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VIDHIMAAN'S GST PROFESSIONALS TODAY

Editor : B P Bhargava • Executive Editors : CA Rajeev Talwar ; Adv. Shivashish Karnani

LEGISLATION

- Implementation of e-invoicing for the taxpayers **21**
- Applicability of GST rates & exemptions on certain services **39**
- GST applicability on liquidated damages, compensation and penalty **52**
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- Application of GST to Legal Services Offered by Sole Practitioners, Senior Attorneys, or a Partnership Firm of Attorneys **1**

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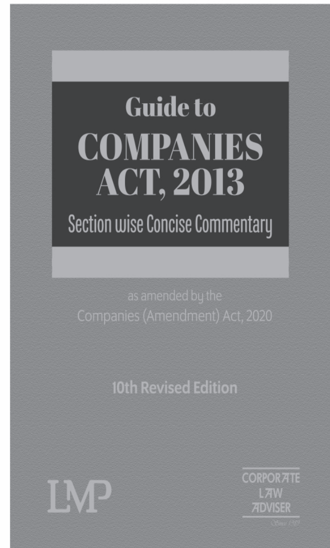

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Notification

Implementation of e-invoicing for the taxpayers – *GSR 612(E)/ Notification No. 17/2022-Central Tax, dated 1st August, 2022*

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 GSR 196(E), dated 21st March, 2020, namely :–

In the said notification, in the first paragraph, with effect from the 1st day of October, 2022, for the words "twenty crore rupees", the words "ten crore rupees" shall be substituted.

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Circulars

Mandatory furnishing of correct and proper information in Form GSTR-3B and statement in Form GSTR-1 – *Circular No. 170/02/2022-GST/F.No. CBIC-20001/2/2022-GST, dated 6th July, 2022*

The process of return filing has been simplified over a period of time. With effect from December 2020, Form GSTR-3B is getting auto-generated on the portal by way of auto-population of input tax credit (ITC) from Form GSTR-2B (auto-generated inward supply statement) and auto-population of liabilities from Form GSTR-1 (Outward supply statement), with an editing facility to the registered person. However, it has been observed that there still are some infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 of the Central Goods and Services Tax Act, 2017 (composition taxable persons) and UIN holders. Also, there appears to be lack of clarity regarding reporting of information about reversal of Input Tax Credit ('ITC') as well as ineligible ITC in Table 4 of Form GSTR-3B.

2. It is desirable that correct reporting of information is done by the registered person in Form GSTR-3B and Form GSTR-1 so as to ensure correct accountal and accurate settlement of funds between the Central and State Governments. Accordingly, in order to ensure uniformity in return filing, the Board, in exercise of its powers conferred under sub-section (1) of section 168 of the Central Goods and Services Tax Act, 2017 ('the CGST Act'), hereby clarifies various issues in succeeding paragraphs.

3. Furnishing of information regarding inter-State supplies made to unregistered persons, composition taxable persons and UIN holders :

3.1 It has been noticed that a number of registered persons are not reporting the correct details of inter-State supplies made to unregistered persons, to registered person paying tax under section 10 of the CGST Act (composition taxable persons) and to UIN holders, as required to be declared in Table 3.2 of Form GSTR-3B, under the notion that the taxable value of the same along with tax payable has already been reported in Table 3.1 of the said Form. In certain cases, it has also been noticed that the address of unregistered person are captured incorrectly by the supplier, especially those belonging to banking, insurance, finance, stock broking, telecom, digital payment facilitators, OTT platform services providers

and E-commerce operators, leading to wrong declaration of Place of Supply ('PoS') in both the invoices issued under section 31 of the CGST Act, as well as in Table 3.2 of Form GSTR-3B.

3.2 In this context, it may be noted that the information sought in Table 3.2 of Form GSTR-3B is required to be furnished, place of supply-wise, even though the details of said supplies are already part of the supplies declared in Table 3.1 of the said Form. For assisting the registered persons, Table 3.2 of Form GSTR-3B is being auto-populated on the portal based on the details furnished by them in their Form GSTR-1.

3.3 Accordingly, it is hereby advised that the registered persons making inter-State supplies –

(*i*) to the unregistered persons, shall also report the details of such supplies, place of supply-wise, in Table 3.2 of Form GSTR-3B and Table 7B or Table 5 or Table 9/10 of Form GSTR-1, as the case may be ;

(ii) to the registered persons paying tax under section 10 of the SGST/CGST Act (composition taxable persons) and to UIN holders, shall also report the details of such supplies, place of supply-wise, in Table 3.2 of Form GSTR-3B and Table 4A or 4C or 9 of Form GSTR-1, as the case may be, as mandated by the law ;

(*iii*) shall update their customer database properly with correct State name and ensure that correct PoS is declared in the tax invoice and in Table 3.2 of Form GSTR-3B while filing their return, so that tax reaches the Consumption State as per the principles of destination-based taxation system.

3.4 It is further advised that any amendment carried out in Table 9 or Table 10 of Form GSTR-1 or any entry in Table 11 of Form GSTR-1 relating to such supplies should also be given effect to while reporting the figures in Table 3.2 of Form GSTR-3B.

4. Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of GSTR-3B

4.1 Table 4(A) of the Form GSTR-3B is getting auto-populated from various entries of Form GSTR-2B. However, various reversals of ITC on account of rules 42 and 43 of the CGST Rules or for any other reasons are required to be made by the registered person, on his own ascertainment, in Table 4(B) of the said Form. It has been observed that different practices are being followed to report ineligible ITC as well as various reversals of ITC in Form GSTR-3B.

4.2 It may be noted that the amount of Net ITC Available as per Table 4(*C*) of

Form GSTR-3B gets credited into the electronic credit ledger ('ECL') of the registered person.

Therefore, it is important that any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of Net ITC Available in Table 4(C) and accordingly, should not get credited into the ECL of the registered person.

4.3 In this context, it is pertinent to mention that the facility of static month-wise auto-drafted statement in Form GSTR-2B for all registered persons has been introduced from August 2020. The statement provides invoice-wise total details of ITC available to the registered person including the details of the ITC on account of import of goods. Further, details of the said statement are auto-populated in Table 4 of return in Form GSTR-3B which are editable in the hands of registered person. It may be noted that the entire set of data that is available in Form GSTR-2B is carried to the table 4 in Form GSTR-3B, except for the details regarding ITC that is not available to the registered person either on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State/UT than that of place of supply. It is pertinent to mention that the ineligible ITC, which was earlier not part of calculation of eligible/available ITC, is now part of calculation of eligible/available ITC in view of auto-population of Table 4(A) of Form GTSR-3B from various tables of Form GTSR-2B. Thereafter, the registered person is required to identify ineligible ITC as well as the reversal of ITC to arrive at the Net ITC available, which is to be credited to the ECL. In light of the above, the procedure to be followed by registered person is being detailed hereunder for correct reporting of information in the return :

A. Total ITC (eligible as well as ineligible) is being auto-populated from statement in Form GSTR-2B in different fields of Table 4(A) of Form GSTR-3B (except for the ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State/UT than that of place of supply).

B. Registered person will report reversal of ITC, which are absolute in nature and are not reclaimable, such as on account of rule 38 (reversal of credit by a banking company or a financial institution), rule 42 (reversal on input and input services on account of supply of exempted goods or services), rule 43 (reversal on capital goods on account of supply of exempted goods or services) of the CGST Rules and for reporting ineligible ITC under section 17(5) of the CGST Act in Table 4(B)(1).

C. Registered person will report reversal of ITC, which are not permanent in nature and can be reclaimed in future subject to fulfilment of specific conditions, such as on account of rule 37 of CGST Rules (non-payment of consideration to supplier within 180 days), section 16(2)*(b)* and section 16(2)*(c)* of the CGST Act in Table 4(B)(2). Such ITC may be reclaimed in Table 4(A)(5) on fulfilment of necessary conditions. Further, all such reclaimed ITC shall also be shown in Table 4(D)(1). Table 4(B)(2) may also be used by registered person for reversal of any ITC availed in Table 4(A) in previous tax periods because of some inadvertent mistake.

D. Therefore, the net ITC Available will be calculated in Table 4(C) which is as per the formula (4A - [4B (1) + 4B (2)]) and same will be credited to the ECL of the registered person.

E. As the details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1).

F. ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State/UT than that of place of supply, may be reported by the registered person in Table 4(D)(2). Such details are available in Table 4 of Form GSTR-2B.

4.4 Accordingly, it is clarified that the reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules thereunder is required to be made under Table 4(B) and not under Table 4(D) of Form GSTR-3B.

4.5 For ease of understanding, the manner of reversals is being elucidated in the illustrations enclosed as Annexure to this Circular.

