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GST LAW COMMUNIQUE

Volume 3
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Latest updates for the month of September 2024

Compliance Calendar for the month of October 2024

Due Date of Compliance	Compliance
10.10.2024	Monthly GSTR 7 for the month of September 2024 (TDS deductor)
	Monthly GSTR 8 for the month of September 2024 (TCS collector)
11.10.2024	Monthly GSTR 1 for the month of September 2024 (Regular Monthly Taxpayer)
13.10.2024	GSTR-1 for taxpayers under the QRMP scheme (July-Sept 2024)
13.10.2024	GSTR-5 for the month of September 2024 (Non-Resident Taxpayer)
13.10.2024	GSTR-6 for the month of September 2024 (Input Service Distributor)
18.10.2024	Statement of payment by composition dealer in CMP-08
20.10.2024	Monthly GSTR 3B for the month of September 2024 (Regular Monthly Taxpayer)
	Monthly GSTR 5A for the month of September 2024 (OIDAR service provider)
22.10.2024	GSTR-3B of quarterly filers for July to Sept 24 (Category I)
24.10.2024	GSTR-3B of quarterly filers for July to Sept 24 (Category II)
25.10.2024	Details of inputs and capital goods sent to a job worker in FORM ITC-04 for the period April to Sept 24
31.10.2024	Last date for opting in/out from QRMP

Category I: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep

Category II: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

Incorporating

- 1] Important Notifications
- 2] Important Circulars/Clarifications
- 3] Important Case laws, AAR, AAAR
- 4] Compliance calendar for the month of September 24



Article of the month**Invoice Management System (IMS)****A] Introduction :-**

GSTN has developed a new facility on the portal viz. Invoice Management System. This will allow recipients' Inward Invoices to appear on the portal & the recipient will be able to accept/reject/hold the Invoices appearing on the portal. This will also help the recipient to match his records with that of the supplier which will enable him to avail correct ITC. This facility will be available to the taxpayers w.e.f. 1st October 2024.

B] Important features of IMS :-

- 1] Once the suppliers save any invoice in GSTR-1 /IFF/IA, the same invoice would be reflected in the IMS dashboard of the recipient.
- 2] Only the accepted invoices by the recipients would become part of their GSTR-2B and will be eligible for availing ITC.
- 3] Invoice Management System enables taxpayers to efficiently address invoice corrections / amendments with their suppliers through the portal, a new communication process is being brought at common portal.
- 4] Recipient will have to take action like accept, reject etc. before filing his GSTR 3B for the relevant period. If he does not take any action within this time limit, then the suppliers' Invoices appearing on IMS dashboard will be deemed accepted.
- 5] In case, the supplier amends the details of a saved invoices in the GSTR-1 before filing the GSTR-1, in such cases the amended invoice will replace the original invoice in IMS, irrespective of the action taken by the recipient on the original invoice.
- 6] ITC in respect of the invoices which would be kept pending can be availed by taxpayers at any future point of time but not later than the limits prescribed by Section 16(4) of the CGST Act,2017 i.e. after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.
- 7] IMS will be a facility for the taxpayers and will not add any compliance burden on the taxpayers.
- 8] Following supplies will not go to IMS and will be directly populated in the GSTR-2B
 - a. Inward RCM supplies where supplier has reported in the Table 4B of IFF /GSTR-1 or GSTR-1A and
 - b. Supplies where ITC is not eligible due to section 16(4) of CGST Act or on account of Point of Supply rule.
- 9] All the accepted / deemed accepted/rejected records will move out of IMS dashboard after filing of respective GSTR-3B.
- 10] Pending records will remain on IMS dashboard and these records can be accepted or rejected in future months.
- 11] The liability of supplier will be increased in GSTR-3B for the subsequent tax period, for the invoices / records when have been rejected by the recipient in the IMS for the following transactions.
 - a) Original Credit note rejected by the recipient
 - b) Upward amendment of the credit note rejected by the recipient irrespective of the action taken by recipient on the original credit note
 - c) Downward amendment of the credit note rejected by the recipient if original credit note was rejected by him.
 - d) Downward amendment of Invoice / Debit note rejected by the recipient where original invoice / Debit note was accepted by him and respective GSTR-3B has also been filed.

A] Recommendation of 54th GST Council Meeting

The 54th GST Council meeting was held on 9th September, 2024 under the Chairpersonship of Smt. Nirmala Sitharaman, the Union Minister for Finance & Corporate Affairs in New Delhi. The Council recommended the following changes for the facilitation of trade and measures for streamlining compliances in the GST.

