TAXCONNECT & CONSULT EASE
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CONSULTease™ TAXCONNECT

By -

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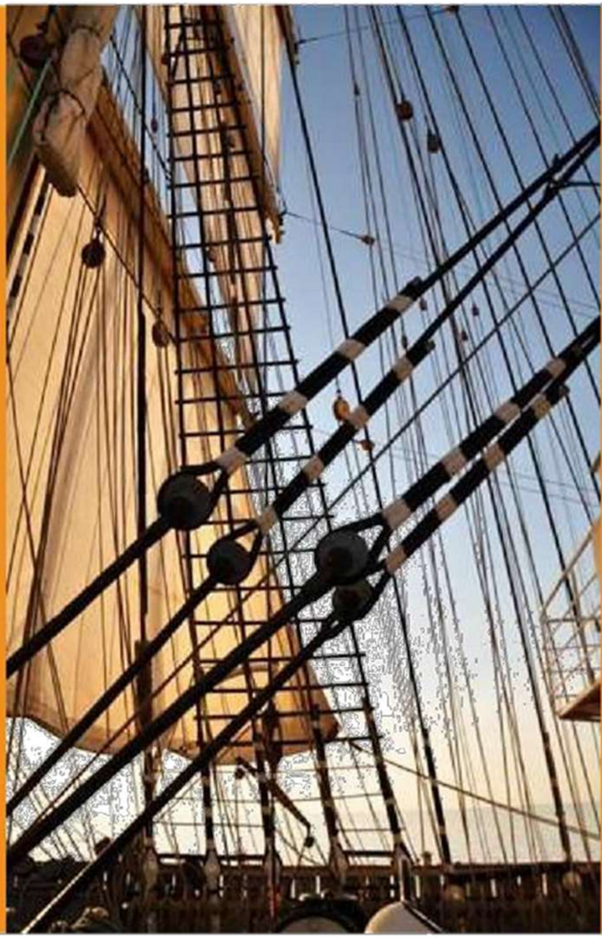
[MUMBAI BANGALORE KOLKATA DELHI]



Facing Blocked ITC

CAL- MRS REALTY PRIVATE LTD & ANR. Vs UNION OF INDIA & ORS

GST - **Petition challenging constitutional validity of Rule 86A of the CGST Rules and reading down of Section 16(2)(c) of the CGST Act**

HELD – Serve Notices to both Centre & State Govt.

In 'Arise India Limited and other v. Commissioner Of Trade & Taxes, Delhi And others' – SC held that the expression dealer or class of dealers occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices and where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression dealer or class of dealers in Section 9 (2) (g) is ***read down*** *in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.*

GUJ : M/s MILI ENTERPRISE Vs UNION OF INDIA

No notice served or the reasons for blocking the credit under Rule 86A provided

– HELD - Even if the powers are exercised under Rule 86(A) of the CGST Rules, 2017, then also, the **concerned authority is required to give reasons** for blocking the credits in the credit ledger of the petitioner - issue notice

KAR - M/s ARYAN TRADELINK Vs THE UNION OF INDIA

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GST - Rule 86A(3) - **Petitioner challenge the blocking of electronic credit ledger and its continuance beyond one year** - expiry period of blocking of electronic credit ledger –

HELD - ..the action of the respondents in continuing the blocking of electronic credit ledger is set aside and orders and restoring credit to the electronic credit ledger to be made forthwith – writ petition is allowed

Rule 86A...

Blocking of differential ITC availed

To

M/s.

Dear Taxpayer,

There is a difference between ITC availed by your good self in GSTR 3B and ITC available in GSTR-2A, from July 2017. Hence the differential ITC (GSTR3B-GSTR2A) is blocked.

You are requested to contact the jurisdictional Divisional CGST office to unblock the differential ITC along with proper justification for the same.

Please go through the Trade notice given by the &and also available on the site:

Thanking you.