5. It is requested that suitable trade notices may be issued to publicise the contents of this Circular.

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

For Annexure refer www.cbic.gov.in

Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 – *Circular No. 171/03/2022-GST/F.No. CBIC-20001/2/2022-GST, dated 6th July, 2022*

A number of cases have come to notice where the registered persons are found

to be involved in issuing tax invoice, without actual supply of goods or services or both ('fake invoices'), in order to enable the recipients of such invoices to avail and utilise input tax credit ('ITC') fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 ('CGST Act'), in respect of such transactions involving fake invoices. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder :

Sl. No.	*Issues*	*Clarification*
1.	In case where a registered person *'A'* has issued tax invoice to another registered person *'B'* without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from *'A'* in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act. Also, whether any penal action can be taken against registered person *'A'* in such cases.	Since there is only been an issuance of tax invoice by the registered person *'A'* to registered person *'B'* without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of 'supply', as defined under section 7 of the CGST Act. As there is no supply by *'A'* to *'B'* in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against *'A'* for the said transaction, and accordingly, no demand and recovery is required to be made against *'A'* under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against *'A'* in respect of the said transaction. The registered person *'A'* shall, however, be liable for penal action under section 122(1)*(ii)* of the CGST Act for issuing tax invoices without actual supply of goods or services or both.
2.	A registered person *'A'* has issued tax invoice to another registered person *'B'* without any underlying supply of goods or services or both. *'B'* avails input tax credit on the basis of the said tax invoice. *'B'* further issues invoice along with underlying supply of goods or	Since the registered person *'B'* has availed and utilised fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)*(b)* of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of

Sl. No.	*Issues*	*Clarification*
	services or both to his buyers and utilises ITC availed on the basis of the above mentioned invoices issued by *'A'*, for payment of his tax liability in respect of his said outward supplies. Whether *'B'* will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.	the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilisation of ITC is taken against *'B'* under section 74 of CGST Act, no penalty for the same act, *i.e.,* for the said fraudulent availment or utilisation of ITC, can be imposed on *'B'* under any other provisions of CGST Act, including under section 122.
3.	A registered person *'A'* has issued tax invoice to another registered person *'B'* without any underlying supply of goods or services or both. *'B'* avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act. Goods or services or both. As there was no supply of goods or services or both by '*B*' to '*C*' in respect of the said transaction, no tax was required to be paid by '*B*' in respect of the same. The input tax credit availed by '*B*' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16(2)*(b)* of the CGST Act. In this case, there was no supply of goods or services or both.	In this case, the input tax credit availed by *'B'* in his electronic credit ledger on the basis of tax invoice issued by *'A'*, without actual receipt of goods or services or both, has been utilised by *'B'* for passing on of input tax credit by issuing tax invoice to '*C*' without any underlying supply of by '*B*' to '*C*' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by '*B*' in such case or tax liability in respect of the said outward transaction by '*B*' to '*C*' is required to be made from '*B*' under the provisions of section 73 or section 74 of CGST Act. However, in such cases, '*B*' shall be liable for penal action both under section 122(1) (*(ii)* and section 122(1)(*vii*) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/utilising input tax credit without actual receipt of goods and/or services.

2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/fraudulent availment or utilisation of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilisation of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invokable, subject to conditions specified therein, based on facts and circumstances of each case.

3. It is requested that suitable trade notices may be issued to publicise the contents of this Circular.

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

Clarification on various issues pertaining to CGST Act – *Circular No. 172/04/2022-GST/F. No. CBIC-20001/2/2022-GST, dated 6th July, 2022*

Various representations have been received from the field formations seeking clarification on certain issues with respect to –

(*i*) refund claimed by the recipients of supplies regarded as deemed export ;

(ii) interpretation of section 17(5) of the CGST Act ;

(*iii*) perquisites provided by employer to the employees as per contractual agreement ; and

(ii) utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law 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 (‘CGST Act’), hereby clarify the issues as under :

Sl. No.	*Issue*	*Clarification*
Refund claimed by the recipients of supplies regarded as deemed export		
1.	Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of section 17 of the CGST Act, 2017.	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients *vide* Circular No. 147/03/2021-GST, dated 12th March, 2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of section 17 of the CGST Act, 2017.
2.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) and rule 89(5) of the CGST Rules, 2017.	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is **not** to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.
Clarification on various issues of section 17(5) of the CGST Act		
3.	Whether the proviso at the end of clause *(b)* of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause *(b)* or the said proviso is applicable only to sub-clause (*iii*) of clause *(b)*?	1. *Vide* the Central Goods and Service Tax (Amendment) Act, 2018, clause *(b)* of sub-section (5) of section 17 of the CGST Act was substituted with effect from 1st February, 2019. After the said substitution, the proviso after sub-clause (*iii*) of clause *(b)* of sub-section (5) of section 17 of the CGST Act provides as under: "*Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.*"

		2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21st July, 2018. It had been clarified *"that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."* 3. Accordingly, it is clarified that the proviso after sub-clause (*iii*) of clause *(b)* of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause *(b)* of sub-section (5) of section 17 of the CGST Act.
4.	Whether the provisions of sub-clause (*i*) of clause *(b)* of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of "leasing of motor vehicles, vessels or aircraft" *or* ITC on input services by way of any type of leasing is barred under the said provisions?	1. Sub-clause (*i*) of clause *(b)* of sub-section (5) of section 17 of the CGST Act provides that ITC shall not be available in respect of following supply of goods or services or both – *"(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery,* **leasing, renting or hiring of motor vehicles, vessels or aircraft** *referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance :* Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an *outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply"* 2. It is clarified that "leasing" referred in sub-clause (*i*) of clause *(b)* of sub-section (5) of section 17 **refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items**. Accordingly, availment of ITC is not barred under sub-clause (*i*) of clause *(b)* of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

Perquisites provided by employer to the employees as per contractual agreement		
5.	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and, hence, GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. 2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are *in lieu* of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, **will not be subjected to GST** when the same are provided in terms of the contract between the employer and employee.
Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities		
6.	Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?	1. In terms of sub-section (4) of section 49 of CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as 'IGST Act'), subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules. 2. Sub-rule (2) of rule 86 of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the CGST Act. 3. Further, output tax in relation to a taxable person (*i.e.*, a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (*82*) of section 2 of the CGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism. 4. **Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilisation of the amount available in the electronic credit ledger of a registered person**.

		5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.
7.	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?	As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8.	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?	As per sub-section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

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

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board.

Clarification on issue of claiming refund under inverted duty structure – *Circular No. 173/05/2022-GST/F.No. CBIC-20001/2/2022-GST, dated 6th July, 2022*

Various representations have been received seeking clarification with regard to applicability of para 3.2 of the Circular No. 135/05/2020-GST dated 31st March, 2020 in cases where the supplier is required to supply goods at a lower rate under Concessional Notification issued by the Government. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law in this regard 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 ('CGST Act'), hereby clarifies the issue as under :

2. *Vide* para 3.2 of Circular No. 135/05/2020-GST, dated 31st March, 2020, it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same. Para 3.2 of Circular No. 135/05/2020-GST dated 31st March, 2020 is reproduced, as under :

"Refund of accumulated ITC in terms clause *(ii)* of sub-section (3) of section

54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause *(ii)* of sub-section (3) of section 54 of the CGST Act.

It is hereby clarified that refund of accumulated ITC under clause *(ii)* of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."

3. The matter has been examined. The intent of para 3.2 of Circular No. 135/05/2020-GST dated 31st March, 2020 was not to cover those cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification.

4. Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause *(ii)* of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.

Accordingly, para 3.2 of the Circular No. 135/05/2020-GST, dated 31st March, 2020 stands substituted as under :

"3.2 It may be noted that refund of accumulated ITC in terms of clause *(ii)* of first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause *(ii)* of the first proviso to sub-section (3) of section 54 of the CGST Act.

3.3 There may, however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause *(ii)* of the first proviso

to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause."

5. It is requested that suitable trade notices may be issued to publicise the contents of this Circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board.

Manner of re-credit in electronic credit ledger using Form GST PMT-03A – *Circular No. 174/06/2022-GST/F.No. CBIC-20001/2/2022-GST, dated 6th July, 2022*

Difficulties were being faced by the taxpayers in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund sanctioned to them had been paid back by them either on their own or on being pointed by the tax officer. In order to resolve this issue, GSTN has recently developed a new functionality of Form GST PMT-03A which allows proper officer to re-credit the amount in the electronic credit ledger of the taxpayer. Further, sub-rule (4B) in rule 86 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') has been inserted *vide* Notification No. 14/2022-CT, dated 5th July, 2022 to provide for re-credit in the electronic credit ledger where the taxpayer deposits the erroneous refund sanctioned to him.

2. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), hereby clarifies the following :

3. Categories of refunds where re-credit can be done using Form GST PMT-03A :

3.1 Reference is invited to sub-rule (4B) of rule 86 of the CGST Rules, which is reproduced as under :

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him –

(*a*) under sub-section (3) of section 54 of the Act, or

(*b*) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96, along with interest and penalty, wherever applicable, through Form GST DRC-03, in cash, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall

be re-credited to the electronic credit ledger by the proper officer by an order made in Form GST PMT-03A.

3.2 From the above, it can be stated that in respect of the following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through Form GST PMT-03A, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer :

(*a*) Refund of IGST obtained in contravention of sub-rule (10) of rule 96.