A. Changes/Clarifications in GST Tax Rates: Following changes are recommended in respect of goods and services

Goods:

- **Food Products:** GST rate of extruded or expanded products, savoury or salted (other than unfried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion), falling under HS 1905 90 30 (except unfried or uncooked snack pellets) reduced from 18% to 12% prospectively.
- **Cancer Drugs:** GST on drugs like Trastuzumab Deruxtecan reduced from 12% to 5%.
- **Metal Scrap:** Reverse Charge Mechanism (RCM) introduced for supply by unregistered persons to registered person. A TDS at 2% is payable by a registered person in B2B supplies.
- **Car and Motorcycle Seats:** GST on car seats raised from 18% to 28% prospectively, matching motorcycle seat rates.
- **Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways:** It is clarified that roof Mounted Package Unit (RMPU) Air Conditioning Machines for railways would be classified under HSN 8415 attracting a GST rate of 28%.**Services:**
- **Insurance:** A Group of Ministers (GoM) will review GST issues on life and health insurance and will submit the report by the end of October 2024.
- **Flying Training:** It is clarified that DGCA-approved flying courses are exempt from GST.
- **Research Services:** R&D services by a Government Entity; or a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 using Government or private grants are exempt from GST.
- **Preferential Location Charges (PLC):** It is clarified that location charges or Preferential Location Charges (PLC) are paid along with the consideration for the construction services of residential/commercial/industrial complex before issuance of completion certificate are composite supply and are eligible for same tax treatment as the main supply i.e. construction service.
- **Affiliation Services:** Affiliation services provided by educational boards like CBSE are taxable. However, affiliation services provided by State/Central boards or councils to government schools will be exempt prospectively. It is also clarified that Affiliation services provided by universities to their constituent colleges do not qualify for the exemptions available to educational institutions. Therefore, GST at the rate of 18% will apply to these services.
- **Import of service by branch Office:** Import of services by an establishment of a foreign airline company from a related person or any of its establishments outside India without consideration are made exempted from GST.
- **Renting of commercial property:** Renting of commercial property by unregistered person to a registered person will be now subject to payment of tax under RCM.
- **Ancillary/intermediate services are provided by GTA:** It is clarified that ancillary/intermediate services are provided by GTA are composite supply will be treated as part of the principle supply. In case these services are not provided as part transportation of goods and invoiced separately, then these services will not be treated as the composite supply of transport of goods.
- **Electricity related expenses:** The GST Council recommended exempting services such as application fees for electricity connections, rental charges for meters, testing fees for meters/transformers, labor charges for shifting meters or service lines, and charges for duplicate

bills. These services, when provided as part of the composite supply of electricity transmission and distribution, will be exempt from GST. Additionally, the GST liability for the past period will be regularized on an "as is where is" basis.

B. Trade Facilitation Measures:

- **Introduction of rules and procedures for waiver of interest or penalties for tax demands from FYs 2017-18 to 2019-20:** Rule 164 is recommended to be inserted in CGST Rules along with the necessary forms providing for the procedure and conditions for availment of benefit of waiver of interest or penalty or both, relating to tax demands under section 73 of CGST Act, pertaining to FYs 2017-18, 2018-19 and 2019-20, as per section 128A of CGST Act. It is also recommended that Section 128A may be notified w.e.f. 01.11.2024.
- **Providing a mechanism for implementation of newly inserted sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017:** The GST Council recommended Sections 118 and 150 of the Finance (No. 2) Act, 2024 should be notified at the earliest, which retrospectively inserts sub-sections (5) and (6) into Section 16 of the CGST Act, 2017, effective from 1st July 2017.

The Council also proposed a special procedure for rectifying orders issued under Sections 73, 74, 107, or 108 of the CGST Act, which confirmed demands for wrongful input tax credit (ITC) claims due to non-compliance with Section 16(4). This rectification process would apply to cases where the ITC is now valid under the newly inserted sub-sections (5) and (6), and where no appeal has been filed. The Council also recommended issuing a circular to clarify the procedures and issues regarding the implementation of these provisions.

- **Amendment in refund rules i.e. Rule 89 & 96:** The GST Council recommended that if imported inputs, initially exempt from IGST and compensation cess under Notifications 78/2017 and 79/2017, later have the IGST and cess paid with interest and the Bill of Entry reassessed by Customs authorities, the refunded IGST on exports will not be considered in violation of rule 96(10) of the CGST Rules.

Additionally, due to difficulties faced by exporters under refund restrictions imposed by rules 96(10), 89(4A), and 89(4B) of the CGST Rules, the Council recommended the prospective removal of these rules to simplify and expedite the refund process for such exports.

