of the petitioner, makes the tax evasion assessable. The appeal was rejected by the Appellate Authority confirming the order passed by the State Tax Officer.

**9.** It is argued that Section 68 of the GST Act read with Rule 138-A of the Goods and Service Tax Rules, 2017 requires that the person in-charge of a conveyance carrying any consignment of the goods of the value, exceeding Rs.50000/-, should carry a copy of the documents viz. invoice, bill of supply, delivery challan, bill of entry and a valid E-way bill, in physical or electronic form for the purpose of verification. Complying with all such formalities, the petitioner carried all related documents during movement of the goods from Mumbai to Katni. It is strenuously urged that in case, if the petitioner at the time of movement of the goods does not carry the aforementioned documents, there is no doubt that contravention of the provisions of laws takes place and the provisions enjoined in Section 129 of the GST Act are invokable. It is put forth that in spite of all requisite documents having been carried, how the proceeding under Section 129 of the GST Act was initiated by the State Tax Officer, which was confirmed by the appellate authority. It is stated that the proceeding initiated under Section 129 of the GST Act against the petitioner is injudicious. It is asseverated that the Appellate Authority is not justified in rejecting the appeal preferred by the petitioner without pursuing the General Disciplines pertaining to concept of penalty.

**10.** A reference is made to Sub-section (1) of Section 126 of the GST Act, which provides that no Officer under this Act, shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without any fraudulent intent or gross negligence. Clause (b) of the Sub-section further prescribes that an omission or mistake in documentation shall be considered to be easily rectifiable, if the same is an error apparent on the face of record. The error which the service agent, Titan Sea & Air Services Pvt. Ltd., committed at the time of generation of the E way bill, was a procedural mistake without a fraudulent intention or gross negligence. Therefore, the tax and penalty levied against the petitioner runs counter to the provisions envisaged in the GST Act. It is argued that in para 4 of the impugned order the respondent has accepted that the goods so imported were consigned from the Robbins Company (a parent company from the

USA) to the petitioner and the documents were fully matching with the transaction.

**11.** Learned counsel for the petitioner further submitted that even in the E-way bill, Annexure-P/9, an approximate distance was also mentioned as 1200 Kms., which was not possible for the destination within the State of Maharashtra. It was a clerical mistake and, therefore, the respondents ought to have considered the case for minor punishment by virtue of the Circular, dated 14-9-2018, issued by the Ministry of Finance. Further, the respondents have completely failed to take into consideration the E-way bill, Annexure-P/9, showing the approximate distance of 1200 km. and rejecting the appeal of the petitioner, merely on the ground that the name of the consignee is not matching. Whereas the particulars in Part A of E-way bill, were fully matching with all the related documents.

**12.** It is vehemently argued that the Central Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, received various representations regarding imposition of penalty, in case of minor discrepancies in the details mentioned in the E-way bill, although there are no major lapses in the invoices accompanying the goods in movement. Consequently, a circular was issued, vide No.CBEC/20/16/03/2017-GST, dated 14-9-2018 by the Ministry of Finance, appended as Annexure-P/15 to the writ petition, specifically stating that it has been informed that proceedings under Section 129 of the GST Act are being initiated for every mistake in the documents mentioned in para 3 of the said Circular. It is clarified that in case, a consignment of goods is accompanied with an invoice or any other specified documents and not with an E-way bill, proceedings under Section 129 of the GST Act may be initiated. Para 5 of the Circular further clarifies, that in case a consignment of goods is accompanied with an invoice or any other specified document and also with an E-way bill, proceedings under Section 129 of the GST Act may not be initiated. It is strenuously urged that the respondent/Appellate Authority is not justified in rejecting the appeal on the ground that the petitioner has not discharged its liability of payment of IGST Tax at the time of import. It is put forth that the point raised on behalf of the respondents, is totally incorrect because at the time of making of a Bill of Entry for home consumption, vide No.8870378, dated 15-11-2018, the IGST for a sum of Rs.1112134/- was paid accordingly along with Custom Duty.

**13.** Regard being had to the pleadings advanced on behalf of the parties, and bestowing our anxious consideration on the relevant provisions of the GST Act, we find that the respondents are not justified in rejecting the appeal of the petitioner on the ground that the mistake committed while generating the E-way bill, was not a clerical error or a small mistake. Accordingly, the impugned orders passed by the respondents, dated 28-9-2019 (Annexure-P/14) and 14-12-2018 (Annexure-P/12) confirming the tax and penalty to the tune of Rs.2224268/-, are hereby quashed. The respondents are directed to consider the case of the petitioner for imposition of a minor penalty, treating it to be a clerical mistake, as per Circular, dated 14-9-2018 No.CBEC/20/16/03/2017-GST issued by the Ministry of Finance.

**14.** Ex-consequenti, the writ petition is allowed, in the above terms. There shall be no order as to costs.

❑

**(2021) 66 TLD 140** In the High Court of Delhi

Hon'ble Rajiv Sahai Endlaw & Sanjeev Narula, JJ.

**Ashish Saraf**

**Vs.**

**PR Commissioner of Income Tax-4**

W.P.(C) No.: 1980/2021

February 15, 2021

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

**Vivad Se Vishwas Act, 2020 - The Delhi High Court directed the Principal CIT-4 to correct the error apparent on the record and if of the opinion that there is no error, to within the said time, communicate the reasons therefor in writing and where against the petitioner shall have remedies in accordance with law.**

**Writ petition allowed**

Mr. Gaurav Jain, Mr. Aniket D. Agrawal & Ms. Manisha Sharma, Advs. for the petitioner.

Mr. Sunil Agarwal, Adv. for the respondent.

**:: ORDER ::**

**[VIA VIDEO CONFERENCING]**

**CM No.5783/2021 (for exemption)**

**1.** Allowed, subject to just exceptions and as per extant Rules.

**2.** The application is disposed of.

**W.P.(C) 1980/2021 & CM No.5782/2021 (for interim relief)**

**3.** The petition impugns the Certificate dated 9th January, 2021 issued by the respondent in Form-3, under Section 5(1) of the Direct Tax Vivad Se Vishwas Act, 2020, vide Acknowledgment No.158235220090121, to the extent the same treats the case of the petitioner as a search case.

**4.** On a perusal of the documents placed by the petitioner, it appears that the case of the petitioner cannot be treated as a search case.

**5.** The counsel for the respondent appearing on advance notice has been heard and has not been able to justify the case of the petitioner as falling in the category of a search case.

**6.** We thus allow the petition, by directing the Principal Commissioner, Income Tax-4, New Delhi to, within three days hereof, correct the error apparent on the record and if of the opinion that there is no error, to within the said time, communicate the reasons therefor in writing and where against the petitioner shall have remedies in accordance with law.

**7.** The petition is disposed of.

❑

**(2021) 66 TLD 141**

In the High Court of Gujarat
Hon'ble J.B. Pardiwala & Ilesh J. Vora, JJ.

**Bhumi Associate**

**Vs.**

**Union of India**

R/Special Civil Application No. 3196 of 2021 with 2426 of 2021 with 2515 of 2021 with 2618 of 2021

February 16, 2021

**Recovery - Search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 - The Gujarat High Court directed the CBIC and Commissioner of GGST and CCGT for issuance of guidelines.**

Mr. Avinash Poddar (9761) for the Petitioner(s) No. 1, 2.
DS AFF. NOT FILED (N)(11) for the Respondent(s) No. 1,2,3,4,5,6

**:: COMMON ORAL ORDER ::**

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

**1.** We have heard all the learned counsel appearing for the writ applicants. We have also heard Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the respondents.

**2.** The officers of the concerned department who were asked to join the video conference did join, but at a very later stage. They were unable to witness the discussion that took place between the Court and Mr. Vyas. We propose to pass an interim order issuing the following directions.

> "The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/ State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:
>
> (1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/ inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.
>
> (2) Even if the assessee comes forward to make voluntary payment by filing Form DRC03, the assessee should be asked/ advised to file such Form DRC03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.
>
> (3) Facility of filing complaint/ grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.
>
> (4) If complaint/ grievance is filed by assessee and officer is found to have acted in defiance of the aforestated directions, then strict disciplinary action should be initiated against the concerned officer."

3. Mr. Devang Vyas, the learned Additional Solicitor General of India has taken the pains to address this Court from the hospital room. Mr. Vyas is not well and has been hospitalized. Mr. Vyas may respond day after

tomorrow to the aforesaid directions, which we propose to issue. We direct all officers to once again join the video conference dayafter tomorrow, but this time, they should join well in time.

Post all the matters on **18-2-2021** on top of the board.

❑

**(2021) 66 TLD 143** In the High Court of M.P.

Hon'ble Sheel Nagu & Rajeev Kumar Shrivastava, JJ.

**Agrawal Oil Mill**

**Vs.**

**State of M.P.**

W.P. No. 12679/2020, 12690/2020 & 12687/2020

September 15, 2020

***Deposition : In favour of Department***

**Inspection, Search & Seizure - Section 67(5) of CGST Act, 2017 - Denial of copies of seized documents/their extracts to the person was justified where supply of copies/extracts of seized documents can lead to adversely affecting the investigation - Discretion available to the competent authority u/S 67(5).**

**Writ petition dismissed**

*The discretion available to the competent authority u/S 67(5) of the CGST Act while withholding supply of copies/extracts of documents seized appears to be judiciously exercised by the competent authority for reasons which prima facie appear to be cogent and convincing.* [Para 4.2]

*Once it is held that discretion available to the competent authority u/S. 67(5) of the CGST Act had been reasonably exercised while refusing to accede to the request for supply of copies/extracts of seized documents, it cannot be said that the competent authority has travelled beyond it's jurisdictional purviews prescribed by law and therefore in the absence of jurisdictional error in the order impugned, no interference is called for, especially in the face of unavailed alternative statutory remedy of appeal.* [Para 4.3]

**Cases referred :**

* Filterco Vs. Commissioner of Sales Tax Madhya Pradesh AIR 1986 SC 626
* High Ground Enterprises Ltd. Vs. Union of India & another W.P.8075/19 dated 14-8-2019 (Bombay High Court)
* M.G. Abrol, Addl. Collector of Customs Bombay Vs. M/s. Shantilal Chhotelal and Co. AIR 1966 SC 197
* Mozart Global Furniture Vs. The State Tax Officer and another, WP(C) 34457/19 decision dated 17-12-2019 (Kerala High Court)

Shri Gaurav Mishra, learned counsel for petitioners in all the petitions.
Shri Ankur Mody, learned Additional Advocate General for the respondents/State.

**:: ORDER ::**

The Order of the Court was made by **SHEEL NAGU, J. :**

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

**1.** All the three petitions have been filed by the same petitioner assailing tax liability alongwith interest and penalty of different assessment years (2017-18, 2018-19 & 2019-20) as contained in the impugned order (Annexure-P/1), dated 11-8-2020 passed by respondent No.4-Assistant Commissioner State Tax, Shivpuri (M.P.).

**2.** For facility of reference, facts attending W.P.12679/20 are being considered for adjudication.

**3.** Learned counsel for petitioner submits that though remedy of statutory appeal is available to petitioner against the impugned order (P/1) but since all the impugned orders have been passed in flagrant violation of principles of natural justice in as much as denial of supply of copies/extracts of the seized documents, the petitioners have invoked writ jurisdiction of this court u/Art. 226 of the Constitution. It is submitted that denial of copies of seized documents/their extracts amounts to denial of reasonable opportunity to defend as statutorily provided in Sec. 67(5) of the Central Goods and Services Tax Act, 2017 (for brevity CGST Act).

**3.1** Bare facts disclose that at the premises of petitioner-firm which is engaged in the trading of food grains and sugar, a search was conducted on

29-5-2019 by officers of the official respondents which led to seizure of certain material documents. Other documents are alleged to have been handed over to the proprietor of the firm but the seized documents were taken possession of by the official respondents vide seizure memo P/2. A show-cause notice was issued u/Sec. 74 of the CGST Act on 8-7-2020 vide P/3. The tax consultant of the petitioner-firm appeared before the authority on 10-7-2020 when the next date was fixed as 20-7-2020. On 20-7-2020 the proprietor of the petitioner-firm alongwith tax consultant were personally present before the authority and were asked to produce cashbook, ledger of the year 2017-18, 2018-19 and 2019-20 (till 29-5-2019), trading accounts and bank statements. The proprietor and the tax consultant perused the scrutiny report prepared by official respondents. A reminder was issued to petitioner and next date of 27-7-2020 was fixed. On 27-7-2020 an application was filed on behalf of petitioner-firm for supplying certified copy of the proposal order, seizure memo and scrutiny report. The competent authority in the order sheet of 27-7-2020 noted that on earlier occasion on 20-7-2020 the proprietor and as well as tax consultant had scrutinized the scrutiny report when they were made aware of the requirement of producing accounts, cashbooks, trading accounts and bank statements but the proprietor failed to do so. The authority recorded in the order sheet dated 27-7-2020 that in the seizure of the books made on 3-7-2020 account books and cash books were not seized and therefore demand has been made from the proprietor to produce the same but the proprietor has not yet produced despite grant of sufficient opportunity. The order sheet further reveals that proprietor disclosed that account books are maintained in the computer. In this scenario, the competent authority while recording order sheet dated 27-7-2020 found that intention on the part of petitioner-proprietor while seeking copies/extracts of the documents seized is to cause interpolations in the account books maintained in his computer. Accordingly, the competent authority exercising it's discretion available u/Sec. 67 of the CGST Act denied the prayer for grant of copies of the seized books. Finally, the competent authority granted last opportunity to petitioner to produce the documents as required by the competent authority by fixing the date of hearing as 6-8-2020. Thereafter, on 29-7-2020 a fresh reminder was issued to the petitioner reiterating the earlier demand made on 20-7-2020 of producing cash books, ledger, trading accounts, bank statements etc. Thereafter on 6-8-2020 the proprietor and his tax consultant were present and produced the trading

accounts, purchase & sale list & bank statements. However, the competent authority noted that ledger and the account books were not produced. The competent authority taking note of the failure of petitioner to produce incomplete record held that verification cannot take place and therefore exercising discretion on the basis of the compelling reason attributed to the petitioner, took the decision of proceeding *ex parte* and issued the impugned order P/1 adjudicating total tax liability of Rs. 4,33,00,753 for the assessment year 2019-20 which included tax/cess, interest and penalty, which is assailed in WP 12679/20 before this court. So also W.P. 12690/20 assails the impugned order P/1dated 11-8-2020 adjudicating total tax liability of Rs. 16,08,12,732/- for the assessment year 2018-19 and W.P. 12687/20 assails the impugned order P/1 dated 11-8-2020 adjudicating total tax liability of Rs. 8,78,36,779/- for the assessment year 2017-18 after imposing penalty and interest.

**3.2** Learned counsel for petitioner on the basis of above factual matrix relying upon Division Bench decision of Bombay High Court in **W.P.8075/19 (High Ground Enterprises Ltd. Vs. Union of India & another) 14-8-2019, Kerala High Court decision dated 17-12-2019 in WP(C) 34457/19 (M/s Mozart Global Furniture Vs. The State Tax Officer and another)** (cumulatively filed as P/11), the Apex Court decisions in **M/s Filterco Vs. Commissioner of Sales Tex Madhya Pradesh (AIR 1986 SC 626) and M.G.Abrol, Addl. Collector of Customs Bombay Vs. M/s. Shantilal Chhotelal and Co. (AIR 1966 SC 197)** contends that sec. 67 of the CGST Act as reproduced in para 6.4 of WP 12679/20 obliges the competent authority to supply copies/extracts of the documents seized during search operation and the only exception carved out is the formation of opinion of competent authority that supply of copies/extracts would prejudicially affect the investigation.