(*b*) Refund of unutilised ITC on account of export of goods/services without payment of tax.

(*c*) Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.

(*d*) Refund of unutilised ITC due to inverted tax structure.

4. Procedure for re-credit of amount in electronic credit ledger :

4.1 The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through Form GST DRC-03 by debit of amount from electronic cash ledger. While making the payment through Form GST DRC-03, the taxpayer shall clearly mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules.

4.2 Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format enclosed as Annexure-A, to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund, thus, paid back through Form GST DRC-03, to electronic credit ledger.

4.3 The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in Form GST DRC-03 by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in Form GST PMT-03A, preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

5. It is requested that suitable trade notices may be issued to publicise the contents of this Circular.

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

For Annexure refer www.cbic.gov.in

Manner of filing refund of unutilised ITC on account of export of electricity – *Circular No. 175/07/2022-GST/F.No. CBIC-20001/2/2022-GST, dated 6th July, 2022*

Reference has been received from Ministry of Power regarding the problem being faced by power generating units in filing of refund of unutilised input tax credit ('ITC') on account of export of electricity. It has been represented that though electricity is classified as 'goods' in GST, there is no requirement for filing of Shipping Bill/Bill of Export in respect of export of electricity. However, the extant provisions under rule 89 of CGST Rules, 2017 provided for requirement of furnishing the details of shipping bill/bill of export in respect of such refund of unutilised ITC in respect of export of goods. Accordingly, a clause (*ba*) has been inserted in sub-rule (2) of rule 89 and a Statement 3B has been inserted in Form GST RFD-01 of the CGST Rules, 2017 *vide* Notification No. 14/2022-CT dated 5th July, 2022. In order to clarify various issues and procedure for filing of refund claim pertaining to export of electricity, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby prescribes the following procedure for filing and processing of refund of unutilised ITC on account of export of electricity :

2. Filing of refund claim :

2.1 Till the time necessary changes are carried out on the portal, the applicant would be required to file the application for refund under "Any Other" category electronically in Form GST RFD-01, on the portal. In remark column of the application, the taxpayer would enter "Export of electricity – without payment of tax (accumulated ITC)". At this stage, the applicant is not required to make any debit from the electronic credit ledger.

2.2 The applicant would be required to furnish/upload the details contained in Statement 3B (and not in statement 3) of Form GST RFD-01 (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.

2.3 The applicant will also be required to upload the copy of statement of scheduled energy for electricity exported by the Generation Plants (in format attached as Annexure-I) issued as part of Regional Energy Account by Regional Power Committee Secretariat ('RPC') under regulation 2(1)(*nnn*) of the CERC (Indian

Electricity Grid Code) Regulations, 2010, for the period for which refund has been claimed and the copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported. The applicant will also give details of calculation of the refund amount in Statement-3A of Form GST RFD-01 by uploading the same in pdf format along with refund application in Form GST RFD-01.

3. Relevant date for filing of refund :

As per sub-section (1) of section 54 of the CGST Act, 2017, time period of two years from the relevant date has been specified for filing an application of refund. Electrical energy is in nature of “goods” under GST and is exported on a continuous basis through the transmission lines attached to the land. Therefore, it is not possible to determine the specific date on which a specific unit of electricity passes through the frontier. However, a statement of scheduled energy for export of electricity by a Generation Plant is issued by Regional Power Committee (‘RPC’) Secretariat, as a part of Regional Energy Account (‘REA’) under regulation 2(1) (*nnn*) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. Accordingly, it is hereby clarified that in case of export of electricity, the relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (‘REA’) issued by the Regional Power Committee Secretariat under regulation 2(1)(*nnn*) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

4. Processing of refund claim by proper officer

4.1 Rule 89(4) provides for the formula for calculation of refund of unutilised ITC on account of zero-rated supplies which is reproduced as under :

> *Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero rated supply of services)* x *Net ITC ÷ Adjusted Total Turnover*

Export of electricity being zero-rated supply, refund of unutilised ITC on account of export of electricity would also be calculated using the same formula.

4.2 The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement. It is clarified that quantum of Scheduled Energy exported, as reflected in the REA issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity. Such monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat, can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under

rule 89(4) of CGST Rules, 2019. The calculation of the value of the exports of electricity during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit (details of which will have to be provided by the concerned exporter based on agreed contracted rates).

4.3 It is also mentioned that usually, the quantum of electricity exported as specified in the statement of scheduled energy exported and on invoice should be same. However, in certain cases, it might happen that the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with REA on Regional Power Committee website. In such cases, turnover of export of electricity shall be calculated using the lower of the quantum of electricity exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.

4.4 Adjusted Total Turnover shall be calculated as per the clause (*E*) of sub-rule (4) of rule 89. However, as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (*E*) of the sub-rule (4) of rule 89, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover. The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making domestic supply of electricity.

4.5 The proper officer shall calculate the admissible refund amount as per the formula provided under rule 89(4) and as per the clarification furnished above. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through Form GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in Form GST RFD-06 and the payment order in Form GST RFD-05.

5. Difficulties, if any, in implementation of these instructions may be informed to the Board (*gst-cbecatgov.in*).

For Annexure refer www.cbic.gov.in

Withdrawal of Circular No. 106/25/2019-GST – *Circular No. 176/08/2022-GST/F.No. CBIC-20001/2/2022-GST, dated 6th July, 2022*

Kind attention is invited to Circular No. 106/25/2019-GST dated 29th June, 2019

wherein certain clarifications were given in relation to rule 95A, inserted in the Central Goods and Services Tax Rules, 2017 with effect from 1st July, 2019, for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

2. The said rule 95A has been omitted, retrospectively with effect from 1st July, 2019, *vide* Notification No. 14/2022-Central Tax, dated 5th July, 2022. Accordingly, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby withdraws, ab initio, Circular No 106/25/2019-GST dated 29th June, 2019.

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

Applicability of GST rates & exemptions on certain services – *Circular No. 177/09/2022-TRU/CBIC-190354/176/2022-TRU, dated 3rd August, 2022*

Representations have been received seeking clarification on the following issues :

1. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 1st July, 2017 to 5th October, 2021 ;

2. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions ;

3. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18th July, 2022 ;

4. Whether exemption under Sl. No. 9B of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 covers services associated with transit cargo both to and from Nepal and Bhutan ;

5. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments ;

6. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5 per cent ;

7. Taxability and applicable rate of GST on transport of minerals from mining

pit head to railway siding, beneficiation plant, etc., by vehicles deployed with driver for a specific duration of time ;

8. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long-term lease of land constitute part of the lease premium or upfront amount charged for long-term lease of land and are eligible for the same tax treatment ;

9. Applicability of GST on payment of honorarium to the Guest Anchors ;

10. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST ;

11. Applicability of GST on services in the form of Assisted Reproductive Technology (ART)/In vitro fertilisation (IVF) ;

12. Whether sale of land after levelling, laying down of drainage lines, etc., is taxable under GST ;

13. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers ;

14. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sl. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage ;

15. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18th July, 2022 ;

16. Applicability of GST on tickets of private ferry used for passenger transportation.

2. The issues have been examined by GST Council in the 47th meeting held on 28th and 29th June, 2022. The issue-wise clarifications as recommended by the GST Council are below :

3. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 1st July, 2017 to 5th October, 2021

3.1 On the recommendation of the GST Council in its 45th meeting, it was clarified *vide* circular 164/20/2021-GST, dated 6th October, 2021 that ice cream parlours sell already manufactured ice- cream and they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST at 18 per cent with ITC.

3.2 Representations have been received requesting that GST at 18 per cent may be levied on supply of ice-cream by ice-cream parlors with effect from 6th October, 2021.

3.3 It has been represented that ice cream parlors which paid GST at 5 per cent without ITC in view of prevailing doubt before the issuance of the Circular dated 6th October, 2021 did not avail ITC and paid 5 per cent in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors at 5 per cent without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18 per cent. With effect from 6th October, 2021, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18 per cent with ITC.

4. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

4.1 Representations have been received regarding applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

4.2 In this regard, it is stated that educational services supplied by educational institutions to its students are exempt from GST *vide* entry 66 of the Notification No. 12/2017 Central Tax (Rate) dated 28th June, 2017 relevant portion of which reads as under, -

"Services provided –

(a) by an educational institution to its students, faculty and staff ;

[(*aa*) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee ;]..."

4.3 Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution.

Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt.

4.4 Accordingly, it is clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is covered by exemption under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017.

5. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18th July, 2022.

5.1 Representations have been received regarding applicability of GST exemption on the service of storage or warehousing of cotton in baled or ginned form.

5.2 Prior to 18th July, 2022, entry 24 B of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 exempted services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute, etc., Cotton Fiber glossary by *barnhardtcotton.net* defines ‘cotton staple, virgin cotton or raw cotton’ as cotton fibers that are removed from the cotton seed by the gin. Further, CESTAT Chandigarh in the case of *R K & Sons* v. *CCE, Rohtak* dated 14th July, 2016 has observed as under :

> “Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants.”