The Council also recommended amendments in some other provisions of CGST Rules, 2017

- **Clarification on certain aspects:** The council has recommended to issue a clarification on the following aspects-
 - i. Clarification on the Place of Supply of advertising services provided by Indian advertising companies to foreign entities.
 - ii. Clarification regarding availability of Input Tax Credit on demo vehicles by the dealers of the vehicle manufacturers.
 - iii. Clarification on Place of Supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India
- **New e-invoicing pilot program for B2C transactions to enhance retail efficiency and transparency:** The Council has recommended to implement a pilot for B2C e-Invoicing for better efficiency in b2c transactions.
- **Introduction of new ledgers and an Invoice Management System (IMS) to improve input tax credit reconciliation:** The GST Council discussed enhancements to the existing GST return system, which include the introduction of three key features: a Reverse Charge Mechanism (RCM) ledger, an Input Tax Credit (ITC) Reclaim ledger, and an Invoice Management System (IMS). Taxpayers can declare their opening balances for these ledgers by 31st October 2024.

The IMS will allow taxpayers to accept, reject, or keep invoices pending in relation to availing ITC. This optional feature aims to minimize errors in claiming ITC and improve reconciliation, ultimately reducing the number of notices issued for ITC mismatches in GST returns.

B] Important Notifications (Rate)

No new rate Notifications are issued during the month

B] Important Notifications

A] Provisions of Finance (No. 2) Act, 2024 are made effective : Certain provisions of Finance (No. 2) Act, 2024 are made effective w.e.f. 27th September, 2024 and 01st November, 2024 as under-

Finance Act Section	CGST Section	Particulars	Inserted w.e.f.
Section 114	Section 9	Amendment to Section 9, which deals with the levy and collection of CGST	01-11-2024
Section 115	Section 10	Amendment to Section 10, which relates to the composition scheme for taxpayers under GST.	01-11-2024
Section 116	Section 11A	insertion of Section 11A, addressing the non-recovery of tax not levied due to general practice.	01-11-2024
Section 117	Section 13	Amendment to Section 13, related to the time of supply of services under the CGST Act.	01-11-2024
Section 118	Section 16	Amendment to Section 16, regarding eligibility and conditions for Input Tax Credit (ITC).	27-09-2024
Section 119	Section 17	Amendment to Section 17, dealing with restrictions on ITC.	01-11-2024
Section 120	Section 21	Amendment to Section 21, which addresses issues regarding registration cancellation	01-11-2024
Section 121	Section 30	Amendment to Section 30, concerning revocation of cancellation of registration.	01-11-2024
Section 122	Section 31	Amendment to Section 31, which involves the time limit for issuing invoices.	01-11-2024
Section 123	Section 35	Amendment to Section 35, pertaining to records and accounts that must be maintained by taxpayers.	01-11-2024
Section 124	Section 39	Amendment to Section 39, related to the furnishing of returns under the CGST Act.	01-11-2024
Section 125	Section 49	Amendment to Section 49, concerning the manner of utilizing ITC.	01-11-2024
Section 126	Section 50	Amendment to Section 50, which deals with interest on delayed payment of tax.	01-11-2024
Section 127	Section 51	Amendment to Section 51, regarding tax deduction at source (TDS) under GST.	01-11-2024
Section 128	Section 54	Amendment to Section 54, related to refunds under the CGST Act.	01-11-2024
Section 129	Section 61	Amendment to Section 61, which deals with scrutiny of returns	01-11-2024
Section 130	Section 62	Amendment to Section 62, related to assessment of non-filers of returns.	01-11-2024
Section 131	Section 63	Amendment to Section 63, regarding assessment of unregistered persons.	01-11-2024
Section 132	Section 64	Amendment to Section 64, concerning summary assessment.	01-11-2024
Section 133	Section 65	Amendment to Section 65, related to audit by tax authorities.	01-11-2024
Section 134	Section 66	Amendment to Section 66, concerning special audit provisions.	01-11-2024

Section 135	Section 70	Amendment to Section 70, related to the power to summon persons for evidence.	01-11-2024
Section 136	Section 73	Amendment to Section 73, dealing with determination of tax not paid, short-paid, or erroneously refunded.	01-11-2024
Section 137	Section 74	Amendment to Section 74, which deals with the determination of tax for cases involving fraud or suppression.	01-11-2024
Section 138	Section 74A	Insertion of Section 74A, addressing tax determinations from FY 2024-25 onwards.	01-11-2024
Section 139	Section 75	Amendment to Section 75, related to general provisions on determination of tax.	01-11-2024
Section 140	Section 104	Amendment to Section 104, concerning the appeals process under the CGST Act.	01-11-2024
Section 141	Section 107	Amendment to Section 107, related to appeals to the Appellate Authority.	01-11-2024
Section 142	Section 109	Amendment to Section 109, which addresses the establishment of the Appellate Tribunal.	27-09-2024
Section 143	Section 112	Amendment to Section 112, concerning the appeals process to the Appellate Tribunal.	01-11-2024
Section 144	Section 122	Amendment to Section 122, which deals with penalties under the CGST Act.	01-11-2024
Section 145	Section 127	Amendment to Section 127, related to the imposition of penalties for certain offenses.	01-11-2024
Section 146	Section 128A	Insertion of Section 128A, providing conditional waiver of interest and penalty for certain demand notices.	01-11-2024
Section 147	Section 140	Amendment to Section 140, concerning transitional provisions for Input Tax Credit.	01-11-2024
Section 148	Section 171	Amendment to Section 171, related to anti-profiteering measures under the CGST Act	27-09-2024
Section 149	Schedule III	Amendment to Schedule III, dealing with activities or transactions that are neither supply of goods nor services for Insurance premiums.	01-11-2024
Section 150	Refund Limitations	Restriction of Refund pertaining to ITC reversal.	27-09-2024