…Rule 86A

(1) The officer … **not below the rank of an AC**… having **reasons to believe** on the following grounds that credit of ITC is **fraudulently availed or is ineligible** may block ITC -

a) ITC has been availed on invoices, etc -
i. issued by a person who has been found non-existent or not .. conducting .. business registered place
ii. without receipt of goods or services **or**

b) ITC has been availed on the strength of any document, the tax charged on which has not been paid to the Govt; or
c) The recipient is found non-existent or
d) The recipient does not possess the document

…

Defenses on a/c of Rule 86A being irregularly implemented

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1. From the email received, we understand that your honor has **no reason** to invoke Rule 86A of CGST Rules 2017. Just due to a prima-facie mismatch in ITC availed in GSTR3B vis-à-vis ITC available in GSTR2A, ITC has been blocked

2. The Conditions laid down u/r 86A are not satisfied in our case

3. Incase of any doubt, the same could have been asked by **means of a notice** rather than blocking ITC which can cause financial hardship to the tax payer.

4. Argue on the '**Doctrine of impossible performance**' and '**doctrine of reading down**' as laid down in Arise India Case

5. Argue on principles laid down in DY Beathel Enterprises (Mad) and Press Note dated 4th May 2018

6. Argue on the basis of Sec 42(3)

7. The detailed reason for such differences are explained and justified in our submission above and we hope that the same will suffice your requirement.

Guidelines on Rule 86A : Blocking of Credit
Kerela CIRCULAR No. 04/2021

1. ITC can be blocked on-

a. ITC availed without receipt of goods/services

b. Tax has not been paid to Govt on ITC invoices

c. Supplier non-existent

d. Document u/r 36 not available

2. More importance has to be given for situation **(a) and (c).** With regard to **(b)**, major cases should be identified from the red flag reports or other reports available in the backend. while taking figures from 2A, it shall be ensured that the 2A is updated

3. The authorized officer shall **determine the amount equivalent to such fraudulent** credit and shall block usage of such amount in the portal.

Guidelines on Rule 86A : Blocking of Credit
Kerela CIRCULAR No. 04/2021

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4. The authorized officer shall inform such blocking/ restriction of credit to the officer under whom the taxpayer is registered and also to the taxpayer whose credit has been blocked. Such intimation shall be send through e-mail to the registered mail id as soon as possible and also shall serve a hard copy of order to the taxpayer with proper acknowledgment.

5. ITC Blocking shall be subject to limitations imposed by law on cross- utilization of ITC

6. Any representation received from the taxpayer against blocking of ITC shall be **disposed** by the authorized officer within a reasonable time (say 15 days).

7. Blocking of credit under Section 86A is an **emergency** measure to prevent the taxpayer from using the credit availed fraudulently or ineligible credit taken.

8. ITC blocking is a **temporary step** and **should not be seen as equivalent to recovery of tax**. Action under section 73/74 is the full and final demand creation exercise as per GST Law. Both are mutually exclusive and SCN under section 73/74 should be issued immediately upon completion of investigation in all cases.

CHG : M/s BHARAT ALUMINIUM COMPANY LIMITED Vs UNION OF INDIA AND OTHERS

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Denial of Input Tax Credit on ground of mismatch of ITC in Form GSTR-3B with Form GSTR-2A

– As per the Press Release of 27th GST Council Meeting dated 04th May 2018, there shall not be any automatic reversal of Input Tax Credit of buyer on non-payment of tax by the seller

–Madras High Court judgement in M/s. D.Y. Beathel Enterprises held that if the default is made by non-payment of tax by the seller, the recovery shall be made from the seller

- Only in exceptional circumstances, it can be from the recipient
- **The Input Tax Credit which was claimed by the petitioner cannot be denied for the reason that the seller has not uploaded their invoices on time**

–Petition is admitted for hearing

ITC Issues

MAD : M/s ARS STEELS & ALLOY INTERNATIONAL PVT LTD Vs THE STATE TAX OFFICER

Interpretation Section 17(5)(h) of the CGST Act –whether reversal of Input Tax Credit is contemplated in relation to loss arising from manufacturing process

– 17(5)(h) of the CGST Act relates to **goods lost, stolen, destroyed, written off or disposed by way of gift or free samples**

- the manufacturing loss (normal & abnormal?) that is occasioned by the process of manufacture cannot be equated to any of the instances set out in Section 17(5)(h) of the CGST Act as it does not **involve external factors or compulsions**.