5.3 Accordingly, it is clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under entry 24B of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f. 18th July, 2022

6. Whether exemption under Sl. No. 9B of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 covers services associated with transit cargo both to and from Nepal and Bhutan

6.1 Representations have been received regarding applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India.

6.2 GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted with effect from 29th September, 2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(*ix*) placed before the GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.

6.3 Accordingly, as recommended by the GST Council, it is clarified that exemption under Sl. No. 9B of Notification 12/2017-Central Tax (Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.

6.4 It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.

6.5 Needless to say that the cargo has to be transshipped/transited to Nepal and Bhutan, as per Regulations under the Customs Act read with the Treaties for Trade & Transit with Nepal & Bhutan. Under the regulations/procedures, the container number, which is a unique alpha numeric identifier for the container, is declared. Further, the Customs broker/shipping line/carrier is responsible for making available a track and trace facility for locating goods brought for transhipment.

6.6 With respect to transit or transhipment of cargo to Nepal, specific regulations namely Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 have been notified. It is relevant to mention here that as per these regulations also, the authorised carrier has to execute a general bond for an amount as directed by the proper officer. The authorised carrier also has to procure ECTS (Electronic Cargo Tracking System) from a bi-laterally appointed managed service provider. In order to discharge the bond, the proper officer of customs has to extract trip reports from the ECTS web application as proof of completion of transhipment. The reconciliation of transhipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and then only the general bond submitted by the authorised carrier will be re-credited or discharged.

6.7 As can be seen from the above, the regulations governing transit/transhipment have to be followed in addition to the ensuring that an electronic track and trace facility is in place. This facility uses container numbers to locate the cargo. Thus, it is verifiable that the empty container returning from Nepal or Bhutan is the same container which was used to deliver goods to Nepal or Bhutan.

7. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments

7.1 Representations have been received regarding taxability of sanitation and conservancy services supplied to Army and other Central and State Government departments.

7.2 Municipalities and Panchayats and other local authorities such as Cantonment Boards listed in section 2(*69*) of the Central Goods and Services Tax act, 2017 carry out functions entrusted to them under articles 243W & 243G of the Constitution respectively. Functions that may be entrusted to panchayats and municipalities are listed in Schedule 11 & 12 of the Constitution. Central Government, State Governments & Union Territories also perform functions listed in Schedule 11 & 12 such as irrigation, public health, etc.,

7.3 Services by Central Government, State Government, Union Territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a municipality under article 243W of the constitution have been declared as "neither a supply of goods nor a supply of service" *vide* Notification No. 14/2017-Central Tax (Rate), dated 28th June, 2017.

7.4 The exemption under entry 3 and 3A of notification 12/2017-Central Tax (Rate), dated 28th June, 2017 has been given on pure services and composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11th and 12th schedule of the constitution.

7.5 It is clarified that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12 th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 12/2017-Central Tax (Rate).

8. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5 per cent.

8.1 Representation has been received regarding the GST rate applicable on selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs, etc.

8.2 As per serial number (i) of entry 21 of Notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 selling of space for advertisement in print media

attracts GST at 5 per cent. The term 'print media' has been defined in clause (*zt*) of Notification No.12/2017-Central Tax (Rate), dated 28th June, 2017 as under :

"print media" means, –

(i) 'book' as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes ;....

8.3 Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows :

"Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.

8.4 It therefore appears that 'book' has been defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would cover souvenir book also.

8.5 Accordingly, as recommended by the GST Council, it is clarified sale of space for advertisement in souvenir book is covered under serial number (*i*) of entry 21 of Notification No. 11/2017-Central Tax (Rate) and attracts GST at 5 per cent.

9. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant, etc., by vehicles deployed with driver for a specific duration of time.

9.1 Representations have been received to clarify the taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant, etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under Sl. No. 18 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 which exempts transport of goods by road except by a GTA.

9.2 Usually in such cases the vehicles such as tippers, dumpers, loader, trucks, etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant, etc.,) as per his requirement during the period of contract.

9.3 Such services are nothing but "rental services of transport vehicles with operator" which fall under heading 9966 and attract GST at 18 per cent under Sl. No. 10 part (*iii*) of Notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017. The person who takes the vehicle on rent defines how and when the

vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.

9.4 Accordingly, as recommended by the GST Council, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017. On such rental services of goods carriages where the cost of fuel is in included in the consideration charged from the recipient of service, GST rate has been reduced from 18 per cent to 12 per cent with effect from 18th July, 2022. Prior to 18th July, 2022, it attracted GST at the rate of 18 per cent.

10. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long-term lease of land constitute part of the lease premium or of upfront amount charged for long-term lease of land and are eligible for the same tax treatment ;

10.1 Representation has been received seeking clarification whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long-term lease of land constitute part of the lease premium or upfront amount charged for long-term lease of land and are eligible for the same tax treatment.

10.2 As per entry 41 of the Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 upfront amount, which is defined as "*upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long-term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area",* is exempt from GST

10.3 Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long-term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.

10.4 Accordingly, as per recommendation of the GST Council, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long-term lease of land constitute part of upfront amount

charged for long-term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017.

11. Applicability of GST on payment of honorarium to the Guest Anchors

11.1 Representation has been received regarding applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST at 18 per cent on the honorarium paid to them for such appearances.

11.2 It is clarified that supply of all goods and services are taxable unless exempt or declared as "neither a supply of goods nor a supply of service". Services provided by the guest anchors in lieu of honorarium attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs. 20 lakhs (Rs. 10 lakh in case of special category states) shall not be liable to take registration and pay GST.

12. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST

12.1 Representation has been received regarding taxability of additional toll fees collected by the Concessionaires from the vehicles which is not having Fastag.

12.2 Entry 23 of Notification No.12/2017-Central Tax (Rate), dated 28th June, 2017 exempts service by way of access to a road or a bridge on payment of toll charges.

12.3 Ministry of Road Transport & Highways (MORTH) *vide* circular dated 16.02.2021 has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.

12.4 Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges and should be treated as additional toll charges.

12.5 On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been clarified *vide* Circular No. 164/20/2021-GST, dated 6th October, 2021, which was issued on the basis of recommendation of GST Council that overloading charges at toll plazas would get the same treatment as given to toll charges.

12.6 Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for

allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

13. Applicability of GST on services in form of Assisted Reproductive Technology (ART)/In vitro fertilisation (IVF)

13.1 Representations have been received to clarify whether GST is applicable on services by way of Assisted Reproductive Technology ('ART') procedures such as In vitro fertilization ('IVF').

13.2 Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017].

13.3 Health care services is defined *vide* 2(*zg*) of the Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 as –

> "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma."

13.4 The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

14. Whether sale of land after levelling, laying down of drainage lines, etc., is taxable under GST

14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines, etc.

14.2 As per Sl. No. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

14.3 Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sl. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

14.4 However, it may be noted that any service provided for development of land,

like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

15. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers

15.1 In case of services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, tax is required to be paid by the body corporate under RCM.

15.2 Representations have been received to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).

15.3 Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is renting of motor vehicle for transport of passengers for a period of time where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

15.4 'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules.

15.5 Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

15.6 Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees, etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

15.7 However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

16. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sl. No. 15(*b*) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage

16.1 Representations have been received to clarify whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is exempt under entry at Sl. No. 15(*b*) of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017.

16.2 Sl. No. 15(*b*) of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 exempts *"transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire."*

16.3 It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

16.4 In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

17. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18th July, 2022.

17.1 Representation has been received seeking clarification regarding the applicable GST rate on service of construction, supply, installation and commissioning of a 2.00 LLPD dairy plant on turn-key basis.

17.2 In case of a turn key project for construction, supply, installation and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12 per cent applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.3 In this regard, it may be seen that prior to 18th July, 2022.serial number

3(*v*)(*f*) of Notification No. 11/2017 Central Tax (Rate), dated 28th June, 2017 prescribes GST rate of 12 per cent on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to *mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.*

17.4 It is clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property.

17.5 It is also clarified that such works contract services were eligible for concessional rate of 12 per cent GST under serial number 3(*v*)(*f*) of Notification No. 11/2017 Central Tax (Rate), dated 28th June, 2017 prior to 18th July, 2022. With effect from 18th July, 2022, such works contract services would attract GST at the rate of 18 per cent in view of amendment carried out in Notification No. 11/2017-Central Tax (Rate) *vide* Notification No. 03/2022-Central Tax (Rate).

18. Applicability of GST on tickets of private ferry used for passenger transportation.

18.1 Representations have been received seeking clarification on applicability of GST on private ferry tickets. It has been stated that these private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

18.2 As per Sl. No. 17(*d*) of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 *"transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India"* is exempted.

18.3 It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

18.4 It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise, etc.

19. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

GST applicability on liquidated damages, compensation and penalty – *Circular No. 178/10/2022-GST/F.No. 190354/176/2022-TRU, dated 3rd August, 2022*

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge, etc., arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "CGST Act") in this context has been examined in the following paragraphs.