[Notification No17/2024 Central Tax dt. 27th September 2024]

C] Important Circulars

1] Clarification in respect of advertising services provided to foreign clients: Following clarifications are given in respect of advertising services provided by Indian advertising companies/agencies to foreign clients

- It is clarified that Indian advertising agencies working on a principal-to-principal basis with foreign clients (i.e., offering comprehensive services, including media space procurement) are not considered intermediaries. As such, these services do not fall under the "intermediary" definition in Section 2(13) of the IGST Act.
- Even if the foreign client has a representative or target audience in India, the foreign client is regarded as the recipient of the services. The presence of a representative or the target audience in India does not change the recipient status under Section 2(93) of the CGST Act.
- Advertising services provided to foreign clients are not considered "performance-based" under Section 13(3) of the IGST Act. Therefore, the default rule under Section 13(2) applies, meaning the place of supply is the location of the recipient, confirming that these services are exports.

[Circular No. 230/24/2024-GST dt. 10th September, 2024]

2] Clarification in respect of the demo vehicle: Following clarifications are given in respect of demo vehicles-

- **Eligibility for ITC:** Demo vehicles, used by authorized dealers for test drives and demonstrations, are considered to promote the sale of similar vehicles. Therefore, ITC on these demo vehicles is **not blocked** under Section 17(5) of the CGST Act, as they fall under "further supply" of similar motor vehicles.
- **Non-Eligibility for ITC:** If a demo vehicle is used for purposes other than selling similar vehicles (e.g., for staff transport or when the dealer acts only as an agent for the manufacturer), ITC will not be available.
- **Capitalized Demo Vehicles:** When demo vehicles are capitalized in the books of accounts, ITC can still be claimed, provided the dealer does not claim depreciation on the tax component under the Income Tax Act.

[Circular No. 231/25/2024-GST dt. 11th September, 2024]

3] Clarification on the place of supply on hosting services: Following clarifications are given with respect to place of supply in case of hosting services-

- It is clarified that data hosting service providers (DHSPs) are not considered intermediaries under Section 2(13) of the IGST Act, 2017. DHSPs provide services directly to cloud computing service providers (CCSPs) on a principal-to-principal basis, managing all operational aspects (infrastructure, software, hardware, power supply, etc.) of the data center without interacting with the end-users of CCSPs. Therefore, these services are not covered under the intermediary provisions of Section 13(8)(b) of the IGST Act.
- The circular also clarified that the services provided by DHSPs are not related to any goods "made available" by CCSPs, as required under Section 13(3)(a). DHSPs operate independently, managing all infrastructure themselves, even when some hardware is provided by CCSPs. Therefore, the place of supply cannot be determined based on this provision.
- The circular clarified that the data hosting services are not directly linked to immovable property, despite being hosted on physical premises. Therefore, the place of supply cannot be determined under Section 13(4) of the IGST Act. As a result, the general rule under Section 13(2) applies, which means that if the recipient (CCSP) is located outside India, the place of supply will be outside India, potentially qualifying as an export of services.

4] Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017: Circular provides clarification on the regularization of Integrated Goods and Services Tax (IGST) refunds for exporters who had initially imported certain inputs without paying IGST and compensation cess, as per Rule 96(10) of the CGST Rules, 2017. The circular clarifies the following-

- The circular clarifies that if exporters initially imported inputs without paying IGST and compensation cess by availing of certain exemptions, but subsequently paid these taxes along with interest, their IGST refund on exports would not be considered in violation of Rule 96(10). This is allowed even if the exemptions were utilized for the Basic Customs Duty (BCD) but not for IGST.
- It is clarified that for claiming the refunds, exporters must ensure that their Bill of Entry is reassessed by the jurisdictional Customs authorities to reflect the payment of IGST and compensation cess.

D] Important Instructions

1] Reference to TRU in case of interpretation issues: An instruction is given that when auditors encounter issues where differing interpretations of the GST Act or Rules exist, particularly those linked to established trade practices, they should refer the matter to the relevant policy wing of the CBIC before finalizing their audit conclusions.

The instruction underscores the need for auditors to collaborate with the zonal Chief Commissioner and submit a detailed reference for guidance before concluding their audit, especially when litigation risks are high.