**3.3** Learned counsel for petitioner has vehemently argued to submit that once entire documents are seized by the competent authority at the time of search, then supply of copies of seized documents cannot enable the petitioner to indulge in any kind of manipulation/interpolation or interference with investigation.

**4.** After having heard learned counsel for the rival parties on admission, this court deems it appropriate to decline admission for the reasons infra:

**4.1** From order sheets as detailed and explained above, ever since conduction of search till passing of the impugned order, it is evident that due and sufficient opportunity was afforded to petitioner to produce the remaining relevant documents which had not been recovered during search. The explanation given by petitioner for not producing documents sought by Revenue was that the same are maintained in soft copy in computer while in regard to other documents sought by the Revenue, there was no explanation. This obviously gives an impression that the remaining relevant documents which could not be seized during search are still in possession of petitioner and therefore supply of copies or extracts of the seized documents to petitioner can enable the petitioner to carry out interpolations for reducing or depressing tax liability and with corresponding loss to the Revenue. The formation of this opinion is founded upon reasonable apprehension in the mind of the competent authority that supply of copies/ extracts of seized documents can lead to adversely affecting the investigation.

**4.2** The discretion available to the competent authority u/S 67(5) of the CGST Act while withholding supply of copies/extracts of documents seized appears to be judiciously exercised by the competent authority for reasons which *prima facie* appear to be cogent and convincing.

**4.3** Once it is held that discretion available to the competent authority u/ S. 67(5) of the CGST Act had been reasonably exercised while refusing to accede to the request for supply of copies/extracts of seized documents, it cannot be said that the competent authority has travelled beyond it's jurisdictional purviews prescribed by law and therefore in the absence of jurisdictional error in the order impugned, no interference is called for, especially in the face of unavailed alternative statutory remedy of appeal.

**5.** Consequently, this court does not find any substance in all the three petitions **(WP 12679/20, WP 12690/20 & WP 12687/20)** which accordingly stand dismissed in *limine* at the admission stage itself, *sans* cost.

❑

**(2021) 66 TLD 148** In the High Court of M.P.
Hon'ble Sheel Nagu & Rajeev Kumar Shrivastava, JJ.

**Ram Prasad Sharma**

**Vs.**

**The Chief Commissioner and another**

W.P. No.: 16119/2020

November 19, 2020

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

**Service of Notice - Notice and order for demand of amounts payable under the Act - Rule 142 of CGST - The only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.**

**Writ petition allowed**

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

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

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

Shri Pankaj Ghiya, learned counsel for the petitioner.
Shri Ankur Mody, learned AAG for the respondent No.3/State.

**:: ORDER ::**

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

**1.** Instant petition invoking writ and supervisory jurisdiction of this Court

under Articles 226 and 227 of Constitution prays for following reliefs:-

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

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

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

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

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

**2.** Grievance of the petitioner is that while raising the demand of tax vide summary of order dated 18-9-2020 vide Annexure P/2 (at page 17 of the writ petition), the foundational show-cause notice/order No.10 dated 10-6-2020 qua financial year 2019-2020 and tax period April, 2019 to July, 2019, was never communicated to the petitioner who is an individual registered under GST Act.

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

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

**5.** Learned counsel for the petitioner has drawn the attention of this Court to the provision of Rule 142(1) of CGST Act to contend that the said provision statutorily obliges the revenue department to communicate show-

cause notice/order by uploading the same on the website of revenue so that the aggrieved person can have access to the same and be aware of reasons behind the demand to enable the aggrieved person to avail alternative remedy before the higher forum under CGST Act.

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

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

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

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02,

specifying therein the details of the amount payable.

(1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under subsection (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.] 274;

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

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

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

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

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

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

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

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

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

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

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

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

❑

**(2021) 66 TLD 152**

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.
**Podaran Foods India Pvt. Ltd.**
**Vs.**
**State of Kerala & Others**
WP(C).No.: 17379 OF 2020(V)
**Universal Cables Limited**
**Vs.**
**State of Kerala & Another**
W.P(C).No.: 22072 OF 2020(H)
**Chakkiath Brothers**
**Vs.**
**The Assistant State Tax Officer & Others**
W.P(C).No.: 22608 OF 2020(A)
January 12, 2021

***Deposition : In favour of Department***

**Alternate remedy - Any person aggrieved by the order of the proper officer must necessarily approach the appellate authority**

**before which an appeal against the adjudication order under Section 129 (3) of the Act is maintainable.**

**Writ petition disposed of**

*On a consideration of the rival contentions, I am of the view that under Section 129 of the Act, if a proper officer who is entrusted with the task of detaining goods, finds that they have been transported in contravention of the rules, he does not have the discretion to condone the procedural lapse or relax its rigour in particular cases. He must interpret the Rule strictly keeping in mind the statutory scheme that aims to curb tax evasion. In as much as the adjudication that is expected of him is a summary one, he can do no more than determine whether or not on a literal reading of the statutory provisions, together with the circulars issued from time to time, there has been a breach occasioned thereof. Any person aggrieved by the order of the proper officer must necessarily approach the appellate authority before which an appeal against the adjudication order under Section 129 (3) of the Act is maintainable. In the instant case too, the remedy of the petitioner is to approach the appellate authority under the Act against the finding of the proper officer.* [Para 6]

**Cases referred :**

* NVK Mohammed Sulthan Rawther & Sons Vs. UOI & Ors. Judgment dated 16-10-2018 in W.P(C) No.32324 of 2018

* State of Uttar Pradesh Vs. Kay Pan Fragrance Pvt. Ltd. (2020) 74 GSTR 281 (SC)

* Synergy Fertichem Private Limited Vs. State of Gujarat (2019) VIL 623 (Guj)

Shri. Prabhakaran P.M., Sri. Karthik S. Nair & Shri. Navaz P.C. for the petitioner in W.P(C) No.17379 of 2020, Sri. A. Kumar, Sri. P.J. Anilkumar, Smt. G. Mini (1748), Sri. P.S. Sree Prasad, Shri I. Job Abraham & Sri. Ajay V. Anand for the petitioner in W.P(C).No.: 22072 OF 2020(H) and Sri. K. Srikumar (Sr.) & Sri. K. Manoj Chandran for the petitioner in W.P(C).No.: 22608 OF 2020(A)

Dr. Thushara James, Government Pleader for the respondents.

**:: JUDGMENT ::**

As these writ petitions raise a common challenge to the legality of orders of detention passed by the respondents under the GST Act, they are taken up together for consideration and disposed by this common judgment.

**2.** I have heard Sri.Shrikumar, the learned Senior Counsel, duly assisted by Sri.Manoj Chandran for the petitioner in W.P(C) No.22608 of 2020, Sri.A.Kumar, the learned counsel for the petitioner in W.P(C).No.22072 of 2020, Sri.Karthik S. Nair, the learned counsel for the petitioner in W.P(C) No.17379 of 2020 and the learned Govt. Pleader Smt.Dr. Thushara James for the respondents in all the writ petitions.

**3.** For the sake of convenience, the general provisions regarding detention and their scope and ambit are discussed first, and the application of the legal principles to the facts of the individual cases discussed thereafter. I have chosen to resort to said format because I have come across numerous instances of writ petitions being filed in this court challenging detention orders passed under the GST Act when the scheme of the Act clearly indicates that the writ court is not to be ordinarily approached in detention cases where effective alternate remedies by way of provisional clearance, and appeal thereafter, are provided against alleged arbitrary/illegal detention orders. The legal position in this regard was recently reiterated by the Supreme Court in **State of Uttar Pradesh Vs. Kay Pan Fragrance Pvt. Ltd. - [2020 (74) GSTR 281 (SC)]** when it observed that writ petitions seeking directions to release seized goods ought not to be entertained as the Act provides for a complete mechanism for release and disposal of seized goods. I also believe that an enunciation of the scope and ambit of the statutory provision would help clarify the doubts arising in the minds of proper officers, who are entrusted with the task of overseeing the transportation of taxable goods with a view to check the evasion of tax, as regards the procedure to be followed while going about their assigned duties.

**4.** The detention of goods and vehicles, while in transit pursuant to a commercial arrangement between the consignor and consignee thereof, is often seen as infringing the fundamental freedom guaranteed to a citizen under Article 19 (1)(g) of our Constitution, to carry on a trade or business of his choice. It is also seen as a restriction to one's freedom to engage in trade, commerce and intercourse throughout the territory of India, a right guaranteed under Article 301 of the Constitution. The justification of any legal provision

that authorises such detention must, therefore, be through a demonstration of the reasonableness of the provision, and its necessity in larger public interest.

**5.** Tax legislations in our country, especially those dealing with indirect taxes, have always found the need to have provisions for detaining goods and vehicles while in transit to ensure that tax that is legitimately due to the State is not lost through deliberate evasion by unscrupulous assessees. It is therefore that such provisions have been incorporated as incidental machinery provisions for levying the tax as contemplated in the statute concerned. The detection of evasion, and the consequential recovery of tax due to the State, are seen as acts that sub serve larger public interest, and hence the restrictions to the exercise of the constitutional freedoms are seen as reasonable.

**6.** It follows, as a corollary to the above position, that unless there is a possibility of tax evasion, a detention of goods and vehicles cannot be justified, and that an authority vested with the powers of detention under a taxing statute has to bear in mind that the provisions authorizing detention have to be strictly construed for what is at stake is a constitutional right, fundamental or otherwise, of a citizen. There is also the aspect of fairness in the levy and collection of taxes that must inform the authorities entrusted with the said task, for fair implementation of the law has been recognised as an essential attribute of the rule of law in a republic such as ours.

**7.** Our nation witnessed a paradigm shift in the matter of levy and collection of indirect taxes with the introduction of GST, a destination based consumption tax on the supply of goods and services, through the Constitution (101st Amendment) Act, 2016. The GST regime that came into effect from 1-7-2017 provides for concurrent exercise of taxing powers by the Centre and the States on the same subject and the Centre and the States are to act in tandem based on the GST Council's recommendations.

**8.** Section 129 of the GST Act is contained in Chapter XIX thereof that deals with offences and penalties and reads as follows:

**"129 – Detention, seizure and release of goods and conveyances in transit**

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all

such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,–

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: PROVIDED that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

PROVIDED that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fourteen days may be reduced by the proper officer."

A schematic analysis of Section 129 of the Act reveals the following salient features of the said provision;

1. Section 129, not surprisingly, opens with a non-obstante clause that conveys the legislative intention that the provisions of the statute shall not be an impediment to the measure envisaged thereunder. It is an indication by the legislature that the detention provision, which appears to run counter to the general presumption that trade, commerce and intercourse throughout the territory of India will be free, does not unreasonably restrict the said freedom, but is merely a machinery provision that is intended to check evasion of tax and which must be read along with the substantive provisions of the statute that provide for the levy and collection of tax.

2. The provision itself is attracted whenever there is a transportation of goods or storage of goods while in transit, in contravention of the provisions of the Act or Rules made thereunder. This is obviously a reference to those provisions of the CGST/SGST/IGST Act and Rules that deal with the manner of transportation of goods or storage of goods while in transit. Briefly stated the provisions are as under;

i. Section 31 that requires every registered person supplying taxable goods to issue a tax invoice showing the description, quantity and value of the goods, the tax charged thereon and such other particulars as are prescribed in the Rules. The particulars to be contained in the invoice or the documents that may be generated in lieu thereof, as well as the manner in which they have to be issued, are dealt with in Rules 46 to 55A of the CGST Rules. The invoice has to be issued before or at the time of removal of goods for supply to the recipient.

ii. Chapter XVI of the CGST Rules that contain Rules 138 to 138E that deals with the form in which an e-way bill is to be prepared and generated and the particulars to be contained therein. While Rule 138 obliges every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees to upload an e-way bill electronically on the common portal, before commencement of such movement, Rule 138A obliges a person in charge of a conveyance to carry the invoice/bill of supply/

delivery chalan and a copy of the e-way bill in physical form or the e-way bill number in electronic form. Rules 138B and 138C deal with the procedure for verification of documents and conveyances and the inspection and verification of goods respectively.

3. On a contravention of the provisions of the Act and Rules being detected as above, the goods and conveyance concerned become liable to detention/seizure, and after such detention/seizure, can be released only on making the payments stipulated in clauses (a) or (b) of Section 129 (1) or upon furnishing the security as provided in clause (c) thereof, as the case may be. What is apparent from the said provision is that there is no discretion conferred on the detaining authority to release the goods and conveyance on terms that are less stringent than what is specified under the aforesaid clauses of Section 129 (1). Further, although sub-section (2) of Section 129 makes the provisions of sub-section 6 of Section 67 applicable mutatis mutandis for the detention and seizure of goods and conveyances, a reading of Section 67 (6) with Rule 140 of the CGST Rules clearly indicates that a provisional release of the goods and the conveyance can be allowed only upon execution of a bond for the value of the goods, and on furnishing security in the form of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable. It is apparent, therefore, that a determination of contravention of the provisions of the Act and Rules under Section 129 (1) automatically attracts the liability to pay (i) the tax due in respect of the goods, and (ii) a penalty equivalent to 100% of the tax payable on the goods or (iii) in the case of exempted goods, the prescribed amount equal to the specified percentage of the value of the goods, depending on whether or not the owner of the goods comes forward for payment of the tax and penalty, and that the detaining authority does not have any discretion to reduce the quantum of the amount stipulated for payment under the statute.

4. Sub-sections (3) and (4) of Section 129 spell out a requirement for the proper officer detaining or seizing the goods or conveyance to issue a notice specifying the tax and penalty payable and thereafter passing an order for payment of the same after giving the person concerned an opportunity of being heard. Inasmuch as there is no discretion available in the proper officer to reduce the amounts stipulated for payment under the statute, in the event of a finding of contravention of the statutory provisions that justify the detention/seizure itself, the procedural requirements under Section 129 (3)

and (4) must be seen as providing an opportunity to the person concerned of showing cause as to why a detention/seizure of goods is not justified in a particular case. In other words, notwithstanding that the detained/seized goods may have been provisionally cleared by the person concerned, on furnishing of a bond and/or bank guarantee as prescribed, the person concerned can still question the legality of the detention before the proper officer. The proper officer, on his part, is obliged to consider the objections of the person concerned and render a finding as regards the legality of the seizure/detention in the order that he is obliged to pass under Section 129 (3).

5. On payment of the amounts referred to in Section 129(1), the proceedings in respect of the notice in Section 129 (3) shall be deemed concluded. In other words, if in response to the notice issued under Section 129 (3), the person concerned pays the amounts demanded therein without demur, the proceedings under Section 129 (3) for that person is deemed concluded by the passing of a formal order under Section 129 (3). On the other hand, when the notice under Section 129 (3) of the Act is served on a person who, on being served with an order of detention, has cleared the goods and conveyance on furnishing a bond and/or bank guarantee, and thereafter responded to the notice served on him, then the proceedings under Section 129 (3) of the Act for such person is deemed concluded only after the adjudication proceedings is completed by the proper officer as above. For such person, an appellate remedy lies against the adjudication order of the proper officer under Section 129 (3). Further, although not expressly provided for under the statute, I am of the view that to render the appellate remedy effective, a requirement ought to be read into the statutory framework that the proper officer should not invoke the bank guarantee for a period of three months from the date of service of the adjudication order under Section 129 (3). The said requirement would safeguard the interests of the person concerned, as also the revenue that holds the bank guarantee, while simultaneously obviating the need for persons concerned to approach the writ court challenging the detention orders.

6. Section 129 (6) provides for a situation where a person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty stipulated in Section 129 (1) within a period of fourteen days of the detention or seizure of the goods. In such cases, proceedings under Section 130 of

the Act are to be initiated against the person concerned for the purposes of realizing the amounts due to the Government through a sale of the seized/ detained goods by following the procedure prescribed under the said provision.