2. "*Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act*" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act. The said expression has following three limbs :

(*a*) **Agreeing to the obligation to refrain from an act.**

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party. Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

(*b*) **Agreeing to the obligation to tolerate an act or a situation.**

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

(*c*) **Agreeing to the obligation to do an act.**

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such

RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

3. The description "*agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act*" was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

3.1 Some of the important examples of such cases are Service Tax/GST demands on –

(*i*) Liquidated damages paid for breach of contract ;

(*ii*) Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order ;

(*iii*) Cheque dishonour fine/penalty charged by a power distribution company from the customers ;

(*iv*) Penalty paid by a mining company to State Government for unaccounted stock of river bed material ;

(*v*) Bond amount recovered from an employee leaving the employment before the agreed period ;

(*vi*) Late payment charges collected by any service provider for late payment of bills ;

(*vii*) Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity ;

(*viii*) Cancellation charges recovered by railways for cancellation of tickets, etc.

In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

4. In Service Tax law, 'Service' was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration'. The element of contractual relationship, where one supplies goods or services at the desire or another, is an essential element of supply.

5. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5(*e*) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines 'Contract' as a set of promises, forming consideration for each other. 'Promise' has been defined as willingness of the 'promisor' to do or to abstain from doing anything. 'Consideration' has been defined in the Contract Act as what the 'promisee' does or abstains from doing for the promises made to him.

6. This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (*i.e.*, agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(*e*) of Schedule II would reveal that it comprises the aforementioned three different sets of activities, *viz*., (*a*) the obligation to refrain from an act, (*b*) obligation to tolerate an act or a situation and (*c*) obligation to do an act. All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (*a*) refrain from an act, or (*b*) to tolerate an act or a situation or (*c*) to do an act. Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (*a*) refraining or (*b*) tolerating or (*c*) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand- alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Agreement to do or refrain from an act should not be presumed to exist

7. There has to be an express or implied agreement ; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another.

Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour, etc., are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts ; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract : (*a*) for breach thereof, or (*b*) for holding more stock than permitted under the mining contract, or (*c*) for leaving the employment before the agreed minimum period or (*d*) for doing something leading to the dishonour of a cheque. As has already been stated, unless payment has been made for an independent activity of tolerating an act under an independent arrangement entered into for such activity of tolerating an act, such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act. Taxability of these transactions is discussed in greater detail in the following paragraphs.

Liquidated damages

7.1 Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity ; it is just an event in the course of performance of that contract.

7.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. *Black's Law Dictionary* defines 'Liquidated Damages' *as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party*.

7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount

or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

7.1.5 Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorised use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a

penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

7.1.6 If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called ; it must be remembered that a "consideration" cannot be considered *de hors* an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre-payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

Compensation for cancellation of coal blocks

7.2 In the year 2014, coal block/mine allocations were cancelled by the hon'ble

Supreme Court *vide* order dated 24th September, 2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. In accordance with section 16 of the said Act, prior (old) allottee of mines were given compensation in the year 2016 towards the transfer of their rights/titles in the land, mine infrastructure, geological reports, consents, approvals, etc., to the new entity (successful bidder) as per the directions of hon'ble Supreme Court.

7.2.1 There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

Cheque dishonor fine/penalty

7.3 No supplier wants a cheque given to him to be dishonoured. It entails extra administrative cost to him and disruption of his routine activities and cash flow. The promise made by any supplier of goods or services is to make supply against payment within an agreed time (including the agreed permissible time with late payment) through a valid instrument. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty. The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

Penalty imposed for violation of laws

7.4 Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received

and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax education guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties.

7.4.1 It was also clarified *vide* Circular No. 192/02/2016-Service Tax, dated 13th April, 2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. The same holds true for GST also.

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organisation for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

Compensation for not collecting toll charges

8. In the wake of demonetization, NHAI directed the concessionaires (toll

operators) to allow free access of toll roads to the users from 8th November, 2016 to 1st December, 2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8th November, 2016 to 1st December, 2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.

8.1 It has been clarified *vide* Circular No. 212/2/2019-ST, dated 21st May, 2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8th November, 2016 to 1st December, 2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

Late payment surcharge or fee

9. The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services, etc., Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance, etc., it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs.

Fixed capacity charges for power

10. The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the

fixed cost of generating/supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.

10.1 The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

10.2 Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements ; the contract is essentially for supply of electricity.

Cancellation charges

11. A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancelation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation, etc., to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred

seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area, etc., form part and parcel of the transportation service ; they constitute the various elements of passenger transportation service, a composite supply.. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (*i.e.*, 5 per cent GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

12. Field formations are advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

13. Any difficulty in implementation of the circular may be brought to the notice of the Board.

Clarification regarding GST rates – *Circular No. 179/11/2022-GST/F. No. CBIC-190354/172/2022-TRU,dated 3rd August, 2022*

Based on the recommendations of the GST Council in its 47th meeting held on 28th-29th June at Chandigarh, clarifications, with reference to GST levy, related to the following are being issued through this circular :

2. Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5 per cent :

2.1 Representations have been received seeking clarification regarding the applicable rate of GST on electrically operated vehicle without any battery fitted to it.

2.2 The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of Notification No. 1/2017-Central Tax (Rate) reads as : 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

2.3 As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.

2.4 It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.

2.5 Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs, *i.e.*, the chassis fitted with cabin body falls under 87.02 to 87.04 and not in heading 87.06.

2.6 In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5 per cent in terms of entry 242A of Schedule I of Notification No. 1/2017-Central Tax (Rate).

3. Stones otherwise covered in Sl. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry :

3.1 Representations have been received seeking clarification regarding the applicable GST rates on building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished.

3.2 Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, Sl. No. 123 of Schedule-I prescribes GST rate of 5 per cent for 'Ecaussine and other calcareous monumental or building stone ; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.' However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.

3.3 Therefore, it is clarified that Sl. No. 123 in schedule-I to the Notification No. 1/2017-Central Tax (rate), dated 28th June, 2017 covers minor polished stones.

4. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12 per cent rate :

4.1 Representations have been received seeking clarification regarding the applicable GST rate on different forms of Mangoes including Mango Pulp.

4.2 On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12 per cent to 5 per cent [Sl. No. 30A of Schedule I of Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12 per cent.

4.3 Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt ; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5 per cent ; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12 per cent. To bring absolute clarity, the relevant entry at Sl. No. 16 of Schedule-II of Notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended *vide* Notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022.

4.4 Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [Sl. No. 51 of Notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017].

5. Treated sewage water attracts Nil rate of GST :

5.1 Representations have been received seeking clarification regarding the applicable GST rate on treated sewage water. Treated sewage water was not meant to be construed as falling under "purified" water for the purpose of levy of GST.

5.2 In general, Water, falling under heading 2201, with certain specified exclusions,

is exempt from GST *vide* entry at Sl. No. 99 of Notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017.

5.3. Accordingly, it is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry *vide* Notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022.

6. Nicotine Polacrilex Gum attracts a GST rate of 18 per cent :

6.1 Representations have been received seeking clarification regarding the classification and applicable GST rate on Nicotine Polacrilex gum.

6.2 The WCO 2022 HS Codes has, inter alia, introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 1st January, 2022. Accordingly, a technical change, without any consequential rate change, has been made *vide* Notification No. 18/2021-Central Tax (Rate), dated the 28th December, 2021, wherein Sl. No. 26B in Schedule III of Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.

6.3 Accordingly, it is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18 per cent [Sl. No. 26B in Schedule III of Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

7. Fly ash bricks and aggregate – condition of 90 per cent fly ash content applied only to fly ash aggregate, and not fly ash bricks :

7.1 Representations have been received seeking clarification regarding the applicable rate on the fly ash bricks and fly ash aggregates.

7.2 Hitherto, as per entry at Sl. No. 176B of the Schedule II the items of description "Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content ; Fly ash blocks" attracts a GST rate of 12 per cent. Confusion has arisen about the applicability of 90 per cent condition on fly ash aggregates and fly ash bricks. As

per the recommendations of the GST Council in the 23rd Meeting, the condition of 90 per cent or more fly ash content was applicable only for fly ash aggregate.

7.3 Therefore, it is clarified that the condition of 90 per cent or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the description.

8. Applicability of GST on by-products of milling of Dal/Pulses such as Chilka, Khanda and Churi :

8.1 Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/Pulses such as Chilka, Khanda and Churi.

8.2 The by-products of milling of pulses/dal such as Chilka, Khanda and Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.

8.3 The applicable GST rate on goods falling under heading 2302 is detailed in the Table below :

Entry and notification No.	*Description*	*GST Rate*
Sl. No. 102 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake [other than rice bran]	Nil
Sl. No. 103A of Schedule-I of Notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
Sl. No. 103B of Schedule- I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Rice bran (other than de-oiled rice bran)	5%

8.4 The dispute in applicable GST rate revolves around the central argument as to whether the above-mentioned by-products are meant for direct consumption

as cattle feed and therefore attract exemption under Sl. No. 102 of Notification No. 2/2017-Central Tax (Rate), dated 28th June, 2017 or are otherwise not meant for direct consumption and thus covered under Sl. No. 103A of Notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017 attracting a GST rate of 5 per cent.