E] Important Case Laws

1]Ramaraj Constructions Vs. State Tax Officer, Thanjavur:-2024(88)G.S.T.L.5 :- Madras High Court-

Penalty - Tax or ITC involving fraud, etc. - Building contractor - Period 2017-18 to 2021-22 - Petitioner filed writ petition challenging penalty order and submitted that it was a small time building contractor and had committed certain mistakes, but, had paid disputed tax together with interest and that 100 per cent penalty that had been levied was usurious - **HELD** : Tax amount was paid on date of inspection which was long after due date for payment for respective assessment years - There was no scope for any reduction of penalty contrary to Section 74 of TNGST Act, 2017 - Writ petitions were to be dismissed with liberty to petitioner to file statutory appeal [Section 74 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017.

2]Atulya Minerals Vs.Commissioner of State Tax, Cuttak :- 2024(88) G.S.T.L.9 :-Cuttak High Court-

Input tax credit - Electronic Credit Ledger - Conditions of use of available amount - Jurisdictional authority - Petitioner-assessee filed writ petition seeking to quash letter issued by Deputy Commissioner of State Tax and to declare that blocking of ITC in question was bad in law - It was contended by assessee that impugned orders having been passed by Deputy Commissioner of State Tax, CT and GST Enforcement, said orders could not be sustained in eye of law as he had no jurisdiction to pass such orders - He further contended that orders impugned was also passed without complying principles of natural justice, for which same should be quashed - **HELD** : As per Rule 86A(1) of OGST Rules, 2017, Commissioner or an officer authorized by him in this behalf, not below rank of an Assistant Commissioner, can pass order - In instant case, impugned orders having been passed by Deputy Commissioner, who was higher in rank to Assistant Commissioner, it was well within his jurisdiction to pass such orders - In view of such position, claim made by assessee that orders impugned had been passed by an officer having no jurisdiction, could not be sustained in eye of law [Section 16 of Central Goods and Services Tax Act, 2017/Odhisha Goods and Services Tax Act, 2017 - Rule 86A of Central Goods and Services Tax Rules, 2017/Odhisha Goods and Services Tax Rules,2017.

3]Acme Fab-Con India Pvt.Ltd.-2024(88) G.S.T.L.12- Madras High Court-

Demand - Tax and ITC not involving fraud - GSTR-3B and GSTR-2A, mismatch - Show cause notice - Principles of natural justice - Assessee in instant case had asserted that it had engaged services of a part time consultant to handle GST compliances and that it was unaware of proceedings culminating in impugned order because intimation and show cause notice were uploaded on 'View Additional Notices and Orders' tab on GST portal and not communicated to assessee by any other mode - On examining impugned order, it was clear that confirmed tax proposal pertained to mismatch between GSTR-3B returns and auto-populated GSTR-2A - Such tax proposal was confirmed because petitioner did not reply to show cause notice - **HELD**: Interest of justice warranted that petitioner be provided an opportunity to contest tax demand on merits, albeit by putting petitioner on terms - Therefore, impugned order was to be set aside and matter was to be remanded for reconsideration [Section 73 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017 - Article 226 of Constitution of India].

4] Murugan Metals Vs.State Tax Officer, Chennai-2024(88) G.S.T.L.30- Madras High Court-

Assessment - Annual return - Assessee had made an inadvertent error while filing annual return by choosing Column 6(D) instead of Column 6(B) which resulted in tax proposal - However, assessee was unaware of impugned order until bank attachment notice was served on it - **HELD**: Assessee was required to be provided reasonable opportunity to contest tax demand on merits - Petitioner has also failed to subsequently participate in proceedings or file reconciliation statement in GSTR 9C - In these circumstances, while reconsideration is necessary, it is also necessary to put petitioner on terms - Impugned order was to be set aside on condition that assessee remits 5 per cent of disputed tax demand and was to be provided an opportunity to submit additional documents, if any [Section 44 read with Section 73 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017.

5]Haarine Associates Vs.Asst.Com.(ST), Chennai-2024(88) G.S.T.L.34- Madras High Court-

Demand and Recovery - Opportunity to contest demand - Violation of natural Justice - Assessment period 2017-2018 - Adjudicating Authority had imposed tax liability on assessee on difference between turnover reflected in Form 26AS and turnover reflected in assessee's GST returns for assessment period 2017-2018 - Assessee explained this difference by pointing out that period running from 1-4-2017 to 30-6-2017 did not fall within GST period - However, impugned order was issued without hearing assessee on this aspect -Therefore, impugned order was to be set aside subject to condition that assessee remits 10 per cent of disputed tax demand and was permitted to submit a reply to show-cause notice - Bank attachment was to be raised [Section 73 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017.