- A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself

CHG : BHARAT ALUMINIUM COMPANY LIMITED Vs STATE OF CHHATTISGARH & ORS.

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Eligibility of Input tax credit on coal to the extent used for generation of electricity and part of which is supplied in the township situated adjacent to plant

– Denial of input tax credit for the township is contrary to Section 16 of the CGST Act as township being integral part of the production as the factory itself is situated in the remote area

- Prima facie, reading of Section 16 which **takes within its sweep the furtherance of the business**, if the township is attached and placed in the remote area which is the **factual aspect which** requires to be ascertained in the further hearing.

- Considering the definition under Section 16 and Section 2(17) of the CGST Act, there shall be **stay** of the impugned order

GUJ : M/s COMSOL ENERGY PRIVATE LIMITED Vs STATE OF GUJARAT

Fate of GST on Ocean Freight – Do you go for Refunds?

Refund claim pursuant to High Court order declaring Notification No.8/2017-Integrated Tax (Rate) dated 28.06.2017 and the Entry No.10 of the Notification No.10/2017-Integrated Tax (Rate) dated 28.06.2017 as ultra vires and levy of IGST under the RCM on the Ocean Freight unconstitutional

– Rejection of refund and issue of Deficiency Memo on ground that the refund claims were not filed within the statutory time limit as provided under Sec. 54 of the CGST Act

– HELD - Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the SGST Act. The amount collected by the Revenue without the authority of law cannot be considered as tax collected and, therefore, Section 54 is not applicable - **Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under mistake of law** - The respondent is directed to process the refund claim filed by the applicant – writ application is allowed

GST & Customs Refunds

How to get refund of Excess BCD paid for non claiming Exemption

- File Appeal in terms of Sec u/s 128
  - Invoke Article 265
  - Invoke Shri Hari Chemicals Export Ltd. Vs. Union of India – 2006(193) ELT 257(S.C.)
  - Invoke Bennet & Coleman (CESTAT Bangalore)

- File Application in-terms of Section 149 of Customs Act 1962
  - **CESTAT-CHE : M/s LENOVO INDIA PRIVATE LIMITED Vs THE COMMISSIONER OF CUSTOMS, CHENNAI**

- **File Refund Application u/s 27 – See ITC Ltd Order**

CESTAT-AHM-CU : CMR NIKKIE INDIA PVT LTD Vs C.C. - AHMEDABAD

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Whether the appellant is required to file multiple appeals against Order-in-Appeal when there are multiple bills of Entry are involved

– In case there are number of bills of entry but for all the Bills of Entry if one order or decision is given then only one appeal will be sufficient.

- **However, as per explanation to the Rule 6A of CESTAT Procedure Rules 1982, when more than one Order-in-Original was passed assessee is required to file number of appeals as many as numbers of Orders-in-Original.**

- In the present case there is no single order covering 84 bills of entry was passed but the 84 bills of entry itself were challenged by filing 84 appeals before the Commissioner (Appeals). In this fact 84 bills of entry are as good as 84 assessment orders. Therefore, the appellant is required to file 84 appeals – the appellant is directed to file 83 more appeals