8.5 While milling of pulses/dal, a wide range of by-products such as chilka, khanda, churi, among others, are obtained which are preferred as cattle feed by dairy industry for better palatability and higher nutritive value. The mentioned by-products are required to go through varying degrees of processing in order to customize the color, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s). Further, as per the Indian Standards 2052:2009-Compounded Feeds for Cattle – Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorised as one of the ingredients of the compounded cattle feed.

8.6 The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.

8.7 Accordingly, it is hereby clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5 per cent *vide* Sl. No. 103A of Schedule-I of Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis as mentioned in para 8.6.

9. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

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Summary of Notification and Circulars under GST Legislations

CENTRAL TAX

Notification No.	*Date*	*Summary*
17/2022	01-Aug-2022	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 crore from 1st October, 2022.

CIRCULAR CENTRAL TAX

Notification No.	*Date*	*Summary*
177/09/2022-GST	03-Aug-2022	Clarifications regarding applicable GST rates and exemptions on certain services
178/10/2022-GST	03-Aug-2022	GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law
179/11/2022-GST	03-Aug-2022	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh

Professional View Point

Volume 12/3

[2022] 12 GSTPT (PV) 1

Application of GST to Legal Services Offered by Sole Practitioners, Senior Attorneys, or a Partnership Firm of Attorneys

*Rishabh Aggarwal**

In this article the author explains application of GST to legal services offered by professionals.

Introduction

1. GST is applicable on supply. As per clause (*a*) of sub-section (1) section 7 of CGST Act, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease, or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Phrase "All form of supply" has a very wider meaning and that is why providing legal services will be considered as supply under the CGST Act and GST will be applicable to it.

If CGST Act is applicable to all forms of supply, the following questions come to our mind :–

- Who will be responsible for paying GST on it, *i.e.*, under forward charge or reverse charge ?
- What is the meaning of legal services ?

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- Whether any exemption provided under the law concerning these service providers and concerning their chargeability ?
- When is registration required under the CGST Act ?
- Whether e-invoicing is applicable for supplies involving reverse charge ?

Issues raised on applicability of the CGST Act to all forms of supply

2. Let us discuss all these issues in detail in the succeeding paras.

2.1 Issue No. 1 : *Who will be responsible for paying GST on it, i.e., under forward charge or reverse charge* ? – As per section 9 of CGST Act 2017, the levy of GST is either on the supplier or the recipient. On all supplies of services forward charge will apply but on specified supplies of services reverse charge mechanism ('RCM') will be applicable. RCM will govern by notification number 13/2017-Central tax (Rate), dated 28th June, 2017 in case of intra-State supply and notification No. 10/2017-Integrated tax (Rate), dated 28th June, 2017 which is amended from time-to-time. As per this notification if services are provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly to any business entity located in the taxable territory then, in that case, GST needs to be paid under RCM by the recipient. "Business entity" shall be treated as the person who receives the legal services for this notification. Further, RCM will be calculated by considering the provisions of the place of supply concerning the payment of CGST and SGST or IGST and time of supply to ascertain when liability will arise and valuation of the value to supply. RCM provision will apply only in those cases where a supplier is an individual advocate including a senior advocate or firm of advocates. If a supplier is providing legal services via a corporate legal entity/LLP, the supply will be covered under a forward charge.

2.2 Issue No. 2 : *What is the meaning of legal services* ? – The term "legal service" refers to any service related to advice, consultancy, or assistance in any area of law, in any way, and includes representational services before any court, tribunal, or authority. This definition is taken from the *Explanation* given in the Notification No. 13/2017-Central tax (Rate), dated 28th June, 2017 in case of intra-State supply and notification No. 10/2017-Integrated tax (Rate), dated 28th June, 2017. So, the words legal services have a very wider meaning about providing services and all services concerning advice, consultancy, or assistance in any branch of law, representation services will also include legal services.

2.3 Issue No. 3 : *Whether any exemption provided under the law concerning these*

service providers and chargeability ? – As per notification following services are exempted under the CGST Act if these services are provided by the following-to-following recipients :

- A partnership firm of attorneys or a non-senior attorney acting as an attorney, providing legal services to -
  - a sole practitioner, or a partnership firm of advocates providing legal services;
  - any person other than a business entity ;
  - a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act (exemption limits are Rs. 10 lakh/ Rs. 20 lakh/Rs. 40 lakh as the case may be) ;
  - the Central Government, State Government, Union territory, local authority, Governmental authority, or Government entity.
- A senior advocate by way of legal services to –
  - any person other than a business entity;
  - a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act (exemption limits are Rs. 10 lakh/ Rs. 20 lakh/Rs. 40 lakh as the case may be);
  - the Central Government, the State Government, the Union Territory, the Local Government, the Governmental Authority, or the Government Entity.

So, if we are covering any of the above provision of services then it will be called exempt supply under the CGST Act.

2.4 Issue No. 4 : *When is registration required to be taken under GST* ? – By notification No. 5/2017-Central Tax, dated 19th June, 2017, it has been clarified that if persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient then the person will be exempted from obtaining registration under the CGST Act.

2.5 Issue No. 5 : *Whether will it be mandatory to take registration under GST if we are providing the only inter-State supply of legal services via a corporate entity/LLP* ? – Benefit of threshold limit of Rs.20 lakh/Rs.10 lakh (in case of special category of states) will also be provided to the persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed

on Pan India basis and it will be exempted from obtaining registration under the CGST Act (notification No. 10/2017-Integrated tax, dated 13th October, 2017 as amended by notification No. 3/2019-Integrated tax, dated 29th January, 2019).

2.6 Issue No. 6 : *Whether e-invoicing is applicable for supplies involving reverse charge* ? – E-invoicing is applicable if the invoice is issued by the notified person related to supplies which are subjected to a reverse charge. *Example* – If a firm of attorneys provides services to an organisation (who would be discharging tax obligations as a recipient under RCM) with an annual turnover totalling more than Rs.20 crore, such invoice must be disclosed by the notified person to IRP. Further, E-invoicing does not applicable or arises on the recipient's part where supplies are received by a notified person on which recipient is paying GST under reverse charge.

CGST Act

[2022] 12 GSTPT 101 (Mad.)

HIGH COURT OF MADRAS

KUPPAN GOUNDER P G NATARAJAN

v.

DIRECTORATE GENERAL OF GST INTELLIGENCE

WA No.2003 of 2021 & CMP No.12863 of 2021

T S Sivagnanam & Sathi Kumar Sukumara Kurup, JJ
1st September 2021

The proper officer may invoke power under section 70 in any inquiry and the prohibition under clause (b) of sub-section (2) of section 6 shall come into play when any proceeding on the same subject-matter had already been initiated by a proper officer under the State Act. Therefore, the contention raised by the appellant stating that in issuance of summons for conducting an inquiry and to obtain a statement from the appellant cannot be construed to be bar under clause (b) of sub-section (2) of section 6.

Central Goods and Services Tax Act, 2017 – Sections 6(2)(b) and 70 – Proper officer – Authorisation of officers of State tax as – Power of summon persons to give evidence – Issuance of summons for conducting an inquiry from the appellant – Can it be construed to be bar under clause (b) of sub-section (2).

The proper officer has power to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in any inquiry, in the same manner, as provided in the case of a civil court. The bar contained under clause *(b)* **of sub-section (2) of section 6 is with regard to any proceedings initiated by a proper officer on a subject-matter, on the same subject-matter, the proper officer under the Central Act cannot initiate any action referred. The scope of clause** *(b)* **of sub-section (2) of section 6 and section 70 is different and distinct, as the former deals with any "proceedings on a subject-matter/same subject-matter" whereas, section 70 deals with power to summon in an inquiry and, therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the respondent to invoke the power under section 70.**

Cases referred to : *Ankit Bindal* v. *Principal Commissioner of Central Goods and Services Tax* WP(C) No.3968 of 2021, dated 25th March, 2021 and 12th April,

2021 ; *Dadhichi Iron & Steel (P.) Ltd.* v. *Chhattisgarh GST* 2020 (35) GSTL 4 (Chhattisgarh) ; *G K Trading Company* v. *Union of India* 2021-TIOL-31-HC-ALL-GST ; *Kaushal Kumar Mishra* v. *Additional Director General, Ludhiana Zonal Unit* 2021-TIOL-387-HC-P&H-GST ; *P V Rao* v. *Senior Intelligence Officer, Directorate General of GST Intelligence* 2021 (45) GSTL 97 (Del.) ; *RCT Industries & Technologies Ltd.* v. *Commissioner DGST Delhi* 2021 (46) GSTL 123 (Del.) ; *Sanganeriya Spinning Mills Ltd.* v. *Union of India* 2019 (28) GSTL 442 (Raj.) and *Siddhi Vinayak Trading Company* v. *UoI* [Writ Tax No.822 of 2020 dated 23th February, 2021 (HC-Allahabad)].

Appearances : E Om Prakash, senior counsel for the Appellant. V Sundareswaran, senior standing counsel for the Respondent.