6] The Tile Bros. Vs. Assistant Com.(S.T.),Coimbatore – 2024(88)G.S.T.L.37- Madras High Court-

Demand of tax - GSTR 3B and GSTR 2A, mismatch - Natural justice - Tax proposal pertaining to mismatch between GSTR-3B returns and GSTR-2A was confirmed as petitioner did not respond to show cause notice or attend personal hearing - Petitioner submitted that he was unaware of proceedings as intimation, show cause notice and impugned order were uploaded on "View Additional Notices and Orders" tab on GST portal and not communicated to petitioner through any other mode - Petitioner had paid a sum of Rs. 90,000 towards tax liability pursuant to impugned order - **HELD:** As respondent-revenue did not have instructions with regard to payment of Rs. 90,000 by petitioner respondent was directed to verify whether such payment was towards tax liability under impugned order - Subject to such verification, interest of justice warranted that an opportunity be provided to petitioner - Impugned order was to be treated as show cause notice and Adjudicating Authority was to be directed to issue a fresh order after considering reply of assessee [Section 74 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017.

7]P.S.Enterprises Vs.Union of India-2024(88)G.S.T.L.68- Delhi High Court-

Input tax credit - Denial of - Show cause noice - Violation of natural justice - A show cause notice was issued to assessee on grounds under separate headings i.e. excess claim of ITC, excess input tax credit (ITC) claimed on account of non-reconciliation of information and ITC claimed from cancelled dealers, return defaulters and tax non-payers - A detailed reply was filed by assessee to said notice giving response under each of heads with supporting documents - Impugned order was passed raising demand against assessee recording that assessee had not uploaded supporting documents in respect of cancelled dealer despite sufficient opportunity being given - **HELD :** If proper officer required further detailed same could have been sought from assessee, however no such opportunity was granted to assessee - Therefore, observation in impugned order was not sustainable for reasons that reply filed by assessee was a detailed reply with supporting documents - Matter was to be remitted [Section 16 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017.

8]TVL Muthu Packaging works Vs.Proper officer/Asst.Com.(ST), Chennai- 2024(88) G.S.T.L.105- Madras High Court-

Input tax credit - Apportionment of credit and blocked credit - Assessee assailed impugned order of tax proposal with respect to denial of input tax credit, by relying on sub-section (5) of Section 17 of CGST Act - Assessee submitted that it was unaware of proceedings culminating in impugned order because show cause notice and other communications were uploaded in GST portal but not communicated to assessee through any other mode - Assessee was ready to remit 10 per cent of disputed tax demand in cash as a condition for remand - **HELD :** Tax proposal was confirmed because assessee failed to reply to show cause notice - Since assessee was unable to participate on account of being unaware of proceedings, an opportunity was to be provided to assessee to contest demand on merits - Accordingly, impugned order was to be set aside [Section 17 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017.

9]Partha Pratim DasguptaVs.Joint Com.of State Tax- 2024(88) G.S.T.L.108 – Calcutta High Court-

Appellate authority - Appeals to - Condonation of delay - Assessee appealed against an order passed under Section 73(9) WBGST Act, 2017 which was delayed by 55 days - Appeal was accompanied with an application for condonation of delay - Appeal so filed was rejected by appellate authority taking plea of lack of jurisdiction to condone delay beyond one month - Assessee argued that Appellate

Authority ignored explanation provided in said application and relied solely on proviso to Section 107(4) ibid taking plea that it lacked jurisdiction to condone delays beyond one month after prescribed period - **HELD** : In case of S.K. Chakraborty & Sons [(2024) 15 Centax 172 (Cal.)], it was conclusively decided that appellate authority is competent to condone delays beyond one month of prescribed period for filing an appeal - Therefore, order rejecting appeal was to be set aside and appeal was to be restored to consider explanation provided by assessee in application for condonation of delay [Section 107 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017].

10] A.M.N.Life Pvt.Ltd. Vs.Union of India - 2024(88) G.S.T.L.114- Himachal Pradesh High Court-

Refund of tax - Manual filing v. e-filing of application - Period 2017-18 to 2020-21 - Assessee's applications for refund filed through e-mail was rejected on grounds that applications were not filed in Form RFD-01 and were not filed electronically - Assessee informed it got registered with GST in October, 2020 pursuant to acquisition of a business undertaking, hence refund applications could not be filed through online mode within time - However, Respondent authority placed reliance on C.B.I. & C. Circular No. 125/44/2019-GST, dated 18-11-2019 which mandates that refund applications to be filed only electronically with effect from 26-9-2019 - **HELD** : Rule 97A of CGST Rules specifically permits manual filing of applications and a circular cannot go contrary to a rule framed - Accordingly, respondent ought not to have rejected applications for refund filed manually - Accordingly, impugned order was to be set aside [Section 54 of Central Goods and Services Tax Act, 2017/Himachal Pradesh Goods and Services Tax Act, 2017 - Rule 97A of Central Goods and Services Tax Rules, 2017/Himachal Pradesh Goods and Services Tax Rules, 2017].