**9.** It is rather surprising that although the statute provides for a detention of goods and conveyance while in transit, the procedure to be followed by the proper officer concerned is not spelt out in any Rule framed under the parent Act. The central government has, however, chosen to prescribe the procedure for interception of conveyances for inspection of goods in movement, detention, release and confiscation of goods and conveyances through various Circulars issued in exercise of its powers under Section 168 (1) of the CGST Act. A reading of the various circulars issued from time to time reveals the following procedure to be currently in vogue and followed by the proper officers.

- On apprehending a vehicle and finding it to be transporting goods without the required documents, the statement of the person in charge of the conveyance, who fails to produce a valid document covering the transportation is recorded in **Form GST MOV-1.**

- An order for physical verification/inspection of conveyance, goods and documents is then passed in **Form GST MOV-2**. The proper officer has to prepare a report in Part A of Form GST EWB-03, within 24 hours of issuance of the order in Form GST MOV-2, and upload the same on the common portal. The proper officer has, thereafter, within a period of 3 working days from the date of issue of order in Form GST MOV-2, to conclude the inspection proceedings. If the above time needs to be extended, the proper officer has to obtain written permission in **Form GST MOV-3** from the Commissioner or an officer authorised by him, and a copy of the said order has to be served on the person in charge of the conveyance.

- On completion of the physical verification/inspection, the proper officer has to prepare a report in **Form GST MOV-4** and serve a copy of the report on the person in charge of the conveyance. The proper officer has also to record, on the common portal, the final report of the inspection in Part B of Form GST EWB-03, within 3 days of such physical verification/inspection.

- Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer has to issue a **release order in Form GST**

**MOV-5** and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained u/s 129 of the CGST Act, he shall issue an **order of detention in Form GST MOV-6** and a **notice in Form GST MOV-7**, specifying the tax and penalty payable.

- Where the owner of the goods pays the tax and penalty as applicable, the goods and conveyance may be released by an order in Form GST MOV-5 and **the order in Form GST MOV-9** shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or electronic credit ledger of the person concerned in accordance with Section 49 of the CGST Act.

- Where the owner of the goods or the person in charge of the conveyance offers to get a release of the goods by furnishing a security in terms of Section 129 (1)(c) of the CGST Act, the goods and conveyance shall be released by an order under Form GST MOV-5, after obtaining a **bond in Form GST MOV-8** along with security in the form of **bank guarantee** for the amounts demanded. The proceedings under Section 129 can then be finalised and the security adjusted against the demand arising from such proceedings.

- Where objections are filed against the proposed amounts of tax and penalty payable, the proper officer shall consider such objections and thereafter pass a speaking order in Form GST MOV-9, quantifying the tax and penalty payable. The order shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or electronic credit ledger of the person concerned in accordance with Section 49 of the CGST Act.

- In case the tax and penalty are not paid within 7 days from the date of issuance of the order of detention in Form GST MOV-6, action under Section 130 of the CGST Act shall be initiated by serving a notice in Form GST MOV-10 proposing confiscation of the goods and conveyance and imposition of penalty. The said notice can also be issued by the proper officer earlier in point of time, if he is of the opinion that such movement of goods

is being effected to evade payment of tax. In either event, the order of confiscation in Form GST MOV-11 can be passed only after affording the person concerned an opportunity of hearing. The order has thereafter to be served on the person concerned. On the order being passed, the title of the goods shall stand transferred to the Central Government. The person concerned can thereafter get the goods released if payment of tax, penalty and fine in lieu of confiscation is paid within 3 months. Once an order of confiscation under Form GST MOV-11 is passed, the order confirming tax and penalty in Form GST MOV-9 shall be withdrawn.

- If no person comes forward to pay the amounts mentioned in Form GST MOV-11, the proper officer shall auction the goods and/or conveyance by public auction and remit the sale proceedings to the account of the central government.

**10.** As can be seen from the discussion in earlier paragraphs of this judgment, the procedure prescribed above substantially conforms to the requirements of Section 129. The only aspect that probably requires clarification, in the light of the spate of cases that have been filed before this court of late, is as regards the scope and ambit of the orders passed by the proper officer in Form GST MOV-6 and Form GST MOV-9 respectively.

**11.** It is my view that the procedure to be sequentially followed from the stage of recording the statement of the driver in Form GST MOV-1 to the stage of issuing an order in Form GST MOV-6 detaining the goods, is for the purpose of determining whether the goods were being transported, or stored during transit, in contravention of the provisions of the Act and Rules. The proper officer is required to apply his mind to the statement given by the driver of the vehicle, as also other documents produced by or on behalf of the owner of the goods or conveyance, to determine whether a contravention of the statutory provisions has indeed been occasioned. It is only if he is satisfied of such contravention, based on the material before him, that he must proceed to pass the order of detention in Form GST MOV-6. If there is no material to come to such a conclusion, he has to issue a release order in Form GST MOV-5 and permit an unconditional clearance of the goods and vehicle. At all the above stages, the proper officer is also required to strictly adhere to the time limits prescribed in the circulars issued from time to time so that the goods are not detained for a period longer than that permitted under the statute.

**12.** Since the statutory provisions and the circulars envisage the service of a notice in Form GST MOV-7, simultaneous with the issuance of a detention order in Form GST MOV-6, the 'non-finality' of the latter order is statutorily recognised and hence, it will not be open to the person concerned to prefer any statutory appeal or writ petition against the said order in Form GST MOV-6. The person served with an order in Form GST MOV-6, together with a notice in Form GST MOV-7, has the option of either paying the amounts demanded in the notice and clearing the goods or contesting the matter by preferring his objections to the proposals contained in the notice. In the former event, on receipt of the payment from the person concerned, the proper officer has merely to regularize the payment by passing an order in Form GST MOV-9 confirming the proposal in the notice.

**13.** In the latter event, where the person concerned decides to contest the matter, the proper officer may permit the said person to provisionally clear the goods on furnishing a bond and/or bank guarantee as stipulated under the Act and Rules, and thereafter consider the objections of the said person, to the notice issued to him in Form GST MOV-7, and pass an adjudication order in Form GST MOV-9. The order so passed should reflect a consideration of the objections of the person concerned, and contain reasons for the decision to detain the goods and collect the tax and penalty amounts from the person concerned. The proper officer shall bear in mind the statutory provisions that provide for an appeal against an order passed under Section 129 (3) of the Act and accordingly, refrain from invoking the bank guarantee furnished by the person concerned for a period of three months from the date of service of the order in Form GST MOV-9, so that the appellate remedy available to the person concerned is not rendered illusory. (emphasis supplied)

**14.** In the backdrop of the above discussion regarding the substantive and procedural scope and ambit of Section 129 of the GST Act, I now proceed to examine the facts in the individual writ petitions and the legality of the orders impugned therein.

W.P(C).No.17379 of 2020 and W.P(C).No. 22608 of 2020:

In W.P(C).No.17379 of 2020, the petitioner was transporting fruit drinks from Tamil Nadu to Kerala, after ensuring that the transportation of the goods was duly accompanied by valid invoices and e-way bills that described the goods as 'fruit drinks'. The goods and the vehicles were,

however, detained by the respondents on the ground that the description of the goods in the invoice was incorrect in that, the goods were actually classifiable as 'aerated soft drinks with added flavours' attracting a different HSN classification and rate of tax. Although the petitioner paid furnished bonds and bank guarantees for the tax and penalty demanded in the notices issued to it in Form GST MOV-7 (Exts. P1(a), P2(a), P3(a) and P4(a)) and obtained a provisional release of the goods and conveyance on 14.08.2020, it has chosen to challenge the detention orders in Form GST MOV-6 (Exts.P1, P2, P3 and P4) and the notices in Form GST MOV-7 in this writ petition. The main contention urged in the writ petition is that an alleged mis-classification of goods cannot be the basis for a detention under Section 129 of the GST Act.

**2.** When the writ petition came up for admission, this court issued notice before admission to the respondents and restrained them from invoking the bank guarantees furnished by the petitioner pending disposal of the writ petition. Although the respondents were directed to pass the adjudication order under Section 129 (3) of the Act in the meanwhile, it is stated that the said order has not been passed till date.

**3.** In W.P(C).No.22608 of 2020, the petitioner consignee impugns the detention order passed by the respondents detaining a consignment of 'Pappad's' that was being transported to the petitioner's premises from the premises of the manufacturer in Ahmedabad. Although the transportation was duly covered by a Bill of Supply and an e-way bill, since the goods were declared as exempted goods under HSN code 1905, the respondents were of the view that the goods under transport were 'un-fried fryums' (food items) classifiable under HSN code 21069099 with Sl.No.23 of Schedule III attracting IGST @ 18%. The mis-classification of the goods was seen as rendering the transport documents viz. the Bill of Supply and the e-way bill invalid on account of a mis-description of the goods therein. It was also seen that the details required in Part B of the e-way bill were not furnished by the petitioner. The challenge in the writ petition is to the detention order in Form GST MOV-6 (Ext.P3 (C)) and the notice issued in Form GST MOV-7 (Ext.P3 (D)) on the ground that an alleged mis-classification of goods could not have been the basis for a detention under Section 129 of the GST Act.

**4.** When the writ petition came up for admission, this court took note of the contention of learned counsel for the petitioner that it had obtained a

release of the goods and vehicle on furnishing a bank guarantee for the amount demanded by the respondents and directed the respondents to pass the final adjudication order in Form GST MOV-9 pending disposal of the writ petition. It was also made clear that the bank guarantee would not be invoked without further orders from this court. The respondents thereafter passed the final adjudication order in Form GST MOV-9 confirming the proposals in the notice issued to the petitioner, both on the ground of mis-classification of the goods as well as for the reason that incomplete particulars were furnished in the e-way bill. On receipt of the said order, the petitioner amended the writ petition to incorporate a challenge against the said order as well.

**5.** In both the above writ petitions, the detention of the goods and vehicle was for the reason that there was an alleged mis-description of the goods in the transport documents. The issue as to whether a misclassification of the goods can be the basis for a detention under Section 129 of the GST Act has been the subject matter of many decisions of this court as well as other High Courts. In **NVK Mohammed Sulthan Rawther & Sons Vs. UOI & Ors** (Judgment dated 16.10.2018 in W.P(C) No.32324 of 2018), a single Judge of this court relying on an earlier decision of this court in **Rams Vs. STO – [1993 (91) STC 216]**, held that a detention of goods at the check post cannot be resorted to in cases where there is a bona fide dispute regarding the very existence of a sale and exigibility to tax. It was observed that in cases where an inspecting authority entertains a suspicion as regards attempt to evade tax, but the records he seizes truly reflects a transaction, and the assessee's explanation accords with his past conduct, then detention cannot be the answer and the inspecting authority can only alert the assessing authority concerned for examining the issue in assessment proceedings. The said reasoning also finds acceptance in the judgment of the Gujarat High Court in **M/s Synergy Fertichem Private Limited Vs. State of Gujarat – [2019 VIL 623 (Guj)]** where the court opined that in cases of suspected mis-classification, the inspecting authority can detain the goods only for the purpose of preparing the relevant papers for effective transmission to the jurisdictional assessing officer.

**6.** Taking cue from the aforesaid decisions, I am of the view that a mere suspicion of mis-classification of goods cannot be the basis for a detention under Section 129 of the Act. It has to be borne in mind that Section 129

forms part of the machinery provisions under the Act to check evasion of tax and a detention can be justified only if there is a contravention of the provisions of the Act in relation to transportation of goods or their storage while in transit. No doubt, it may be open to an inspecting authority to detain goods if there is a patent mis-description of the goods in the transportation documents, to such an extent that it can only be seen as referring to an entirely different commodity. Such instances, however, must necessarily be confined to glaring mis-descriptions such as 'Apples' being described as 'Oranges' or 'Coconuts' being described as 'Betel Nuts', where the two goods can never be perceived as the same by ordinary persons endowed with reasonable skills of cognition and comprehension.

**7.** In W.P(C) No.17379 of 2020, the mis-classification alleged is not one that amounts to a mis-description of the kind described above. Accordingly, I am of the view that the said alleged mis-classification cannot form the basis of a detention under Section 129 of the GST Act. I accordingly quash the impugned detention orders and notices in the said writ petition and allow the same. The respondents shall forthwith, and at any rate within two weeks from the date of receipt of a copy of this judgment, return the bank guarantee furnished by the petitioners to them.

**8.** In W.P(C) No.22608 of 2020 also, the mis-classification alleged is not one that amounts to a mis-description of the kind described above. I find, however, that the order in Form GST MOV-9 passed by the respondents confirms the proposals in the notice on the ground not only of alleged misclassification but also for the reason that the details required in Part B of the e-way bill were not furnished. Thus while the detention cannot be justified on the ground of mis-classification and the impugned detention order set aside to the said extent, it is sustained to the extent it justifies the detention on the second ground of the e-way bill not being a valid document. Since the adjudication order in Form GST MOV-9 has already been passed, I deem it appropriate to relegate the petitioner therein to his appellate remedy against the said order (to the extent sustained herein), making it clear that the bank guarantee furnished by the petitioner shall not be invoked for a period of two months from the date of receipt of a copy of this judgment so as to enable the petitioner to approach the appellate authority in the meanwhile. The appellate authority shall examine the legality of the detention only on the second ground of the e-way bill not being a valid document. It

is made clear that it will be open to the petitioner to raise all contentions in the appeal before the appellate authority and the sustaining of the detention order, to the limited extent indicated above, shall not be seen as an endorsement of the findings therein on merits.

W.P(C) No.22072 of 2020:

The petitioner in the writ petition is a Company engaged in the manufacture and sale of Power Cables and is a registered dealer under the GST Act. The petitioner had a contract with the Kerala State Electricity Board for the supply of power cables and towards effecting the said supply, it imported power cable end termination kits through Chennai Seaport. The imported items consisting of 33 numbers of end termination kits were contained in 22 packages, and these were cleared through Customs by filing the necessary Bills of Entry for home consumption. The packages were then loaded onto two vehicles bearing Registration Nos.TN 42AB 6969 (carrying 10 packages) and KL 49 JI 1855 (carrying 12 packages). The inter-state transportation of the goods was accompanied by an E-Invoice that was generated that showed payment of IGST on the consignment, as also an E-way bill corresponding to the said E-Invoice. Part B of the e-way bill contained the details of both vehicles with the specific number of units carries in each. A packing list showing the number of packages also accompanied the transportation.

**2.** The goods and the vehicles were detained by the respondents on the ground that there was only one common invoice (for 22 packages) that was generated in respect of the two consignments, and when compared with the number of packages that were contained in each of the vehicles, there was a shortage of packages in both the vehicles. It was also found that the petitioner had not complied with the procedure prescribed under Rule 55 (5) of the CGST Rules while transporting goods in semi-knocked down (SKD) or completely knocked down (CKD) condition or in batches or lots. In particular it was pointed out that the consignments were not covered by separate delivery chalans for each vehicle.

**3.** It would appear that although the petitioner subsequently produced two separate delivery chalans before the proper officer, the said chalans did not contain the details required under Rule 55 (1) of the CGST Rules and hence the proper officer proceeded to issue the detention order in Form GST MOV-6, and notice in Form GST MOV-7 to the petitioner. In the writ

petition, the petitioner impugned the said detention order and notice and sought an expeditious release of the goods and the vehicle.