JUDGMENT

Sivagnanam, J

1. This appeal has been filed by the appellant/writ petitioner, challenging the order passed in WP No.15708 of 2021, dated 29th July, 2021.

2. The appellant is the managing director of a company registered under the Companies Act, 1956, which is engaged in the business of transportation. The appellant sought for issuance of writ of certiorari to quash the summons issued by the respondent dated 8th July, 2021, under section 70 of the Central Goods and Services Tax Act, 2017 ('the CGST Act').

3. The case of the appellant is that the company, in which the appellant is the managing director, was promoted by him, because a pioneer in the transport business and has achieved the present status out of dedication and hard work. The company held by the family members of the appellant as the shareholders and continued to offer bus services to its customers. The appellant received a notice dated 17th December, 2020 from the Assistant Commissioner (SC), Salem stating that there are certain discrepancies in the GST returns in GSTR-3B filed by the appellant for the financial years 2018-19 and 2019-20, while compared with the online service providers returns of the appellant, *viz.*, GSTR-8. The appellant submitted explanation with appropriate details, *vide* letter dated 29th December, 2020. While so on 19th January, 2021, the respondent conducted a search in the premiss of the appellant and the appellant would state that they were harassed and their employees were attacked, which necessitated lodging of a complaint with the police concerned and a case had been registered.

4. It is the further case of the appellant that the respondent on 20th January, 2021, issued summons to the managing director and the directors of the company under

section 70 of the CGST Act. This summons, according to the appellant, is devoid of reasons, issued in a mechanical manner. The appellant filed WP No.2723 of 2021 challenging the said summons and by order dated 8th February, 2021, the Court directed the summons to be kept in abeyance.

5. It is further submitted that the respondent passed an order of provisional attachment under section 83 of the CGST Act attaching 14 bank accounts, which include that of the company and the individual bank accounts of the directors, *vide* order dated 20th January, 2020. This having been brought to the notice of the learned writ court, by order/orders dated 8th February, 2021 and 10th March, 2021, the orders of provisional attachment were directed to be lifted. Aggrieved by such order, the respondent preferred WA No.984 of 2021 in which, certain interim directions were given on 25th March, 2021 directing the order passed lifting the attachment to remain stayed; directing the Authorised Representative of the appellant to appear before the respondent on 29th March, 2021 at 11.00 AM; an opportunity of personal hearing was granted; and the respondent was directed to pass a speaking order within a time frame. Till final orders were passed, taking note of the submission that the appellant's business activity had been crippled, the representation dated 27th January, 2021, was directed to be considered and appropriate interim orders shall be passed, if found tenable, considering the lifting of the provisional attachment in respect of a few Bank accounts to enable the appellant to carry on its business activities. Pursuant to such direction, the respondent had lifted the order of provisional attachment in respect of three Bank accounts, though the appellant sought for lifting the attachment in respect of seven bank accounts. Aggrieved by the same, the appellant had filed WP No.11367 of 2021.

6. The petitioner filed WP No.12402 of 2021 challenging the order passed by the respondent dated 1st April, 2021, to quash the said order and to release all the Bank accounts, which had been attached.

7. The present appeal, which arises out of the order passed in WP No.15628 of 2021 as stated above, challenges the summons issued by the respondent dated 8th July, 2021. The learned writ court by order dated 29th July, 2021, dismissed the writ petition. Aggrieved by the same, the appellant is before us by way of this appeal.

8. Mr. E Om Prakash, learned senior counsel appearing for A & N Care Solicitors submitted that the appellant's company falls within the State jurisdiction under the State Goods and Services Tax Act, 2017 ('the SGST Act') and the respondent is an authority with the central jurisdiction and, therefore, he has no jurisdiction to initiate any proceedings under the CGST/SGST Act more so when, the State

authority had already initiated action and the matter is pending at different stages.

9. Further, it is submitted that the summons had been issued without any authority of law and by overlapping assessment jurisdiction causing untold hardship and harassment to the appellant. Further, it is submitted that the respondent had issued the impugned summons without considering that the officials at Chennai had conducted a search in the premises of the appellant and summons was issued to the appellant, which is subject-matter of challenge in WP No.2723 of 2021 and, therefore, the summons, which was impugned in the writ petition, had to be quashed on account of lack of jurisdiction.

10. Further, it is submitted that under section 62 of the SGST Act, an assessment can be made, however, the said provision would not apply to the appellant's case and even going by the said provisions, which refer to the "proper office", it would mean in the appellant's case, the State authority and not the respondent. Further, it is submitted that there is no notification or order empowering the respondent to initiate assessment proceedings or raise a demand against the appellant, as they fall within the jurisdiction of the State authority under the SGST Act. Further, it is submitted that the State authority had already issued two notices in respect of the alleged discrepancy in the returns and the matter is pending within their jurisdiction and at that juncture, the respondent has no jurisdiction to issue the summons. Further, it is submitted that when the summons issued by the State authority has been directed to be kept in abeyance, pursuant to the order in WP No.2723 of 2021, the summons issued by the respondent is only with a view to get over the interim order passed by the learned writ court. Further, it is submitted that the appellant, who is summoned to appears, is aged about 74 years and during the period of pandemic, it would be putting the appellant to great risk by travelling to Delhi.

11. The learned senior counsel submitted that the learned writ court erred in rejecting the contention advanced by the appellant by referring to section 6(2)*(b)* of the CGST Act by observing that the said provision would have no application to the case of the appellant.

12. The learned senior counsel referred to the interim orders granted by the High Court of Delhi in WP(C) No.3968 of 2021, dated 25th March, 2021 and 12th April, 2021 (*Ankit Bindal* v. *Principal Commissioner of Central Goods and Services Tax*) and the interim order granted by the High Court of Gujarat at Ahmedabad in Special Civil Application No.16271 of 2021, dated 22nd December, 2020. These orders have been referred to, to support the contention that repeatedly issuing the summons to the assessee by different authorities, amounts to harassment.

Apart from that, the authority, who had issued the impugned summons, has no jurisdiction to issue the same.

13. It is further submitted that parallel investigation cannot be done by the State authorities as well as the Central authority and the learned writ court can exercise its jurisdiction, if the exercise of power by the authority is bad in law and no reasonable person can come to the belief as to the action is required to be taken in the manner done so. Therefore, the learned writ court had enough jurisdiction to examine whether the formation of belief to satisfy if the conditions specified in the statutory provision invoked or met. In support of such contention, reliance was placed in *RCT Industries & Technologies Ltd.* v. *Commissioner DGST Delhi* 2021 (46) GSTL 123 (Del.). On the above grounds, the learned senior counsel submitted that the summons issued by the respondent is liable to be quashed on the ground of lack of jurisdiction.

14. Mr.V Sundareswaran, learned senior standing counsel appearing for the Revenue submitted that an investigation was launched against the company among several other such transport companies for non-payment of GST, which was collected by them from the customers during the period July 2017 to December 2020. Search operations were conducted in the business premises of the appellant on 19th January, 2021 and 20th January, 2021 and documents and records were seized. It is submitted that from the documents, which were seized and the voluntary statements given by the employees of the company, the Department is of the prima facie view that a GST amount in excess of Rs.8 crore, which was collected from the customers through third party undertakings, operations such as e-commerce operators, has not been remitted to the Department.

15. It is submitted that a writ petition, challenging a summons is not maintainable and the learned writ court rightly dismissed the writ petition directing the appellant to submit to its jurisdiction. Further, it is submitted that the respondent has sufficient jurisdiction to invoke section 70 of the CGST Act and issue summons and on the grounds raised, the summons cannot be quashed and rightly, the writ petition was dismissed.

16. The learned senior standing counsel referred to a clarification issued by the Central Board of Excise and Customs (‘CBEC’) dated 5th October, 2018. It was stated by the Board that it has come to its notice that there is ambiguity regarding enforcement of action by the Central Tax Officers in case of taxpayer assigned to the State tax authority and vice versa. It was stated that the GST Council, in its 9th Meeting held on 16th January, 2017, discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for

enforcement of intelligence-based action was recorded at para 28 of the Agenda Note No.3 in the minutes of the meeting, which stated that both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain. In terms of the said decision, the Central Board clarified that the officers of both Central tax and the State tax are authorised to initiate intelligence-based enforcement action on entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. It was further clarified that the authority, which initiates such action, is empowered to complete the entire process of investigation, issuance of show cause notice, adjudication, recovery, filing of appeal, etc., arising out of such action. In other words, it was clarified that if an officer of Central tax authority initiates intelligence-based enforcement action against the taxpayer, administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions. Similar the position would remain in case of intelligence-based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority.

17. Based on such clarification, it is submitted that State tax authority as well as the Central tax authority are entitled to initiate intelligence-based enforcement action separately and cross-empowerment of both authorities is permitted under the scheme of the CGST Act.

18. Reliance was placed on the decision in the case of *Sanganeriya Spinning Mills Ltd.* v. *Union of India* 2019 (28) GSTL 442 (Raj.) wherein, the Court rejected the challenge to the vires of section 6(1) of the Goods and Services Tax Act, 2017 and the notification issued by the Government dated 20th September, 2017 delineating the jurisdiction of the State and Central authorities.