Refund of tax - Condition of precedent - Requirement of registration - Period 2017-18 to 2020-21 - Assessee's applications for refund were rejected on ground that assessee was not registered person at relevant point of time as assessee got registered with GST in October, 2020 pursuant to acquisition of a business undertaking - **HELD** : Section 54(1) of CGST Act permits any person to make an application for refund of tax - Therefore, respondent authority could not have refused to entertain application for refund on ground that assessee was not a "registered" person at relevant point of time - Further, respondent should have taken note of Rule 41 of CGST Rules which deals with instances of transfer of credit on amalgamation/merger etc. of businesses/companies - Therefore, impugned order was to be set aside [Section 54 read with Section 18 of Central Goods and Services Tax Act, 2017/Himachal Pradesh Goods and Services Tax Act, 2017 - Rule 41 of Central Goods and Services Tax Rules, 2017/Himachal Pradesh Goods and Services Tax Rules, 2017].

11] Sujit Das Vs.Senior Joint Com.of Revenue, State Tax., Jalpaiguri- 2024(88) G.S.T.L.137- Calcutta High Court-

Appeals to Appellate authority - Limitation period - Condonation of delay - Rejection of application - Aggrieved with determination under Section 74 of WBGST Act, 2017, assessee had filed appeal under section 107 ibid - Since appeal was filed beyond period of limitation i.e. filed beyond one month, beyond prescribed period of limitation as provided for in Section 107(4) ibid same was accompanied with an application under Section 5 of Limitation Act, 1963 - Appellate Authority rejected application for condonation of delay and subsequently disposed of appeal - Assessee contended that Appellate authority by overlooking fact that assessee had made out sufficient ground for condonation of delay, inter alia, observing that there was no scope for condoning delay beyond 4 months, had rejected application for condonation of delay of assessee - **HELD** : Supreme Court in its judgment had held that in absence of non obstante clause rendering Section 29(2) of Limitation Act 1963, non-applicable and in absence of specific exclusion of Section 5 of Limitation Act, 1963, it would be improper to read implied exclusion thereof - Having regard to same, Appellate Authority was not denude of its power to condone delay beyond one month from prescribed period of limitation - Appellate authority had failed to exercise jurisdiction in refusing to entertain application under section 5 of Limitation Act, 1963, since same was filed beyond one month, beyond prescribed period of limitation as provided for in Section 107(4) ibid - Thus, order passed by Appellate Authority refusing to condone delay was to be set aside - Delay in preferring appeal was to be condoned and appeal was to be restored to its original file and number [Section 107 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 - Section 5 of Limitation Act, 1963].

12] Kamla Vora Vs. Sales Tax Officer, Avato- 2024(88) G.S.T.L.216- Delhi High Court-

Service of notice - Show cause notice - Notice uploaded in category of 'Additional Notices' - Thus, assessee impugned order passed under Section 79 of CGST Act pursuant to impugned show cause notice - Impugned SCN was uploaded on portal in category of 'Additional Notices' instead of 'Notices', which was not easily accessible - Accordingly, impugned SCN was not received by assessee and, therefore, she neither filed a reply nor appeared before concerned authorities - HELD : Uploading of notices under heading 'Additional Notices' would not be sufficient service of notice in terms of Section 169 of CGST Act - Therefore, impugned order was to be set aside [Section 169 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017].

13]Shri Narayan Corporation Vs.Union of India - 2024(88) G.S.T.L.249- Madras High Court-

Levy and Collection - Ocean freight - Reverse Charge method - Impugned order-in-original was passed concluding that on ocean freight incurred assessee was liable to pay GST under RCM along with interest - It was submitted by both parties that issue was squarely covered in favour of assessee in terms of decision of Supreme Court in Mohit Minerals (P.) Ltd. 2022 (61) G.S.T.L. 257 (S.C.) - HELD : In view of aforesaid judgment (supra), demand towards IGST on ocean freight under Section 73 of CGST Act, 2017 and interest thereon was to be set aside in favour of assessee [Section 5 of Integrated Goods and Services Tax Act, 2017 - Section 73 of Central Goods and Services Tax Act, 2017].

14]Sai Manikanta Electrical Contractors Vs. Deputy Com., Visakhapatnam-II - 2024(88)GSTL 303- Andhra Pradesh High Court-

Service of notice - Document Identification Number (DIN) - Case of assessee was that impugned proceedings were initiated but same did not contain DIN - It was contended that without generating DIN, impugned proceedings had been issued which was contrary C.B.I. & C. to Circular No. 122/41/2019-GST, dated 5-11-2019 - HELD : Impugned proceedings issued by respondent-authority without generating DIN number would have no legs to stand in eyes of law and same was liable to be set aside [Section 169 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017..