**4.** When the writ petition came up for admission, this court took note of the submission of the learned counsel for the petitioner that a reply had already been preferred to the notice in Form GST MOV-7 and directed a listing of the case after three days so that an adjudication order under Section 129 (3) in Form GST MOV-9 could be passed by the proper officer after considering the objections of the petitioner. The said order was subsequently passed confirming the proposals in the notice. This court then permitted the petitioner to amend the writ petition to incorporate a challenge against the said order, while also permitting him to clear the goods and the vehicles on furnishing a bank guarantee for the amounts demanded in the adjudication order. The respondents were restrained from invoking the bank guarantee during the pendency of the writ petition.

**5.** Sri. A Kumar, the learned counsel for the petitioner would contend that the respondents erred in detaining the goods and the vehicles for a mere procedural lapse occasioned by the petitioner. Alternatively, it is contended that there was a complete misunderstanding of the scope of Rule 55 of the CGST Rules and the provisions of the said Rule did not get attracted to the transportation in question. As regards the discrepancies pointed out with regard to the delivery chalans, it is contended that the said defects had been subsequently cured, and the details required for corelating the transport documents with the goods that were being transported were all available with the proper officer who ought to have treated the breach as merely venial or technical and refrained from detaining the goods.

**6.** On a consideration of the rival contentions, I am of the view that under Section 129 of the Act, if a proper officer who is entrusted with the task of detaining goods, finds that they have been transported in contravention of the rules, he does not have the discretion to condone the procedural lapse or relax its rigour in particular cases. He must interpret the Rule strictly keeping in mind the statutory scheme that aims to curb tax evasion. In as much as the adjudication that is expected of him is a summary one, he can do no more than determine whether or not on a literal reading of the statutory provisions, together with the circulars issued from time to time, there has been a breach occasioned thereof. Any person aggrieved by the order of the proper officer must necessarily approach the appellate authority before which

an appeal against the adjudication order under Section 129 (3) of the Act is maintainable. In the instant case too, the remedy of the petitioner is to approach the appellate authority under the Act against the finding of the proper officer.

**7.** The upshot of the above discussion is that I do not find any reason to interfere with the adjudication orders in Form GST MOV-9 impugned in the writ petition. The petitioner is relegated to his alternate remedy of preferring appeals against the said adjudication orders before the appellate authority under the Act. All contentions, legal and factual, are left open to be agitated by the petitioner before the appellate authority. To enable the petitioner to do so, I direct that the stay granted by this court, against invocation of the bank guarantee furnished by the petitioner, shall continue to remain in force for a period of two months from the date of receipt of a copy of this judgment.

The writ petitions are disposed as above. No costs.

❑

**(2021) 66 TLD 169**

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.

**Renjilal Damodaran**

**Vs.**

**The Assistant State Tax Officer & Another**

WP(C).No.: 24819 OF 2020(B)

November 13, 2020

**E-way bill - Expired in transit - Detention justifed - The High Court directed to respondents to clear the goods and the vehicle on furnishing a bank guarantee.**

Sri. Harisankar V. Menon, Smt. Meera V. Menon & Smt. K. Krishna, Advocates for the petitioner.

Dr. Thushara James, Government Pleader for the respondents.

**:: JUDGMENT ::**

The petitioner has approached this Court challenging Ext.P4 series of notices issued to him under Section 129(3) of the CGST Act. From the said notices it is apparent that the defect noticed by the respondent was that the validity of the e-way bill that accompanied the transportation of the goods had expired by the time of detention.

**2.** The learned counsel for the petitioner would place reliance on the table under Rule 138(10) of the CGST Rules to contend that, inasmuch as the cargo carried in the instant case fell under the description of 'multimodal shipment in which at least one leg involves transport by ship', he must get the benefit of the time permitted in serial number 3 in the table under Rule 138(10) for the purposes of computing the validity period of the e-way bill. It is his alternate contention that as per the 3rd proviso to Rule 138(10), the validity of an e-way bill can be extended within eight hours from the time of its expiry and hence in the instant case the petitioner had time till 8 am on 06.11.2020 for extending the validity of the e-way bill, whereas the detention was at 1.30 am on 06.11.2020. It is submitted, therefore, that there was no valid ground for detention of the goods and the goods ought to be released without further delay.

**3.** I have heard Sri.Harisankar V.Menon, the learned counsel for the petitioner and also Dr.Thushara James, the learned Government Pleader for the respondents.

**4.** On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find it difficult to accept the contentions of the learned counsel for the petitioner. In my view, the classification in the table under R.138(10) is essentially between 'over dimensional cargo' and 'other cargo'. In both the categories of cases, the cargo can be transported either by road or through multimodal shipment in which at least one leg involves transport by ship. The number of days which would count towards the validity period of the e-way bill, for cargo other than over dimensional cargo, would vary depending upon whether the distance traversed is upto 100 km or more. While one day validity is given for distance traversed upto 100 km, an additional day is granted for every 100 kms or part thereof traversed thereafter. Similarly, in the case of over dimensional cargo, one day validity is granted for up to 20 km traversed, and an additional day for every 20 km or part thereof traversed thereafter. I cannot accept the contention of the learned counsel for the petitioner that, irrespective of whether his cargo can be categorised as over dimensional cargo or otherwise, he must get the benefit of the more beneficial provision so long as the mode of shipment is multimodal and in which at least one leg involves transport by ship. To interpret the provision as suggested would do violence to its clear language.

**5.** Secondly, as regards the contention of the learned counsel based on the 3rd proviso to R.138(10), while it may be a fact that the validity of the e-way bill could have been extended within eight hours from the time of its expiry, it is not in dispute that the petitioner did not choose to do so, and there is no merit in the contention that he did not extend the validity of the e-way bill because by that time the goods had already been detained by the respondent. The mere fact that the respondent had detained the goods did not, in any manner, prevent the petitioner from extending the validity period of the e-way bill, and producing a copy of the extended e-way bill before the authority for the purposes of seeking a clearance of the goods.

**6.** In the result, I find that the detention of the goods and the vehicle in the instant case cannot be said to be unjustified.

Taking note of the request of the learned counsel for the petitioner, I permit the petitioner to clear the goods and the vehicle on furnishing a bank guarantee for the amount demanded in the impugned notices. The respondents shall, thereafter, proceed to pass the final order in GST MOV 09, after hearing the petitioner. The learned Government Pleader shall communicate the gist of the directions in this judgment to the respondents so as to enable the petitioner to get clearance of the goods and the vehicle on the conditions directed above.

❑

**(2021) 66 TLD 171**

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.
**Best Sellers (Cochin) Pvt. Ltd.**
**Vs.**
**The Assistant State Tax Officer**
WP(C).No.: 18522 OF 2020(M)
September 17, 2020

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

**E-way bill - The discounted value of the goods was less than Rs.50,000/-, there was no requirement for the consignment to be accompanied by an e-way bill - Detention unjustified.**

**Writ petition allowed**

Sri. S. Abu Baker Kunju, Advocate for the petitioner.
Dr. Thushara James, Government Pleader for the respondent.

**:: JUDGMENT ::**

The petitioner has approached this Court aggrieved by Ext.P7 detention notice issued to him in Form GST MOV-7. In the Writ Petition, it is the case of the petitioner that the transportation was of a consignment of watches that had been supplied to him by the seller in Delhi at a discounted rate of Rs.8.99. It is seen that the transportation of the goods was accompanied by Ext.P4 tax invoice, where the supplier in Delhi had shown the actual price of the consignment of watches, which was Rs.4,49,550/- and had given a discount of almost the entire amount save to the extent of Rs.8.99, and had paid IGST at the rate of 18% on the actual value of the watches. The consignment was detained by the respondent, on the ground that, although the consignment was covered by a valid invoice, it was not accompanied by a valid e-way bill. The learned counsel for the petitioner would point that inasmuch as the discounted value of the goods was less than Rs.50,000/-, there was no requirement for the consignment to be accompanied by an e-way bill.

**2.** I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondent.

**3.** On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find force in the contention of the learned counsel for the petitioner that inasmuch as the effective value of the goods that was transported was only Rs.8.99 as evident from Ext.P4 invoice, and the provisions of the Act and Rules mandate that an e-way bill is required only for consignments whose value exceeds Rs.50,000/-, the detention at the instance of the respondent cannot be said to be justified. Under such circumstances, I allow this Writ Petition by quashing Ext.P7 order and directing the respondent to forthwith release the goods and the vehicle to the petitioner on the petitioner producing a copy of this judgment before the said authorities. The learned Government Pleader shall also communicate the gist of this judgment to the respondent for enabling the petitioner to obtain an immediate release of the goods and the vehicle.

❑

**(2021) 66 TLD 173**

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.

**Suraj Hitech Pvt. Ltd.**

**Vs.**

**Assistant State Tax Officer & Others**

WP(C).No.: 25627 OF 2020(C)

November 27, 2020

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

**E-way bill - Part B - Detention, seizure and release of goods and conveyances in transit - Section 129 of CGST Act, 2017 - Part B updated before passing of detention order - Detention unjustified.**

Between the date of apprehending the goods at the parcel office and the date on which the order of detention was passed, the e-way bill had already been updated by filling the Part B thereof.

**Writ petition allowed**

Sri. Tomson T. Emmanuel, Advocate for the petitioner.
Dr. Thushara James, Government Pleader for the respondents.

**:: JUDGMENT ::**

The petitioner has approached this Court aggrieved by Ext.P8 order of detention that detained goods that were transit, on the ground that Part B of the e-way bill was not updated or generated at the time of inspection. On a perusal of the documents produced in the writ petition, it is evident that while a notice of inspection was purportedly issued on 6-11-2020 and a notice is stated to have been served to the petitioner scheduling the inspection of the goods on 11-11-2020, the detention order in FORM GST MOV-6 was issued to the petitioner on 18-11-2020. It would appear that, in the meanwhile, between the date of apprehending the goods at the parcel office and the date on which the order of detention was passed, the e-way bill had already been updated by filling the Part B thereof. This is evident from Ext.P6 that is produced along with the writ petition.

Taking note of the said development, I am of the view that in as much as the defects did not subsist on the date of passing of Ext.P8 order of detention, the detention cannot be said to be justified for the purpose of Section 129 of the GST Act. Accordingly, I quash Exts.P7 order and P8

notice and direct the respondents to release the goods belonging to the petitioner on the petitioner producing a copy of this judgment before the respondents. The learned Government Pleader shall communicate the gist of this judgment to the respondents to enable the petitioner to expeditious the clearance of the goods.

❑

**(2021) 66 TLD 174**

In the High Court of Allahabad
Hon'ble Rohit Ranjan Agarwal, J.

**Kothari Associates**

**Vs.**

**State Of U.P. And 2 Others**

Writ Tax No.: 383 of 2020

October 15, 2020

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

**Appeals to Appellate Authority - Section 107 of CGST Act, 2017 - Appeal filed after a delay of 8 months rejected by AA - The High Court allowed the petitioner to file appeal before the Tribunal in terms of the provisions of the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019.**

**Writ petition disposed of**

*As in the present case the petitioner was very well aware of the fact that against the penalty order dated 14-8-2018 he had the remedy of filing the appeal but the same was not availed within the statutory limit provided under section 107 of the Act, but he has approached the first Appellate Authority after a delay of eight months on the ground that the web-portal of the department did not reflect the penalty order, while the same has been categorically denied by the department, to which the petitioner failed to respond with concrete answer, thus, no indulgence can be granted and the writ petition being devoid of merit is hereby dismissed.*

*The instant petition is disposed of by providing that the petitioner can invoke the remedy of filing appeal before the Tribunal in terms of the provisions of the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019."*

*In view of the above the petitioner is also provided indulgence to the above extent.*

**Cases referred :**

* Assistant Commissioner (CT) LTU Kakinada and others Vs. Glaxo Smit Kline Consumer Health Care Limited, Civil Appeal No. 2413 of 2020
* Central Industrial Security Force Vs. Commissioner of Central Goods and Service Tax and Central Excise and two others, Writ-Tax No. 822 of 2018
* Commissioner of Custom and Central Excise Noida Vs. Punjab Fibres Limited, JT (2008) 2 SC 458
* Jindal Pipes Limited Vs. State of U.P. and three others, Writ-Tax No. 1366 of 2019
* Polo International Vs. State of U.P. and others, Writ-Tax No. 291 of 2020
* Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others, 2008 NTN (36) 9

Rakesh Kumar for the petitioner.
C.S.C. for the respondents.

**:: ORDER ::**

**1.** This writ petition has been filed assailing the order dated 21-11-2019 whereby the appeal filed by the petitioner challenging the order passed under Section 129 (3) of the U.P. G.S.T. Act 2017 has been dismissed by the Additional Commissioner, Grade-II, (Appeal)-I, Commercial Tax, Noida, the order dated 14-8-2018 passed under Section 129 (3) of the U.P. G.S.T. Act 2017/C.G.S.T./I.G.S.T. Act, 2017 whereby a tax of Rs. 3,52,800/- alongwith penalty of Rs. 3,52,800/- and interest at the rate of 18% total amount of Rs. 705600/- has been imposed against the petitioner. Further a prayer has been made for the refund of the amount of penalty of Rs. 3,52,800/-.

**2.** Facts, in nutshell, are that petitioner, who is a registered dealer under the provisions of GST Act, is in the business of buying and selling plastic granules (PP). Petitioner's firm had purchased 20,000 Kilograms of plastic granules from one M/s. H.K. Trading Company, New Delhi to be sent to M/s. Priaymbada Industries Private Limited, Gorakhpur. While the goods were on their way to Gorakhpur through Vehicle No. U.P. 53 DT 3455, on 11-8-2019 the vehicle in question was intercepted by the mobile squad of

Tax Department at Sikandara Toll Plaza, and when the documents were inspected various discrepancies and anomalies were found in the documents pertaining to the goods loaded in the vehicle. The vehicle in question was detained and notice was issued to the petitioner under Section 20 of the I.G.S.T. Act, 2017 read with Section 68 (3) of the C.G.S.T. Act. A reply was submitted, but the same not being found in order, on 14-8-2018 the authorities concerned imposed a tax of Rs. 3,52,800/- and also levied penalty of the same amount of Rs. 3,52,800/-. The said order was served upon the driver of the vehicle and the entire amount of Rs. 7,05,600/- was deposited on the same date itself i.e. 14-8-2018 and the goods and vehicle in question were released.

**3.** It appears that after a delay of about eight months the order dated 14-8-2018 was challenged by the petitioner before first Appellate Authority on 16-7-2019, on the ground that as the copy of order and demand was not reflected on the web portal of the taxing authorities and driver of the vehicle has not informed about the order and demand made from the said order, the same could not be challenged within statutory period. On 21-11-2019 the first Appellate Authority rejected the appeal of the petitioner on ground of delay.

**4.** Sri Rakesh Kumar, learned counsel for the petitioner, has submitted that the first Appellate Authority should have condoned the delay in filing of appeal and heard the appeal on merits as the order dated 14-8-2018 was not available on the website and petitioner was not aware of the filing of appeal offline, as such, there has been delay in filing the appeal within the statutory time fixed under Section 107 of the Act, which is three months and further the Appellate Authority is empowered to entertain the appeal presented within further one month. It was also contended that the appeal has been rejected on technical ground of delay and the order passed under Section 20 of the I.G.S.T. Act was only on the basis of minor clerical mistake, which appeared in the E-way Bill regarding wrong mentioning of the number of vehicle and thus the imposition of penalty of Rs. 3,52,800/- is totally arbitrary and illegal.

**5.** Reliance has been placed upon a decision of this Court in **Writ-Tax No. 822 of 2018 (M/S Central Industrial Security Force Vs. Commissioner of Central Goods and Service Tax and Central Excise and two others)** decided on 23-5-2018 wherein the Court had condoned the delay in filing the appeal beyond the prescribed period of limitation.