19. Reliance was placed on the decision in the case of *Dadhichi Iron & Steel (P.) Ltd.* v. *Chhattisgarh GST* 2020 (35) GSTL 4 (Chhattisgarh) with regard to the issue relating to the bar under section 6(2)*(b)* of the CGST Act.

20. With regard to the challenge to the summons and as to how the court has to consider the challenge to the summons and with regard to the effect of section 6(2)*(b)* and section 70 of the CGST Act, reliance was placed on the decision in the case of *P V Rao* v. *Senior Intelligence Officer, Directorate General of GST Intelligence* 2021 (45) GSTL 97 (Del.)/Manu/DE/2078/2020.

21. Reliance was also placed on the decision in the case of *RCI Industries & Technologies Ltd.* (*supra*) with regard to the jurisdiction of this court, when a summons is challenged.

22. To test the effect of section 6(2)*(b)* of the CGST Act *qua* the facts of the appellant's case, reliance was made to the decision in the case of *Kaushal Kumar Mishra* v. *Additional Director General, Ludhiana Zonal Unit* 2021-TIOL-387-HC-P&H-GST.

23. Reliance was placed on the decision in the case of *Siddhi Vinayak Trading Company* v. *UoI* [Writ Tax No.822 of 2020 dated 23th February, 2021 (HC-Allahabad)] wherein, the clarification issued by the CBEC dated 5th October, 2018, was referred to and the writ petition was filed challenging the summons issued by the Central tax authorities, where adjudication under section 74 of the CGST Act was made by the State authority and the challenge of such summon was rejected. On the above grounds, the learned senior standing counsel appearing for the Revenue prayed for sustaining the order passed in the writ petition.

24. We have elaborately heard the learned counsel appearing for the parties, considered the submissions made and the materials placed before us.

25. The challenge to the summons issued by the respondent being on the question of the jurisdiction of the respondent to issue summons, we may not be required to examine the facts regarding the search and seizure operations conducted against the appellant, the company, the directors, business premises, etc., and it would suffice to note that the State tax authorities had initiated action against the appellant, the company and its directors and others and those summons are not subject-matter of these proceedings and it appears that there was an interim order granted and certain directions issued in an appeal filed by the Department against the said order. There are separate set of cases filed against the orders of attachment, which were initially directed to be lifted by the Single Bench of this court and writ appeals have been preferred and orders and directions have been issued and the matter is at that stage *qua* the action initiated by the State tax authorities.

26. The argument of the learned senior counsel for the appellant is that since the State tax authorities had already initiated action, the impugned summons issued by the respondent, under section 70 of the CGST Act, is without jurisdiction. Further, it is submitted that the summons calls upon the appellant to tender statement by directing his physical appearance at New Delhi and during the time of pandemic, it will be a great risk for the appellant, who is aged more than 70 years, who has to travel over to Delhi by responding to the summons more particularly, when action had already been initiated by the State tax authorities and the jurisdiction of the authority to initiate action is subject-matter of challenge before this court in separate proceedings.

27. Firstly, we need to take note of whether the State tax authorities and

the Central tax authorities enjoy concurrent jurisdiction, the issue of cross-empowerment of the State tax authorities and the Central tax authorities. We have pointed out about the clarification relied on by the Revenue dated 5th October, 2018. Thus, the ambiguity with regard to the initiation of enforcement action by the State and the Central authorities has been lingering for quite some time and the matter having been brought to the notice of the GST Council, in its meeting held during January 2017, it was decided that both the Central and State tax administrations have the power to take intelligence-based enforcement action in respect of the entire value chain. Based on such decision of the GST Council, the CBEC issued clarification dated 5th October, 2018. Thus, this puts an end to the ambiguity and it is clear from the said clarification that if an intelligence-based enforcement action is taken against a taxpayer, which is assigned to State tax authority, the Central tax authority is entitled to proceed with the matter and take it to the logical conclusions and the same principle is applicable vice versa. This circular was referred to in *Siddhi Vinayak Trading Company* (*supra*) and the challenge was rejected by referring to the above clarification issued by the CBEC.

28. Section 6(2)*(b)* of the CGST Act states that where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject-matter, no proceedings shall be initiated by the proper officer under the CGST Act on the same subject-matter. The appellant's case rests upon the interpretation of the said provision. The key words occurring in section 6(2)*(b)*, *viz.*, "subject-matter" are required to be interpreted to consider as to whether the challenge to the summons impugned in the writ petition was maintainable.

29. Section 70 of the CGST Act, which has been invoked by the respondent while issuing summons, empowers the proper officer under the said Act to summon any person, whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

29.1 In terms of sub-section (2) of section 70, every such inquiry referred to in sub-section (1) of section 70 shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code.

30. The submission of the learned senior counsel for the appellant is that the State authority has conducted the search and seizure operations and summons had been issued, order of provisional attachment had been passed and in such situation, the respondent cannot initiate any action and issue summons under section 70 of

the CGST Act and the summons is barred as per the provisions of section 6(2)*(b)* of the CGST Act.

31. We need to take note of the word 'inquiry' occurring in section 70 of the CGST Act and the proper officer has power to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in any inquiry, in the same manner, as provided in the case of a Civil Court. The bar contained under section 6(2)*(b)* of the CGST Act is with regard to any proceedings initiated by a proper officer on a subject-matter, on the same subject-matter, the proper officer under the Central Act cannot initiate any action referred.

32. In our considered view, the scope of section 6(2)*(b)* and section 70 is different and distinct, as the former deals with any "proceedings on a subject-matter/same subject-matter" whereas, section 70 deals with power to summon in an inquiry and, therefore, the words 'proceedings' and 'inquiry' cannot be mixed up to read as if there is a bar for the respondent to invoke the power under section 70 of the CGST Act.

33. In *G K Trading Company* v. *Union of India* 2021-TIOL-31-HC-ALL-GST, upon considering the scope of section 6(2)*(b)* and section 70, it was pointed out that the word "proceedings" used in section 6(2)*(b)* is qualified by the words "subject-matter" which indicate an adjudication process/proceedings on the same cause of action and for the same dispute, which may be proceedings relating to assessment, audit, demands and recovery and offences and penalties, etc. It was further pointed out that these proceedings are subsequent to inquiry under section 70 of the CGST Act and the words "in any inquiry" are referable to the provisions under Chapter XIV, *viz.*, sections 67, 68, 69, 71 and 72. Thus, it was held that the proper officer may invoke power under section 70 in any inquiry and the prohibition under section 6(2)*(b)* shall come into play when any proceeding on the same subject-matter had already been initiated by a proper officer under the State Act. Therefore, the contention raised by the appellant stating that in issuance of summons for conducting an inquiry and to obtain a statement from the appellant cannot be construed to be bar under section 6(2)*(b)* of the CGST Act. Thus, the key words occurring in both the provisions, *viz.*, "in any inquiry" and "proceedings on the same-subject-matter" indicate the crucial difference between these two provisions.

34. It was argued that the summons impugned in the writ petition issued under section 70 of the CGST Act merely states that the appellant is required to attend to tender statement and the summons is absolutely vague.

35. Reliance was placed by the appellant on the decision in *RCT Industries & Technologies Ltd.* (*supra*) for sustaining the writ petition and that it is

maintainable as against the summons issued by the respondent. The challenge in the said case was a search action carried in the said assessee's business premises under section 67 of the Delhi Goods and Services Tax Act, 2017. The challenge to the action of search was on the ground that the assessee was put to harassment. The Central tax authorities had also conducted search and the search action was challenged in a writ petition, which was quashed and thereafter, the State GST authority has subjected the assessee to another search action in relation to the same period, despite the assessee being subjected to search action at the hands of the Central authorities and, therefore, it was argued that the search by the State authority is illegal and unlawful and contrary to the provisions of the Act. One of the issues, which was considered in the said case, was with regard to the cross-empowerment and taking note of the clarification issued by the CBEC dated 5th October, 2018 and also the letter dated 22nd June, 2020, the hon'ble Division Bench held that the Department shall be bound by the circulars and that the assessee therein would be at liberty to take action in case the action of the State and Central authority is overlapping. The hon'ble Division Bench had no occasion to examine the effect of section 6(2)*(b) qua* section 70 of the CGST Act. Furthermore, in the said decision, the distinction with regard to the words 'proceedings' under the CGST Act and an 'inquiry' was not the subject-matter. Therefore, the said decision can render no support to the case of the assessee. In the said decision, it was held that while exercising writ jurisdiction, the court cannot adjudge or test the adequacy or sufficiency of the grounds and can only go into the question and examine the formation of the belief to satisfy if the conditions specified under the statutory provision invoked or met. The factual matrix being entirely different in the said decision, it can render no assistance to the case of the assessee.

36. For all the above reasons, we find that there is no ground made out by the appellant for quashing the summons issued by the respondent under section 70 of the CGST Act.

37. In the result, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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