F] GST portal updates

1] Invoice Management System: To enable taxpayers to efficiently address invoice corrections/amendments with their suppliers through the portal, a new communication process called the Invoice Management System (IMS) is being brought up at portal. This will also facilitate taxpayer in matching of their records/invoices vis a vis issued by their suppliers for availing the correct Input Tax Credit (ITC) and shall allow the recipient taxpayers to either accept or reject an invoice or to keep it pending in the system, which can be availed later

2] Advisory on Reporting of supplies to un-registered dealers in GSTR1/GSTR 5: Vide Notification No. 12/2024 - Central Tax dated 10th July, 2024, the Government has reduced the threshold limit for reporting of invoice wise details of inter-state taxable outward supplies made to unregistered dealers from 2.5 Lakh to 1 Lakh which needs to be reported in Table 5 of Form GSTR-1 and Table 6 of GSTR-5. In accordance with the new legal provisions, this change is currently under development on the portal and would be available to the taxpayers shortly.

Further, till the time the functionality is made available on portal, it is advised to continue reporting the invoice wise details of taxable outward supplies to unregistered dealers which are more than 2.5 Lakhs in the Table 5 of Form GSTR-1 and Table 6 of GSTR-5.

3] Re-opening of Reporting ITC Reversal Opening Balance: The Government, through Notification No. 14/2022-Central Tax dated 5th July 2022 and Circular 170/02/2022-GST dated 6th July 2022, introduced changes to Table 4 of Form GSTR-3B regarding the availment and reversal of Input Tax Credit (ITC), as well as the reporting of re-claimed and ineligible ITC. ITC that had been reversed in Table 4(B)2 can now be reclaimed under Table 4(A)5, provided the required conditions are met. Additionally, such reclaimed ITC must also be reported in Table 4D(1). To aid taxpayers in the accurate reporting of ITC reversals and reclaims, the GST portal introduced a new "Electronic Credit Reversal and Re-claimed Statement" from August 2023 for monthly filers and from the July-September 2023 quarter for quarterly filers. Taxpayers are allowed to report their cumulative ITC reversal as an opening balance in this statement.

Further, taxpayers are given a final opportunity to report their cumulative ITC reversal as an opening balance in this statement before the ledger is locked. The functionality for reporting this balance is open from 15th September 2024 to 31st October 2024, with amendments permitted until 30th November 2024. Monthly filers must report reversals up to the July 2023 return period, while quarterly filers must report up to the April-June 2023 period. It is important to note that after this period, ITC reclaims will be restricted to the amount previously reversed, and taxpayers will not be allowed to reclaim ITC beyond the available balance in the new statement. It is advised to ensure that all data is reported accurately within the extended timeframe. For further details, taxpayers can refer to the advisory available at the provided link.

4] Draft Manual on Invoice Management System: In a significant leap forward in the Goods and Services Tax (GST) ecosystem, the GST Common Portal has unveiled a ground breaking new facility, the Invoice Management System (IMS), revolutionizing the way recipient taxpayers interact with invoices. This innovative feature empowers taxpayers to seamlessly accept, reject, or keep invoices pending in the system to avail later as and when required, streamlining the reconciliation process, and ensuring greater accuracy and efficiency in GST compliance.

The new system shall facilitate taxpayers in matching their records/invoices vis a vis issued by their suppliers for availing the correct Input Tax Credit (ITC). This facility is set to transform the way businesses manage their GST obligations, reducing errors, and saving time and resources.

5] Frequently Asked Questions on IMS: With the Introduction of Invoice Management System (IMS), the taxpayers interaction with invoices and business processes will change. This innovative feature empowers taxpayers to seamlessly accept, reject, or keep invoices pending in the system to avail later as and when required, streamlining the reconciliation process, and ensuring greater accuracy and efficiency in GST compliance.

6] Advisory on issuance of Notices/Orders without digital signatures of the issuing authorities: Doubts have been created regarding the validity of documents issued by the tax officers on the common portal viz. SCN/Orders without the Digital signatures on the pdf. document downloaded from the common portal. In this context, it is to be mentioned that such documents are generated on the common portal from the login of the officer, who logs in through Digital Signatures.

7] Restoration of GST Returns data on Portal: Please refer to the advisory issued on 24th September, 2024 regarding the archival of return data from the Common Portal after seven years. This data was archived in line with data archival policy. Data archival process was implemented on a monthly basis. Consequently, the return data for July, 2017 and August, 2017 was archived on 01st August and on 01st September respectively.

However, in view of the requests received from the trade due to the difficulties faced, data has been restored back on the portal. We recommend you to download and save the data if needed, as the archival policy shall be implemented again after giving advance information.

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