Reliance has also been placed upon a decision of coordinate Bench of this Court in **Writ-Tax No. 1366 of 2019 (M/S Jindal Pipes Limited Vs. State of U.P. and three others)** wherein this Court had held that the service of the order upon the driver was not a service upon a person, who has been affected by the order and the impugned order was quashed and the Court held the appeal filed to be within limitation as provided under Section 107 of the Act.

**6.** *Per contra*, Sri Bipin Kumar Pandey, learned Standing Counsel appearing for the State, has submitted that the goods were intercepted at Sikandara Toll Plaza, and various anomalies were found in the documents pertaining to the goods loaded in the vehicle. According to him validity of the E-way bill has been provided under Rule 138 (10) of the Goods and Service Tax Rules, and the E-way bill pertaining to the transit in question was issued on 10-8-2018 and was valid till 13-8-2018 i.e. for four days and the distance between New Delhi and Gorakhpur being more than 800 KM cannot be completed within the period of four days mentioned in Eway bill. Further, the vehicle number in question and other information was also wrongly mentioned in the tax invoice pertaining to the transit, as was required by the department, which is available on the departmental portal.

**7.** Sri Pandey, learned Standing Counsel, further submitted that as there is violation of the statutory provisions specified under Section 129 (1) of the Act, detention order (MOV-6) was passed followed by a show cause notice under Section 129 (3) of the Act. The show cause notice was served upon the driver of the vehicle and thereafter penalty order was passed on 14-8-2018 affirming the amount of tax and penalty, which was deposited by the petitioner and the goods and vehicle were released. He further submitted that the demand order i.e. MOV-9 was uploaded on the portal as well as it was provided to the driver of the vehicle and petitioner had himself annexed the copy of the said order which he obtained online through the departmental website.

**8.** Sri Pandey, learned Standing Counsel, further invited the attention of the Court to annexure No. 4 which is memo of appeal filed by the petitioner before the Appellate Authority wherein at serial no. 5 the date of order is mentioned as 14-8-2018, while at serial no. 7 the date of communication of the order appealed against has been shown as 14-8-2018, thus, it is wrong to say that the order was not served upon the petitioner and the petitioner

did not have the knowledge because of the fact that same was not reflected online and the petitioner could not file the appeal online. He further invited the attention of the Court to the affidavit filed alongwith delay condonation application wherein at serial no. V and IX the reasons have been assigned by the petitioner that due to nonfunctioning of online filing facility and the fact that petitioner being unaware of the offline filing mechanism, there occurred delay in filing the appeal.

**9.** It is further contended that nowhere in the memo of appeal or in the writ petition the petitioner has taken the ground that the copy of the penalty order was served upon the driver of the vehicle and was not handed over to the petitioner, thus, the appeal could not be filed well within time, and it was during the argument that the counsel has come up with such a case which was not there before the authorities.

**10.** Lastly, Sri Pandey has submitted that as there is statutory provisions and the authorities cannot extend the period of limitation, thus, the appeal filed by the petitioner is totally time barred. He placed before the Court decision rendered by a coordinate Bench of this Court in **Writ-Tax No. 291 of 2020 (M/s. Polo International Vs. State of U.P. and others)** wherein this Court had given the opportunity to approach the State Appellate Tribunal so constituted. Reliance has been placed upon decision of the Apex Court in the case of **Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others, 2008 NTN (36) 9** wherein the Apex Court held that the Appellate Authority has no power to allow the appeal to be presented beyond period of 30 days, thus, there is complete exclusion of Section 5 of the Limitation Act. Similarly, in a matter relating to Central Excise the Apex Court in the case of **Commissioner of Custom and Central Excise Noida Vs. M/s. Punjab Fibres Limited, JT 2008 (2) SC 458** held that the reference which ought to have been made within 180 days from the date of order passed by the Tribunal is served on the Commissioner or any other authority and any delay in making the reference application cannot be condoned. Reliance has also been placed upon a decision of the Apex Court in the case of **Assistant Commissioner (CT) LTU Kakinada and others Vs. M/s. Glaxo Smit Kline Consumer Health Care Limited, Civil Appeal No. 2413 of 2020**, wherein the Apex Court had taken the view that no appeal can be filed beyond the statutory period and no indulgence can be shown by the High Court. Relevant paragraph nos. 18 and 19 are

extracted here as under;

"18. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.

19. *Arguendo*, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur - after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr. Sreedhar Routh, Site Director of the respondent company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the company became aware about the irregularities committed by its erring official (Mr. P. Sriram Murthy) in the month of July, 2018, which presupposes that the respondent must have become aware about the

assessment order, at least in July, 2018. In the same affidavit, it is asserted that the respondent company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the concerned employee (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or no-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

**11.** Having heard learned counsel for the parties and from the perusal of the material on record, it transpires that while goods which were on their way from New Delhi to Gorakhpur being intercepted at Sikandara Toll Plaza by the mobile squad of the taxing authorities found the papers, accompanying the goods, not being in conformity, a show cause notice was given by the authorities and was served upon the driver of the vehicle in question and a reply was submitted. On the same day the penalty order was passed and was served upon the driver itself and the amount of tax demand as well as

penalty was deposited by the petitioner on the same day i.e. 14-8-2018, pursuant to which the goods and vehicle were released.

**12.** Argument raised by learned counsel for the petitioner that the penalty order was not reflected on the web-portal of the department concerned, and the petitioner having no knowledge of filing the appeal offline, could not file the same within the statutory period, as provided under Section 107 of the Act, cannot be accepted to the extent that neither in the memo of appeal or in the delay condonation application there is a single whisper as to the lack of knowledge of the fact that the appeal can be filed offline.

**13.** It has been pressed by the department that the memo of the appeal reflects that the communication of the order was made on 14-8-2018 and is accepted to the petitioner, thus, he cannot take the plea that the order was not served upon him and was not uploaded on the web-portal of the department, as each and every order and demand is uploaded on the webportal and the plea taken is only to the extent for getting the delay in filing the appeal condoned. As it is evident from the decision of the Apex Court in the case of **Glaxo Smith Kline Consumer Health Care Limited (Supra)** wherein the Apex Court has categorically held that the statutory period specified for filing of appeal cannot be condoned as the remedy of appeal is creature of statute and if period of 90 days is provided for challenging the penalty order, the same cannot be condoned and extended by the High Court exercising power under Article 226 of the Constitution of India.

**14.** Further, the petitioner neither in the present writ petition nor in the grounds of appeal before the first Appellate Authority had disclosed the fact that during which period the order dated 14-8-2018 was not reflected on the web-portal of the department and when did he came to know that the appeal could be filed offline. In the rejoinder affidavit filed by the petitioner it is only submitted that the demand order as well as penalty order dated 14-8-2018 was not uploaded but no specific denial has been made to the averment made by the department that all the orders are uploaded on the web-portal of the department and similarly the demand order as well as penalty order dated 14-8-2018 passed against the petitioner was also uploaded on the web-portal.

**15.** Moreover, in the rejoinder affidavit the petitioner has tried to build up a case that the order was served upon the driver of the vehicle in question

which will not amount to the service upon the petitioner. This assertion cannot be accepted as from the perusal of memo of the appeal it is clear that the date of communication of order has been mentioned specifically as 14-8-2018. Further on the said date the entire amount was deposited by the petitioner, pursuant to which the goods and vehicle in question were released, thus, the argument as well as assertion made in the rejoinder affidavit cannot be accepted to the extent that no service was made upon the petitioner as the order was served upon the driver of the vehicle.

**16.** Reliance placed upon the decision of coordinate Bench of this Court in the case of **M/s. Jindal Pipes Limited (Supra)** is distinguishable in the facts of the present case and the benefit of the same cannot be extended to the petitioner, moreso, no such ground was ever taken by the petitioner before the first Appellate Authority while filing the appeal nor in the affidavit filed to the delay condonation application. The reliance placed upon the decision of Division Bench judgment of this Court in the case of **M/S Central Industrial Security Force (Supra)** is also of no help to the petitioner as the said case is also distinguishable in the facts of the present case, as in that case the delay was not occasioned because of any fault on the part of the petitioner that the Court granted time for filing the appeal.

**17.** As in the present case the petitioner was very well aware of the fact that against the penalty order dated 14-8-2018 he had the remedy of filing the appeal but the same was not availed within the statutory limit provided under Section 107 of the Act, but he has approached the first Appellate Authority after a delay of eight months on the ground that the web-portal of the department did not reflect the penalty order, while the same has been categorically denied by the department, to which the petitioner failed to respond with concrete answer, thus, no indulgence can be granted and the writ petition being devoid of merit is hereby **dismissed**.

**18.** However, Sri Pandey, learned Standing Counsel, in his usual fairness has placed before the Court a notification issued by the Ministry of Finance (Department of Revenue), Central Board of Direct Taxes and Custom published in Gazette of India on 3-12-2019, which extracted as under;

"Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

**Order No. 09/2019-Central Tax**

New Delhi, the 03rd December, 2019

S.O.(E).—WHEREAS, sub-section (1) of section 112 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the said Act) provides that any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal;

AND WHEREAS, sub-section (3) of section 112 of the said Act provides that the Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order;

AND WHEREAS, section 109 of the said Act provides for the constitution of the Goods and Services Tax Appellate Tribunal and Benches thereof;

AND WHEREAS, for the purpose of filing the appeal or application as referred to in sub-section (1) or sub-section (3) of section 112 of the said Act, as the case may be, the Appellate Tribunal and its Benches are yet to be constituted in many States and Union territories under section 109 of the said Act as a result whereof, the said appeal or application could not be filed within the time limit specified in the said sub-sections, and because of that, certain difficulties have arisen in giving effect to the provisions of the said section;

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, hereby makes the

following Order, to remove the difficulties, namely:-

1. Short title.- This Order may be called the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019.

2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating,-

   (a) the "three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal" in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:-

   (i) date of communication of order; or

   (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;

   (b) the "six months from the date on which the said order has been passed" in sub-section (3) of section 112, the start of the six months period shall be considered to be the later of the following dates:-

   (i) date of communication of order; or

   (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office."

**19.** Relying upon this gazette notification coordinate Bench of this Court in the case of **Polo International (Supra)** held as under;

> "It has been pointed out by learned standing counsel that the Government, having regard to the difficulty faced by the assessees in filing appeal on account of non-constitution of the Tribunal and its Benches in various States and Union Territories, has issued Central Goods and Service Tax (Ninth Removal of Difficulties) Order, 2019 notified in the Gazette of India dated 3rd December, 2019 stipulating that in such a situation, the three months' period shall be considered to be the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under Section 109, enters office. It is urged that in such circumstances, the petitioner can wait and avail the remedy of filing appeal as and when

the Tribunal is constituted. It is also pointed out that since the seized goods have already been released, therefore, no prejudice is going to be caused to the petitioner at the present moment.

Learned counsel for the petitioner very fairly admits the above legal position and also the fact that the goods have already been released.

In view of the above, the instant petition is disposed of by providing that the petitioner can invoke the remedy of filing appeal before the Tribunal in terms of the provisions of the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019."

**20.** In view of the above the petitioner is also provided indulgence to the above extent.

❑

**(2021) 66 TLD 185**

In the High Court of Gujarat
Hon'ble Vikram Nath CJ. & J.B. Pardiwala, J.

**Radha Tradelinks Pvt. Ltd.**

**Vs.**

**State of Gujarat**

R/Special Civil Application No. 11067 of 2020

September 10, 2020

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

**Confiscation of goods - Section 130 of CGST Act, 2017 - On deposition of tax and penalty along with the bank guarantee of any Nationalized bank, the authority concerned shall release the goods and the vehicle.**

**Writ petition disposed of**

*Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not interfere at the stage of adjudication of the confiscation proceedings under Section 130 of the Act. The adjudication proceedings shall proceed in accordance with law. However, we are inclined to grant some relief to the writ applicant so as to protect the goods getting damaged, but at the same time keeping in mind the interest of the State also. We direct the writ applicant to deposit an amount of Rs.1,70,787/*

*- towards tax and penalty with the authority concerned and also furnish a bank guarantee to the tune of Rs.17,07,876/- of any Nationalized bank. We are asking the writ applicant to furnish the bank guarantee keeping in mind the value of the goods. The value of the goods is approximately Rs.34,15,752/-. With a view to protect the interest of the writ applicant as well as the State, we direct the writ applicant to furnish bank guarantee equivalent to 50% of the value of the goods, which comes to Rs.17,07,876/-.* [Para 9]

*On deposit of Rs.1,70,787/- towards tax and penalty along with the bank guarantee of Rs.17,07,876/- of any Nationalized bank, the authority concerned shall release the goods and the vehicle at the earliest. The deposit of bank guarantee shall abide by the final outcome after adjudication.* [Para 10]

Mr. Varis V. Isani (3858) for the Petitioner(s) No. 1.
Mr. Chintan Dave, AGP for the Respondent(s) No. 1, 2.

**:: ORAL ORDER ::**

The Order of the Court was made by **VIKRAM NATH, CJ. :**

**1.** By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

"[A] This Hon'ble Court may be pleased to issue a writ of certiorari or a writ in nature of certiorari or any other appropriate writ, order or direction quashing and setting aside detention order dated 13-8-2020 in Form GST MOV-6 (annexed at Annexure A) and confiscation notice dated 13-8-2020 in Form GST MOV-10 (annexed at Annexure B).

[B] This Hon'ble Court may be pleased to issue writ of mandamus or a writ in nature of mandamus or any other appropriate writ or order directing the learned Respondent authorities to forthwith release truck no.TN- 88-A-5400 along with the goods contained therein without directing any payment of tax and penalty and/or security and bond.

[C] Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to stay operation of the impugned detention / confiscation orders / notices (annexed at Annexure A/B) and this Hon'ble Court may be pleased to further direct the learned Respondent authorities to forthwith release truck no.TN-88-A-5400 along with the goods contained therein;

[D] This Hon'ble Court may please be directed the Respondent Authorities to file and withdraw the proceedings initiated u/s. 130 of the GST Act without any reasons and any evidence of attempt made by the petitioner for avoidance of payment of tax.

[E] Ex parte ad interim relief in terms of prayer may kindly be granted;

[F] Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioner shall forever pray"

**2.** The writ applicant is engaged in the business of aracanut, spices, etc. It appears from the materials on record that a consignment of aracanut was transported from Karnataka so as to reach to Ahmedabad. While the goods were in transit, on 13-8-2020 in the Vehicle No.TN-88-A- 5400, the same came to be intercepted by the mobile squad of the GST at the Songadh Check Post. It appears that at the time of seizure and thereafter upon further inquiry many discrepancies were noticed by the authority as regards the documents etc.

**3.** We need not go further into the facts as this writ application can be disposed of on a short ground.

**4.** It appears that initially at the time of detention, an order under Section 129 of the Central/Gujarat Goods and Services Tax Act, 2017 (for short, the Act) came to be passed determining the amount of tax and penalty to be paid by the writ applicant. Simultaneously, a notice was issued under Section 130 of the Act calling upon the writ applicant to show cause as to why the goods and conveyance should not be confiscated. Thereafter a final order came to be passed of confiscation of the goods and vehicle under Section 130 of the Act. As the final order of confiscation was passed without giving any opportunity of hearing to the writ applicant, the same came to be quashed by this Court and the matter was remanded to the authority to pass a fresh order after giving an opportunity of hearing to the writ applicant.

**5.** The matter as on date is at the stage of passing appropriate order under Section 130 of the Act. In other words, the adjudication of the confiscation proceedings is going on.

**6.** Mr. Varis V. Isani, the learned counsel appearing for the writ applicant, vehemently submitted that the detention and seizure itself was illegal as the driver of the conveyance had with him all valid documents including the E-

Way bill. Mr. Isani would submit that there is nothing on record to indicate that the writ applicant committed breach of any of the provisions of the Act or the Rules. He would submit that the goods and the conveyance came to be detained in the month of August, 2020 and continues to be under detention as on date. He prays that the detention order dated 13-8-2020 in the Form GST MOV-6 and the confiscation notice dated 13-8-2020 in the Form GST MOV-10 may be quashed and set aside and the goods and the conveyance may be ordered to be released.

**7.** On the other hand, this writ application has been vehemently opposed by Mr. Chintan Dave, the learned Assistant Government Pleader appearing for the State respondents. Mr. Dave submits that various irregularities were noticed by the authorities concerned at the time of seizure and detention of the goods and the conveyance. Mr. Dave would further submit that further inquiry in the matter revealed the following:

"(i) The owner / driver / person in charge of the goods and conveyance Shri Priyasamy A Andi has not tendered any documents for the goods in movement.

(ii) Prima facie, the documents tendered are found to be defective.

(iii) The genuineness of the goods in transit (its quantity etc) and / or tendered documents requires further verification.

(iv) E-way Bill not tendered for the goods in movement."

**7.1** Mr. Dave, the learned Assistant Government Pleader, further submitted that if the writ applicant is aggrieved in any manner with the action taken by the GST authority, then there is a statutory remedy of appeal provided under Section 107 of the Act.

**8.** In such circumstances referred to above, Mr. Dave, prays that as there is no merit in this writ application the same may be rejected.

**9.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not interfere at the stage of adjudication of the confiscation proceedings under Section 130 of the Act. The adjudication proceedings shall proceed in accordance with law. However, we are inclined to grant some relief to the writ applicant so as to protect the goods getting damaged, but at the same time keeping in mind the interest of the State also. We direct the writ applicant to deposit an amount of Rs.1,70,787/- towards tax and penalty with the

authority concerned and also furnish a bank guarantee to the tune of Rs.17,07,876/- of any Nationalized bank. We are asking the writ applicant to furnish the bank guarantee keeping in mind the value of the goods. The value of the goods is approximately Rs.34,15,752/-. With a view to protect the interest of the writ applicant as well as the State, we direct the writ applicant to furnish bank guarantee equivalent to 50% of the value of the goods, which comes to Rs.17,07,876/-.

**10.** On deposit of Rs.1,70,787/- towards tax and penalty along with the bank guarantee of Rs.17,07,876/- of any Nationalized bank, the authority concerned shall release the goods and the vehicle at the earliest. The deposit of bank guarantee shall abide by the final outcome after adjudication.

**11.** We clarify that we have otherwise not expressed any opinion on the merits of the case. The adjudication proceedings shall be completed on its own merits.

**12.** With the above, this writ application stands disposed of.

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**(2021) 66 TLD 189** In the High Court of Telangana

Hon'ble M.S. Ramachandra Rao & T. Amarnath Goud, JJ.

**Kamlesh Steels**

**Vs.**

**The Deputy State Tax Officer and others**

Writ Petition No.: 2563 of 2020

November 11, 2020

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

**Detention, seizure and release of goods and conveyances in transit - Section 129 of CGST Act, 2017 - It is not permissible to detain a vehicle carrying goods or levy penalty on the sole ground that the vehicle was found at a wrong destination without anything more.**

**Writ petition allowed**

*We are of the opinion that the reasons given for detaining the goods and the vehicle they were being carried in do not indicate any violation of the provisions of the Act by petitioner warranting levy of tax and penalty on the petitioner under the Act.* [Para 64]

*Accordingly, the Writ Petition is allowed; the action of the 1st respondent in detaining the vehicle carrying the goods purchased by petitioner on 22-01-2020 and forcing the petitioner to pay on 25-1-2020 a sum of Rs. 9,40,618/- towards tax and penalty is declared as illegal, arbitrary and violative of Article 14 and 265 of the Constitution of India apart from Article 301 of the Constitution of India and also the provisions of the Act and Rules made thereunder. Accordingly, the 1st respondent is directed to refund the above amount within six (06) weeks together with interest @ 7% p.a. from 25-1-2020 till date of payment.* [Para 70]

**Cases referred :**

* Dabur India Ltd. Vs. State of Uttar Pradesh (1990) 4 SCC 113

* Synergy Fertichem Pvt. Ltd. Vs. State of Gujarat (2020) 33 GSTL 513, (2020) 76 GSTR 81 (Guj)

Sri N. Kodanda Rama Rao, Counsel for the petitioner.
Sri J.Anil Kumar, Learned Special Counsel for Commercial Taxes.

**:: ORDER ::**

The Order of the Court was made by **M.S. RAMACHANDRA RAO, J. :**

The petitioner is a trader in Steels registered under the Central Sales Tax Act, 1956 **(for short 'the Act')** having its registered office in Secunderabad.

**2.** It purchased, in the course of its business, material from M/s.Steel Authority of India Limited (SAIL), Kodambakkam, Tamil Nadu.

**3.** While the goods were in transit from the place of purchase to the petitioner's business premises at Secunderabad and when the carrier/goods vehicle was *en route* at Jeedimetla, it was checked and detained at IDA Jeedimetla on 22-1-2020 at 11.15 p.m.

**4.** A notice was issued Ex.P1- Form GST MOV-06 dt. 22-1-2020/order of detention under Section 129(1) of the Act on the ground that *prima facie* the '*documents tendered were found to be defective*' and that the goods were being transported from Salem in the State of Tamil Nadu to Distillery Road, Secunderabad, but the vehicle was checked at IDA Jeedimetla, Hyderabad. It is alleged that there is a '*mismatch between the goods in*

*movement and the documents tendered'* i.e., that the goods were checked at IDA Jeedimetla; and so the petitioner has to pay tax and penalty as per the provisions of the Act.

**5.** On receipt of information of detention of the vehicle from the driver of the vehicle, the petitioner replied vide Ex.P4 dt. 23-1-2020 that the material from M/s SAIL at Salem in Tamilnadu is purchased by various dealers at Hyderabad for delivery at various destinations in Hyderabad; that the vehicles come to Hyderabad in groups through Outer Ring Road and all the trucks assemble at IDA Jeedimetla; and that from that place, the person in charge from M/s SAIL i.e. vendor, directs them to their destinations.

It was contended that the goods vehicle carrying material of petitioner on its way to its destination was stopped at IDA Jeedimetla and the driver of the vehicle was waiting for the person in-charge from M/s SAIL; and at that time, the vehicle was detained and checked in spite of the fact that the goods vehicle was carrying all required documents such as tax invoice, E-way bill dt. 20-1-2020, which was valid from 21-1-2020 to 27-1-2020. Petitioner requested the respondents to release the vehicle along with goods.

**6.** There was no response to the said submission of the petitioner made to the 1st respondent.

**7.** So, the petitioner made another representation on 25-1-2020 to the 1st respondent requesting him to pass a formal order so that they could seek further remedy and in the meantime requested to release the vehicle along with goods on payment of tax as demanded by 1st respondent; and that they are making online payment of Rs.9,40,628/- towards one time tax of Rs.4,70,315/- and one time penalty of a likesum under protest.

**8.** Thereupon the vehicle carrying the goods and the vehicle was released on 25-1-2020.

**9.** But no formal order was passed by the 1st respondent assigning reasons why it he did not agree with the petitioner's objections/reply Ex.P4 dt.23-1-2020 to the Ex.P1 dt.22-1-2020/Order of detention.

**Contentions of petitioner**

**10.** Petitioner contends that the action of the 1st respondent in detaining the vehicle containing the goods of the petitioner on 22-1-2020 at IDA Jeedimetla and then demanding that petitioner should pay tax and penalty as per the provisions of the Act though all the required documents were

available with the driver of the vehicle and later releasing it on 25-1-2020 only after collecting from the petitioner Rs.9,40,428/- towards tax and penalty, is illegal, arbitrary and violative of Article 14 of the Constitution of India as well as Article 301 of the Constitution of India, and seeks a direction to the 1st respondent to refund the tax and penalty illegally collected from the petitioner.

**11.** It is the contention of the petitioner that 1st respondent had forcibly taken Ex.P5 statement on 22-1-2020 from the driver of the vehicle carrying petitioner's goods that he was told by the petitioner to stay at Weigh Bridge in Jeedimetla and that *petitioner's* agent would direct the vehicle driver to deliver the goods at some places in Jeedimetla.

**12.** It is contended that when the vehicle was checked, it was stopped near a weigh bridge in IDA Jeedimetla and that the 1st respondent had not contended that the goods were unloaded there.

**13.** According to the petitioner, on flimsy grounds such as checking of the vehicle carrying goods at IDA Jeedimetla when goods are to be delivered at Secunderabad, tax and penalty cannot be levied. It is also contended that payment was made under pressure/coercion since the delivery schedule would be disturbed.

**14.** According to the petitioner, Section 129 of the Act applies only to cases where it is established that there was intention or in any case possibility of evasion of tax in respect of goods transported; even if some documents such as E-way bill is missing at the time of verification, it would at the most only create a rebuttable presumption that there was intention to evade payment of tax; and if the agent is able to establish that there was no intention evade payment of tax, then Section 129 of the Act would not be attracted.

**15.** Petitioner alleges that truck was in transit to its destination carrying all the required documents such as tax invoice and E-way bill and 1st respondent could not establish any intention on the part of the petitioner to evade payment of tax.

**The stand of the 1st respondent**

**16.** Counter-affidavit was filed by 1st respondent refuting the above contentions.

**17.** It is alleged that driver of the vehicle never mentioned about delivery at Secunderabad and Form GST MOV-06 dt.22-1-2020 was taken from

the driver at 11.15 p.m. wherein the driver of the vehicle did not mention about delivery at Secunderabad.

**18.** It is alleged that the statement of the driver of the vehicle was recorded and served on the driver as per the provisions of the Act. It is denied that the driver of the vehicle submitted the invoice/E-way bill in support of the goods movement to the point at Jeedimetla in lieu of delivery that is to be done at Secunderabad and that was why the goods vehicle was detained at IDA Jeedimetla on 22-1-2020 by issuing notice in Form MOV-06.

**19.** It is contended by 1st respondent that the driver himself has enquired about the weigh bridge to which he was directed by the agent and also stated that the agent had asked him to stay there and he would direct the goods vehicle to the delivery point at the place located in IDA Jeedimetla. It is stated that the information was sought from the driver in Hindi and that the driver understood and agreed for the reason for detention.

**20.** It is contended that the goods were never destined to Secunderabad because the driver did not state that the goods were to be delivered at Secunderabad.

**21.** It is contended that after the goods were released on 25-1-2020 at 6.15 p.m., the dealer again generated another E-way bill dt.26-1-2020 at 9.45 a.m. on the same vehicle for the same value of goods without tax declaration and delivery was marked to M/s.Nanabhai Steels situated at Plot No.2, Survey No.262, Phase-I, IDA Jeedimetla, Quthbullapur, Telangana. Copy of the said E-way bill produced by the petitioner has also been filed.

**Reply of the petitioner to the stand of the 1st respondent**

**22.** Reply affidavit is filed by the petitioner to the said counteraffidavit.

**23.** Petitioner contended that the 1st respondent with an ill motive and to cover up illegal action of detaining the vehicle at IDA Jeedimetla was trying to mislead the Court by stating in counter that the goods were in transit to IDA Jeedimetla and the driver of the vehicle never mentioned about delivery at Secunderabad by placing reliance on the statement of the driver recorded on 22-1-2020.

**24.** It is contended that both the invoice and E-way bill contained the address at Secunderabad and the goods are destined at Secunderabad only; that the driver in fact showed the address in the invoice to the respondents to inform them about the delivery of goods at Secunderabad; and *the driver*

*did not understand Hindi language* used by the 1st respondent and was forced to sign the statement Ex.P5 in Form MOV-1.

**25.** It was also denied that the driver did not submit any document such invoice/E-way bill in support of the movement of the goods and that 1st respondent's assumption that the goods were destined to point at Jeedimetla cannot be accepted.

**26.** It is further alleged that there was no occasion for the driver to ask the way to weigh bridge as all the vehicles carrying material from SAIL which are to be delivered at various destinations in Hyderabad/Secunderabad come in groups and stop at Jeedimetla and from there the person in charge from SAIL directs them to their destination.

**27.** It is contended that the vehicle was checked and detained in spite of the driver carrying the invoice and E-way bill for the goods to be delivered at Secunderabad and the 1st respondent has forcefully taken the signature of the driver on the statement Ex.P5 in Form GST MOV-1 without properly explaining the contents therein.

**28.** It is specifically denied that the driver did not understand Hindi language and he was forced to sign on the statement without understanding its contents.

**29.** It is also contended that after release of the vehicle on 25-1-2020, petitioner was forced to forward the material for *job work* to M/s.Nanabhai Steels by generating a new E-way bill dt.26-1-2020 for delivery at Jeedimetla using the same vehicle as the delay occurred due to detention and there was a pressure from the customers for supply of the material. It is contended that after the *job work* is done, material is sent back to the petitioner and therefore there is no tax declaration on the E-way bill generated by petitioner on 26-1-2020.

**30.** It is contended that the petitioner had regular transactions of *job work* done by M/s.Nanabhai Steels and the goods were received by petitioner on 25-1-2020 and they were forwarded to M/s.Nanabhai Steels for the purpose of *job work* by generating E-way bill on 26-1-2020.

**31.** It is reiterated that there was no violation of the provisions of the Act by the petitioner and the 1st respondent had falsely implicated the petitioner with ulterior motive for illegal gains.

**32.** Copies of *job work* challan given by petitioner to M/s.Nanabhai Steels is enclosed along with reply affidavit and it is pointed out that even the E-

way bill dt.26-1-2020 issued by petitioner for delivery at M/s.Nanabhai Steels indicated that it was for job work.

**33.** The contents of the E-way bill are not disputed by the learned Special Counsel for Commercial Taxes.

**34.** We have noted the contentions of both sides.

**The consideration by the Court**

**35.** S.107 provides an appellate remedy only against a decision/order of an adjudicatory authority.

**36.** It is not the case of the 1st respondent that he had passed any reasoned order and communicated to the petitioner after considering petitioner's explanation Ex.P4 dt.23-1-2020 to the Ex.P1 dt.22-1-2020 in Form GST-MOV-6 issued by him.

**37.** Without there being any order/decision passed by the 1st respondent and communicated to the petitioner, the petitioner cannot be expected to file appeal invoking Section 107 of the TGST Act, 2017.

**38.** So we reject the plea of the 1st respondent that the petitioner should avail the remedy of appeal under Sec.107 of the TGST Act.

**39.** Next we shall consider the relevant statutory provisions and Circulars issued by the Central Board of indirect Taxes and Customs.

**40.** It is important to keep in mind that CGST Act, 2017/ Telangana GST Act,2017 are very recent laws and the common businessman is admittedly having difficulty to understand these enactments and the procedures they have introduced.

**41.** Also interpretation of taxing statutes should be done in a way to facilitate business and inter-State trading, and not in a perverse manner which would result in impediment of the same by harassing business persons.

**42.** Section 129 of the Act states:

"129. Detention, seizure and release of goods and conveyances in transit:-

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and

documents relating to such goods and conveyances shall be liable to detention or seizure and after detention or seizure, shall be released:

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent, of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees whichever is less, where the owner of the goods does not come forward for payment for such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of Section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub- Section (3) without giving the person concerned and opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the proceedings specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in subsection (1) within seven days of such detention or seizure, further proceedings shall be initiated in terms of Section 130:

Provided that where the detained or seized goods are perishable or

hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."

**43.** Therefore, under the above provision there is power conferred on the respondents to detain goods while in transit *if there is contravention of the provisions of the Act or the Rules made thereunder*.

**44.** Section 68 of the CGST Act, 2017 / TGST, 2017 provides that the Government may require the person in-charge of a conveyance carrying any consignment of goods of value exceeding a prescribed limit to carry certain documents and devices.

**45.** Rule 138-A of the Rules framed under the CGST Act mandates that a person in-charge of conveyance should carry invoice or bill of supply or delivery challan, and a copy of the *e*-Way Bill in physical form.

**46.** Rule 138 – B permits the Commissioner or an Officer empowered by him to intercept any conveyance to verify the *e*-Way Bill in physical or electronic form for all inter-State and intra-State movement of goods, and Rule 138-C provides for inspection and verification of goods.

**47.** Under Section 168 of the Act, the Central Board of Indirect Taxes and Customs had issued a Circular No.41/15/2018-GST-CBEC 2016/03/2017-GST dt.13-4-2018 laying down the procedure for inspection of conveyance for inspection of goods in movement and detention, release and confiscation of goods and conveyance and ha issued certain instructions :

" … (b) The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and **where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further**. An e-way bill number may be available with the person in charge of the conveyance or in the form of a printout, sms or it may be written on an invoice. All these forms of having an e-way bill are valid. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to http://mis.ewaybillgst.gov.in or the Mobile App or through SMS by sending EWBVER to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).

(c) ... ... ...

(d) Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in FORM GST MOV-01. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.

(e) Within a period of three working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST MOV-03 from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance. ...."

These instructions issued by the Board are binding upon all Officers discharging under the Act.

**48.** In **Synergy Fertichem Pvt. Ltd. Vs. State of Gujarat (2020) 33 GSTL 513, (2020) 76 GSTR 81 (Guj)**, the Gujarat High Court referred to another Circular dt.14-9-2018 and held as follows :

"**94.** The Central Board of Indirect Taxes and Customs, New Delhi, has issued a **Circular in F. No. CBEC/20/16/03/2017-GST, dated 14-9-2018**, in regard to the procedure to be followed in the Interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances'.

**95.** Our attention is drawn to paragraphs 3, 4, 5 and 6 of the said Circular, extracted below:-

".... 3. Section 68 of the CGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding

http://www.judis.nic.in Rs. 50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part B of FORM GSTEWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an E-way bill, proceedings under section 129 of the CGST Act may be initiated.

5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;

b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

d) Error in one or two digits of the document number mentioned in the e-way bill;

e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

6. In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs. 1000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.....'the questions to be determined in these cases relate to the release of consignment and the quantum of penalty, if any, to be levied at this stage, and pending adjudication."

**49.** Interpreting the above provisions, the Gujarat High Court in **Synergy Fertichem Pvt. Ltd. (supra)** held as under :

**"96.** As far as the determination of penalty is concerned, it is the Assessing Officer/State Tax Officer who is the competent and proper person for such determination/quantification. However, a holistic reading of the statutory provisions and the Circular noted above, indicates to me that the Department does not paint all violations/transgressions with the same brush and makes a distinction between serious and substantive violations and those that are minor/procedural in nature."

"**101**. We are of the view that at the time of detention and seizure of goods or conveyance, the first thing the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rules. The second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax. Section 135 of the Act provides for presumption of culpable mental state but such presumption is available to the department only in the cases of prosecution and not for the purpose of Section 130 of the Act. What we are trying to convey is that in a given case, the

contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was with the necessary intent to evade payment of tax.

**102.** In such circumstances, referred to above, we propose to take the view that in all cases, without any application of mind and without any justifiable grounds or reasons to believe, the authorities may not be justified to straightway issue a notice of confiscation under Section 130 of the Act. For the purpose of issuing a notice of confiscation under Section 130 of the Act at the threshold, i.e., at the stage of Section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that the contravention was with a definite intent to evade payment of tax. We may give one simple example. The driver of the vehicle is in a position to produce all the relevant documents to the satisfaction of the authority concerned as regards payment of tax etc., but unfortunately, he is not able to produce the e-way bill, which is also one of the important documents so far as the Act, 2017 is concerned. The authenticity of the delivery challan is also not doubted. In such a situation, it would be too much for the authorities to straightway jump to the conclusion that the case is one of confiscation, i.e., the case is of intent to evade payment of tax." (emphasis supplied)

**50.** We are in complete agreement with the *ratio* laid down by the Gujarat High Court in **Synergy Fertichem Pvt. Ltd** (supra) and hold that:

(i) that at the time of detention and seizure of goods or conveyance, the **first thing** the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rule;

(ii) the **second step** in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax;

(iii) **a holistic reading of the statutory provisions and the Circular noted above, indicates that the Department does not paint all violations/transgressions with the same brush and makes a distinction between serious and substantive violations and those that are minor/procedural in nature**; and in a given case, the contravention may be quite trivial or may not be of such a magnitude

which by itself would be sufficient to take the view that the contravention was not with the necessary intent to evade payment of tax.

**We respectfully follow the same**.

**51.** Therefore, we shall consider firstly the nature of the contravention of the provisions of the Act or the Rules allegedly made by the petitioner.

**52.** We are of the view that any defect, if any, in the documentation accompanying the goods for purpose of levy of tax and penalty has to be looked at also in terms of the Circular dt.13-4-2018 and Circular dt.14-9-2018 issued by the Central Board of Indirect Taxes and Customs, New Delhi.

**53.** In the instant case, one of the grounds for detention in Form GST MOV-06 is that 'the documents which were tendered are found to be defective'.

**54.** But (i) which document is defective (whether it is E-way bill or the tax invoice/bill and supply/delivery challan) and (ii) why it is defective, is not mentioned.

**55.** From the very contents of the Form GST MOV-06, wherein it is alleged that the 'documents *tendered* are found to be defective', it is clear that the documents available with the driver were actually tendered to the 1st respondent. They clearly showed that the goods were to be delivered at Secunderabad. Therefore as mentioned in the Circular dt.13-4-2018, the vehicle should be allowed to proceed further and the movement of goods cannot be stopped *prima-facie*.

**56.** The explanation offered by the petitioner in reply dt.23-1-2020 to the notice in Form GST MOV-06 dt.22-1-2020 that generally material from Salem, Tamil Nadu purchased by various dealers at Hyderabad which is to be delivered at Hyderabad at various destinations do come in groups and assemble at IDA Jeedimetla; that the vehicles through Outer Ring Road reach Jeedimetla as there is no entry for heavy vehicle into the city through main roads; and the person in charge from SAIL (TN) reaches IDA Jeedimetla and directs the vehicle drivers to the respective delivery points, cannot be said to be unbelievable. The fact that the said explanations have not even considered by the 1st respondent is also glaring.

**57.** When the petitioner denies that the driver of the vehicle carrying the goods did not understand Hindi, no reliance can be placed on the statement of the driver of the vehicle noted on 22-1-2020 that goods were to be

delivered at IDA Jeedimetla.

**58.** The other reason mentioned is that '*the goods were being transported from Salem to Distillery Road, Secunderabad, but the vehicle is checked at IDA Jeedimetla*'.

**59.** So the question is whether '*checking of the vehicle at IDA Jeetimetla, Hyderabad*' is ground for detention of goods under Section 129 of the Act or Rules made under the Act or as per the Circulars issued by Central Board of Indirect Taxes and Customs, GST Policy Wing.

**60.** It is not the case of the 1st respondent that mere checking of a vehicle or it being found at a different place *without anything more,* is by itself a 'taxable event' under the CGST Act/ Telangana GST Act,2017.

**61.** So, in our opinion, under these Acts, it is not permissible to detain a vehicle carrying goods or levy penalty on the sole ground that the vehicle is found at a wrong destination *without anything more*.

**62.** Admittedly, the vehicle was found at weigh bridge, IDA Jeedimetla and it is not the case of the 1st respondent that at the time of it's detention or check at that location, there was sale of goods being done without paying applicable tax.

**63.** In fact there is no material placed on record by 1st respondent to show that any attempt was being made by petitioner to sell the goods in local market at IDA Jeedimetla on 22-1-2020 evading CGST and SGST.

**64.** We are of the opinion that the reasons given for detaining the goods and the vehicle they were being carried in do not indicate any violation of the provisions of the Act by petitioner warranting levy of tax and penalty on the petitioner under the Act.

**65.** In **Dabur India Ltd. Vs. State of Uttar Pradesh (1990) 4 SCC 113** the Supreme Court observed that a litigant cannot be coerced by the Government to make payment of duties which the litigant is contending not to be leviable. The Supreme Court held that though the State is entitled to enforce payment and to take all legal steps, it cannot be permitted to play dirty games with the citizens to coerce them in making payments when the citizens were not obliged to make them. It also observed that if any money is due to the Government, it should not take extralegal steps to recover it.

**66.** We are of the opinion that the detention of the vehicle at IDA Jeedimetla in spite of the vehicle carrying tax invoice and the E-way bill is in violation of the provisions of the Act, in particular Rule 68 of the Rules framed under the Act and the Circulars dt.13-4-2018 and 14-9-2018 of the Central Board of Indirect Taxes and Customs which are binding on the 1st respondent and that the 1st respondent was not justified in collecting tax and penalty from the petitioner.

**67.** We are also of the opinion that the 1st respondent cannot rely on the fact that after release of goods on 25-1-2020 at 6.15 p.m., the petitioner generated another E-way bill dt.26-1-2020 on the same vehicle for the same value of the goods and marked it to be delivered to M/s.Nanabhai Steels in IDA Jeedimetla, Telangana.

**68.** This is because the very E-way bill dt.26-1-2020 shows that it is only for *job work* purpose and *not intended by way of sale* because after the job work is done, the material would be sent back to the petitioner.

**69.** Also it is not in dispute that petitioner waited for two days after submitting explanation to the show-cause notice for an order to be passed by the 1st respondent, and when the 1st respondent failed to do so and also did not release the vehicle and the goods, the petitioner paid the tax and penalty *under protest* on 25-1-2020 and got released the goods. So there was no voluntary payment of tax and penalty by petitioner for the 1st respondent to plead any estoppel against the petitioner.

**70.** Accordingly, the Writ Petition is allowed; the action of the 1st respondent in detaining the vehicle carrying the goods purchased by petitioner on 22-1-2020 and forcing the petitioner to pay on 25-1- 2020 a sum of Rs.9,40,618/- towards tax and penalty is declared as illegal, arbitrary and violative of Article 14 and 265 of the Constitution of India apart from Article 301 of the Constitution of India and also the provisions of the Act and Rules made thereunder. Accordingly, the 1st respondent is directed to refund the above amount within six (06) weeks together with interest @ 7% p.a. from 25-1-2020 till date of payment. No costs.

**71.** Consequently, miscellaneous petitions, pending if any, shall stand closed.

❑

**(2021) 66 TLD 205**

In the High Court of Karnataka
Hon'ble B.M. Shyam Prasad, J.

**Sanchar Telesystems Ltd.**

**Vs.**

**Commercial Tax Officer & Another**

Writ Petition No. 10589/2020 (T/RES)

October 21, 2020

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

**Opportunity of hearing - The provisions of section 129(4) of the KGST Act mandates that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.**

**Writ petition allowed in part**

*The provisions of Section 129(4) of the KGST Act mandates that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. This stipulation that no tax or interest or penalty shall be determined unless the person concerned is given an opportunity of being heard incorporates the seminal principle of fair play which is inherent in the established principle that no person is to be condemned unheard. If the CTO intended to rely upon data maintained by a third party and shared by such third party pursuant to the communication made by him, the fair play makes it incumbent on the CTO to provide an opportunity to the petitioner to meet the data lest the petitioner is fastened with the liability to pay either the tax or interest or penalty on the basis of the data that, allegedly - and as is now alleged by the petitioner, is obtained behind its back to its detriment. The impugned orders when thus tested cannot be sustained and will have to be quashed with the proceedings in JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19 and JCCT (VIG)/CTO (VIG)-40/SRS/INS-16/2018-19 restored to the CTO for fresh consideration with the necessary opportunity to the petitioner to meet all materials that could be relied against it.* [Para 15]

The petition is allowed-in-part, and the impugned orders were quashed by High Court. The proceedings were remitted to the Commercial Tax Officer for fresh consideration with the necessary opportunity to the petitioner

to meet all materials that could be relied against it.

Sri. Govindraya Kamath K., Advocate for the petitioner.
Sri. Hema Kumar, AGA for the respondents.

**:: ORDER ::**

The petitioner is registered as a dealer under the Delhi Service Tax Act, and is engaged in, amongst others, trading and importing of hand held walkie-talkie sets. The petitioner has filed this petition impugning

- *the orders dated 20-2-2019 under the provisions of Section 129(3) of the Karnataka Goods and Service Tax Act, 2017 (for short, 'the KGST Act') in JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19 (Annexure – A2) and JCCT(VIG)/CTO(VIG)-40/SRS/INS-16/2018-19 (Annexure A3), and*
- *the subsequent orders dated 21-12-2019 in the corresponding appeal proceedings under Section 107(11) of the KGST Act in GST.AP.17/18-19 (Annexure-A1) and GST.AP.18/18-19 (Annexure-A) by the second respondent.*

**2.** The petitioner asserts that it imports walkie-talkie sets only for supply to the Police and the other Government Security Departments across India. A consignment of these walkie-talkies is imported from M/s. JVC Kenwood Corporation, Japan and dispatched to Bangalore Airports Custom Authority from Singapore Airport. The petitioner has obtained clearance from the Customs Authority after paying applicable IGST and basic customs duty as provided in the Bills of Entry. However, the present dispute is because the CTO has commenced proceedings under section 129 of the KGST Act culminating with the impugned orders after the Commercial Tax Officer (Vigilance-40), Bengaluru *(for short, 'the CTO')* detained one of the vehicles viz., the vehicle bearing Registration No. KA-04-AB-9470 (for short, '*the vehicle'*) hired by the petitioner for transportation of these walkie-talkie sets (for easy reference, '*the consignment'*).

**3.** According to the CTO, the driver on interception of the Vehicle could produce only two Commercial Invoice copies and two Delivery Challan copies but could not furnish the prescribed e-way bills. The consignment could not have been moved without generating e-way Bills in view of the provisions of Rule 138 of the Karnataka Goods and Services Tax Rules, 2017 (for short, '*the KGST Rules'*) and the subsequent Notification No.

FD 47 CSL 2017 Bengaluru dated 6-9-2017. Therefore, the consequences under Section 129 of the KGST Act would have to follow. As such, the CTO on physical verification and issuance of Form GST MOV-02 as well as recording Form GST MOV-04 has detained the Vehicle issuing order of detention in Form GST MOV-06 which is served on the person-in-charge of the Goods on 9-2-2019. Subsequently, the CTO has served notice in Form GST MOV- 07 by affixture on the vehicle after drawing mahazar because the driver, the person-in-charge, refused to accept such notice.

**4.** The proceedings in JCCT(VIG)/CTO(VIG)-40/SRS/INS-16/2018-19 is with regard to the transportation of the consignment without e-way bills in the vehicle, and the other proceedings in JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19 relates to the vehicle bearing registration No. KA 02 AG 9261, and there is no dispute that notice in Form GST MOV-07 is issued by the CTO even in respect of this other vehicle bearing registration No. KA 02 AG 9261 after issuance of the required endorsements in the prescribed Forms.

**5.** The petitioner has filed its response dated 8-2-2019 with the Joint Commissioner of Commercial Taxes (Vigilance), Bengaluru placing on record *inter alia* that the CTO intercepted the vehicle within 3-4 km of Bangalore Airport Customs Office. The driver of the vehicle, because he got the clearance early and everything was found correct, left the premises before the e-way bills were generated. However, the e-way bills were generated before interception. The error is bona fide and unintentional and there was no intention to evade tax. The petitioner's authorised persons and advocates have also subsequently filed a detailed response stating that e-way bills for the consignment were generated between 3:06 p.m., and 3:12 p.m., and before these e-way bills could be transferred to the driver, the CTO intercepted the vehicle. The Endorsements are served on the driver of the vehicle at about 4:15 p.m. and there is a possibility that the time of interception is wrongly mentioned as 2:15 p.m. The petitioner's authorised persons and advocates have also filed further reply to the notice in Form GST MOV-07 enclosing an affidavit of the person in charge of the consignment which is an elaboration of the earlier response.

**6.** The CTO has not accepted the petitioner's response being of the opinion that the vehicle was intercepted at 2:45 p.m., and e-way bills were not generated before the commencement of the movement of the vehicle. The

CTO has concluded that the driver's statement that he left the Bangalore International Airport at around 3:15 p.m. due to VIP movement and that the Endorsements were served at the premises of CTO Enforcement Office, Devanahalli at 4:15 p.m. cannot be believed because the "Good's delivery place" and the "Passengers boarding/de-boarding places" at the Airport are different. The details maintained by M/s. Menzies Aviation Security show that the vehicle entered airport for loading at 2:12 p.m. and exited at 2.33 p.m and therefore the driver's (Person-in-charge) statement that he left the Airport premises at 3:15 p.m., cannot be accepted. The CTO has consequentially issued the impugned Orders under Section 129(3) of the KGST Act demanding tax and penalty as contemplated under Section 129(1)(a) of the CST Act.

**7.** In the appeal under Section 107 of the CGST Act, the second respondent has confirmed the CTO's orders. The second respondent has concluded that violation of the provisions of Rule 138 of the KGST Rules and the notification issued as regards generation of e-way bills is indisputable in view of the admitted fact that the driver of the vehicle could not produce the e-way bills when the vehicle was intercepted. The second respondent has confirmed the CTO's conclusion based on the correspondence with M/s. Menzies Aviation Security, a security agency at the Bangalore International Airport Authority, as regards the vehicle's entry and exit from the Airport. The relevant part of the second respondent's impugned orders read as follows:

> "…….. it is very clear that, the appellant has failed to abide the conditions of the Notification (4-D/2017), No. FD 47 CSL 2017, Bengaluru, 30-8-2017 and has not produced the e-way bills at the time of interception. So failure to comply to the conditions of the Notification, the respondent is right in levying the penalty under section 129(3) of the CGST and SGST Act, 2017. Therefore, the order passed by the respondent is upheld to meet the ends of justice.
>
> Further, the appellant contends that as per the Google Map Track record, the vehicle was within the premises of Menzies Aviation until 3 p.m.. But the respondent has proved that the statement is not correct since the said goods vehicle KA 02 AG 9261 entered airport for loading at 2:12 .p.m. and exited at 2:33 p.m. as per Menzies Aviation Security records. In this regard the respondent corresponds with the

Menzies Aviation Security vide letter dated 18-02-2019 and Menzies Aviation Security in turn responded by providing entry and exit information of the said vehicles on 18-2-2019. [This reasoning is common to both the impugned orders dated 21-12-2019]

**8.** The second respondent has also concluded that the petitioner's contention that the Endorsements in the prescribed form are issued at 4:15 p.m. at the CTO Enforcement Office and the prescribed e-way bills were generated earlier cannot be accepted because the petitioner relies upon online tools and data which are not prescribed either under the provisions of the KGST Act or the KGST Rules. The data on the GSTIN have legal sanctity and this data establishes that the necessary e-way Bills were not generated when the consignment was moved from the Bangalore International Airport.

**9.** The learned counsel for the petitioner asserts that the petitioner's specific case is that:

(a) The loading of the consignment was completed around 2:50 p.m.,

(b) The e-way bills were generated between 3:06 p.m. and 3:12 p.m., and because the goods were being transported for shipment purposes to the Transporter's Godown located within the prescribed distance, the e-way bills were not uploaded,

(c) When the CTO intercepted the vehicles, the driver of the vehicle showed e-way bills on his mobile but Form -Part B was not mentioned.

(d) The CTO directed the driver to take the vehicles to the CTO Enforcement office, and the vehicles reached this office at around 4:15 p.m. when the endorsement was issued.

**10.** The learned counsel emphasises that if these circumstances are established there cannot be any allegation of infraction of Rule 138 of the KGST Rules or the notification issued thereunder, and the conclusion that the petitioner would be liable for consequences envisaged under the provisions of section 129(3) of the KGST Act cannot be sustained. Both the CTO and the appellate authority (the second respondent) have relied upon correspondence with M/s. Menzies Aviation Security, a security agency at the Bangalore International Airport, to conclude that the vehicles entered the airport premises on 6-2-2019 at 2:12 p.m. and exited at 2:33 p.m., but the e-way bills were generated later between 3:06 p.m. and 3:12 p.m. However, the petitioner is not given any opportunity to test the veracity of either the

correspondence with the aforesaid security agency or the details as mentioned by this agency in its correspondence. This is in fundamental violation of the principles of fair play encompassed within the opportunity of being heard contemplated under section 129 (4) of the KGST Act.

**11.** The learned counsel for the petitioner also emphasizes that lack of bona fides in the adjudication against the petitioner is manifest in the respondents encashing the Bank Guarantee furnished by the petitioner for securing the release of the goods as contemplated under section 107 of the KGST Act. The respondents, during the pendency of the appeal proceedings, could not have encashed the Bank Guarantee.

**12.** The learned Additional Government Advocate per contra, contends that the second respondent has relied upon the irrefutable data available on GSTIN in arriving at the conclusion that the consignment was moved from the airport premises even before the generation of the e-way bills. The data available on GSTIN cannot be controverted, as attempted by the petitioner, relying upon Internet tools such as Google Map to establish vehicle's location at the relevant time. Once it is established that the consignment is moved without generating e-way bills, the violation of the provisions of Rule 138 of the KGST Rules is established leading to the consequences under section 129(3) of the KGST Act. As such, the petitioner has not made out any grounds for interference under Article 226 of the Constitution of India.

**13.** As it appears from the rival submissions and the petition averments, the dispute lies within a narrow compass: *was the consignment moved without generating the prescribed e-way bills?* It is observed that there is no serious dispute about the petitioner's assertion that consignment was being transported to the transporter's godown situate within the prescribed distance from the airport premises, and the e-way bills are generated between 3:06 p.m. and 3:12 p.m. The petitioner asserts that the CTO intercepted the vehicle and directed the driver of the vehicle to the CTO Enforcement Office, Devanahalli because Form-Part B of the e-way bills were not populated, and the endorsements in the prescribed form were served at 4:15 p.m. when the vehicles reached the CTO Enforcement Office premises.

**14.** The petitioner to substantiate its aforesaid case proposes to rely upon the data available on Internet while the CTO relies upon correspondence with M/s. Menzies Aviation Security. The documents relied upon by the petitioner are not accepted, and the reason assigned by the respondents for non-

accepting the petitioner's case and the documents, in this Court's considered opinion, is rooted inseparably in the reliance upon the data furnished by M/s. Menzies Aviation Security in response to the communication by the CTO.

**15.** The provisions of section 129(4) of the KGST Act mandates that no tax, interest or penalty shall be determined under sub-section (3) *without giving the person concerned an opportunity of being heard*. This stipulation that no tax or interest or penalty shall be determined unless the person concerned is given an opportunity of being heard incorporates the seminal principle of fair play which is inherent in the established principle that no person is to be condemned unheard. If the CTO intended to rely upon data maintained by a third party and shared by such third party pursuant to the communication made by him, the fair play makes it incumbent on the CTO to provide an opportunity to the petitioner to meet the data lest the petitioner is fastened with the liability to pay either the tax or interest or penalty on the basis of the data that, allegedly - and as is now alleged by the petitioner, is obtained behind its back to its detriment. The impugned orders when thus tested cannot be sustained and will have to be quashed with the proceedings in *JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19 and JCCT (VIG)/CTO (VIG)-40/SRS/INS-16/2018-19* restored to the CTO for fresh consideration with the necessary opportunity to the petitioner to meet all materials that could be relied against it. Therefore, the following:

***ORDER***

[A] The petition is allowed-in-part, and the impugned orders *viz., orders dated 20-2-2019 in JCCT (VIG)/CTO(VIG)-40/SRS/INS-15/2018-19(Annexure–A2) and JCCT(VIG)/CTO(VIG)-40/SRS/INS-16/2018-19 (Annexure A3), and orders dated 21-12-2019 in the appeals in GST.AP.17/18-19 (Annexure-A) and GST.AP.18/18-19 (Annexure-A1)* are quashed;

[B] The proceedings in *JCCT(VIG)/CTO(VIG)-40/SRS/INS-15/2018-19 and JCCT(VIG)/CTO (VIG)-40/SRS/INS-16/2018-19* are remitted to the Commercial Tax Officer (Vigilance-4), Bengaluru (the first respondent) for fresh consideration with the necessary opportunity to the petitioner to meet all materials that could be relied against it; and

[C] the petitioner shall appear before the Commercial Tax Officer (Vigilance-4), Bengaluru (the first respondent) without further notice on 11-11-2020.

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**(2021) 66 TLD 212**

In the Supreme Court of India
Hon'ble S.A. Bobde CJI,
L. Nageswara Rao & S. Ravindra Bhat, J.
Suo Motu Writ Petition (Civil) No. 3 of 2020
**Cognizance for extension of limitation**
March 8, 2021

**Limitation - Cognizance for extension of limitation - Supreme Court - In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded.**

*(1) In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.*

*(2) In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.*

*(3) The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

*(4) The Government of India shall amend the guidelines for containment zones, to state.*

**:: ORDER ::**

**1.** Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the

litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 27-3-2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15-3-2020 till further orders. The order dated 15-3-2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 15-3-2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

**2.** We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

(1) In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.

(2) In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.

(3) The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

(4) The Government of India shall amend the guidelines for containment

zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

**3.** The Suo Motu Writ Petition is disposed of accordingly.

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**(2021) 66 TLD 214**

In the High Court of Kerala
Hon'ble A.K. Jayasankaran Nambiar, J.
**Veer Pratab Singh & Another**
**Vs.**
**State of Kerala & Others**
WP(C).No.: 22016 OF 2020(B)
November 6, 2020

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

**Confiscation of goods or conveyances - Section 130 of CGST Act, 2017 - There is no specific averment in the notice served on the petitioners, as regards any act or omission, that was suggestive of an intention to evade payment of tax - Therefore, the proceedings initiated against the petitioners u/s 130 of the GST Act, cannot be legally sustained.**

**Writ petition disposed of**

*There is no specific averment in the notice served on the petitioners, as regards any act or omission, that was suggestive of an intention to evade payment of tax. I therefore find that the proceedings initiated against the petitioners under Section 130 of the GST Act, cannot be legally sustained. The impugned order under Section 130 of the GST Act is therefore quashed, and the respondents are directed to pass orders under Section 129(3) of the GST Act, after hearing the petitioners [para 3]*

Dr. K.P. Pradeep, Shri. Hareesh M.R., Sri. T.T. Biju & Smt.T.Thasmi, Advocates for the petitioner.
Government Pleader for R1-3 & Sri. Thomas Mathew Nellimoottil, SC, Central Board of Excise & AMP; Customs for R4-6.

**:: JUDGMENT ::**

The petitioners are dealers, inter alia, in brass and copper scraps, having their business concern in Coimbatore, Tamil Nadu and Jamnagar, Gujarat, respectively. A consignment of scrap that was being transported from Coimbatore to Gujarat from the 1st petitioner, as consigner, to the 2nd petitioner, as consignee, was detained by the respondents at Kodumuda in Palakkad. The detention notice issued to the petitioners indicates that the reason for detention was that the documents that accompanied the transportation of the goods were found to be defective. The consignment in question was accompanied by a tax invoice and an e-way bill that showed payment of IGST as also that the transportation of the goods was from Coimbatore to Gujarat. The respondents, however, obtained evidence that suggested that the loading of the consignment was effected in Palakkad, within the State of Kerala, and not in Coimbatore. While the detention of the goods may have been justified on the said ground, and based on the material available with the respondents to suggest that the transportation shown in the e-way bill was not the actual transportation of the goods in question, the respondents went further, and invoked the provisions of Section 130 of the GST Act, to serve a notice in FORM GST MOV-10 on the petitioners. While the petitioners submitted their replies to the said notice, and thereafter appeared before the respondents for a hearing in connection with the said notice, their contentions were rejected, and an order of confiscation was passed under Section 130 of the CGST Act, confiscating the goods and the vehicle. In the writ petition, the petitioners impugn the confiscation order passed against them by the respondents.

**2.** The learned Government Pleader would rely on the documents produced by her along with memos to show that there was ample material available with the Department to proceed against the petitioners in terms of Section 130 of the GST Act.

**3.** I have heard Dr.Sri.K.P.Pradeep, the learned counsel appearing for the petitioners and also Dr.Smt.Thushara James, the learned Government Pleader appearing for the official respondents of the State. 4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that while the respondents were justified in detaining the goods and the vehicle, based on the material that was available with them which clearly showed that the transportation undertaken by the

petitioners, of the goods in question, was not necessarily from Coimbatore as was declared in the invoice and the e-way bill that were produced by the petitioners, the said material does not point to any intention to evade tax, more so when, there is nothing to doubt the genuineness of the declaration of the petitioners that the goods were consigned to Gujarat from Coimbatore, or any material to suggest that the ultimate destination of the goods was any place other than Gujarat. It has to be noticed that the 1st petitioner had admitted his liability to IGST by declaring the same in the invoice, and if the goods, even assuming that they were loaded from Palakkad, were destined to Gujarat, it is the IGST that had to be paid by the 1st petitioner/consigner of the goods. To that extent, therefore, it cannot be said that there was any intention to evade payment of tax because the tax liability, in either event, would be the same. That apart, there is no specific averment in the notice served on the petitioners, as regards any act or omission, that was suggestive of an intention to evade payment of tax. I therefore find that the proceedings initiated against the petitioners under Section 130 of the GST Act, cannot be legally sustained. The impugned order under Section 130 of the GST Act is therefore quashed, and the respondents are directed to pass orders under Section 129(3) of the GST Act, after hearing the petitioners, within a week from the date of receipt of a copy of this judgment.

In the meanwhile, however, the respondents shall permit the petitioners to clear the goods and the vehicle on furnishing a bank guarantee for the tax and penalty amounts determined, consequent to the detention of the goods and the vehicle. I make it clear, however, that after the release of the goods and the vehicle, as above, and after passing the final order under Section 129(3), if the said order is adverse to the petitioners, the respondents shall refrain from invoking the bank guarantee furnished by the petitioners for a period of three weeks from the date of communication of the order under Section 129(3) to the petitioners, so as to enable the petitioners to invoke their appellate remedy, if they so desire.

The writ petition is disposed as above. The Government Pleader shall communicate the gist of this judgment to the respondents so as to enable the petitioners to effect an expeditious clearance of the goods and the vehicle, on their furnishing a bank guarantee for the amount of tax and penalty determined by the respondents.

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POSTAL REGN. NO. MP/IDC/412/2021-2023
REGN.NO. 47503/87/ OF REGISTRAR OF NEWS PAPER FOR INDIA.

Vol. 66 Part-3 March-2021 Date of Publication & Posting 15-3-2021

## दुर्ग टेक्स बार के नए कार्यकारिणी चुनाव सम्पन्न

अध्यक्ष
सीए. सुरेश कोठारी

महासचिव
श्री मनोज ताम्रकार

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**TAX LAW DECISIONS** -Published and Printed by Smt. Jaishree Gangrade. F-312, Sewa Sardar Nagar, Indore-452001, Printed at Jai Shree Offset Printers Company, Indore. Guardian : R.P. Tripathi

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