Effect of Foreign Exchange in Exports

Option-3- Foreign Exchange rate is reduced to ₹ 69/$ in the Final Shipping Bill (Export without payment of IGST)					
	Value as per Invoice		Value as per Shipping Bill		Foreign Exchange Rate
	Amount in ₹	Amount in $	Amount in ₹	Amount in $	
Taxable Value	70,00,000.00	1,00,000.00	69,00,000.00	1,00,000.00	₹69/$
IGST Rate	18%		18%		
IGST Amount	-		-		

Option-4- Foreign Exchange rate is increased to ₹ 71/$ in the Final Shipping Bill (Export without payment of IGST)					
	Value as per Invoice		Value as per Shipping Bill		Foreign Exchange Rate
	Amount in ₹	Amount in $	Amount in ₹	Amount in $	
Taxable Value	70,00,000.00	1,00,000.00	71,00,000.00	1,00,000.00	₹71/$
IGST Rate	18%		18%		
IGST Amount	-		-		

Effect of Foreign Exchange in Exports

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Option-1- Foreign Exchange rate is reduced to ₹ 69/$ in the Final Shipping Bill (Export with payment of IGST)					
	Value as per Invoice		Value as per Shipping Bill		Foreign Exchange Rate
	Amount in ₹	Amount in $	Amount in ₹	Amount in $	
Taxable Value	70,00,000.00	1,00,000.00	69,00,000.00	1,00,000.00	₹69/$
IGST Rate	18%		18%		
IGST Amount	12,60,000.00		12,42,000.00		

Option-2- Foreign Exchange rate is increased to ₹ 71/$ in the Final Shipping Bill (Export with payment of IGST)					
	Value as per Invoice		Value as per Shipping Bill		Foreign Exchange Rate
	Amount in ₹	Amount in $	Amount in ₹	Amount in $	
Taxable Value	70,00,000.00	1,00,000.00	71,00,000.00	1,00,000.00	₹71/$
IGST Rate	18%		18%		
IGST Amount	12,60,000.00		12,78,000.00		

SEZ provisions amended – Section 16 of the IGST Act

Section 16 of the IGST Act is being amended so as to:

(i) zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit **only when the said supply is for authorised operations**;

(ii) restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and

(iii) link the foreign exchange remittance in case of export of goods with refund.

Facility for exporters

CBIC provides facilitation for exporters having IGST refund issues 22.02.2021. The Central Board of Indirect Taxes and Customs (CBIC) has extended the time limit for sanction of pending IGST refunds in such cases where records have not been transmitted to ICEGATE due to GSTR1 and GSTR3B mismatch error. T**his overcomes the problem of refund blockage by allowing refunds subject to undertakings/submission of CA certificates by the exporters and post refund audit scrutiny. This facilitation was issued Vide Circular 04/2021 and would be applicable to all shipping bills filed up to 31.03.2021.**

The CBIC has also extended the facility for resolving invoice mismatch errors (**classified as SB-005 error**) through customs officer interface on permanent basis vide Circular 05/2021. Earlier this facility was provided for a limited period i.e. in respect of shipping bills filed up to 31.12.2019.

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

The CBIC has continuously taken a proactive approach to resolve issues faced by the trade. It is seen that a considerable number of exporters have been facing difficulties in getting their IGST refund sanctioned either due to lack of facility to amend GST 3B return or bona-fide clerical/human errors while filing the documents. With the endeavor of resolving all such pending IGST refund claims, CBIC has issued Circular 04/2021-Customs dated 16.02.2021 and Circular 05/2021-Customs dated 17.02.2021.

Invoke Rule 97A : Manual Filing of refunds

MEHAR TEX Vs THE COMMISSIONER OF CENTRAL GST AND CENTRAL EXCISE, MADURAI - MAD

- Due to error, the entire refund liability of ITC got auto populated under the head of SGST instead of CGST, SGST and IGST

- The petitioner had submitted the refund applications manually also.

- **If the petitioner was otherwise eligible to refund**, … the petitioner ought not to be denied relief

- the impugned orders are set aside to the extent they reject the refund claim of the petitioner made under CGST and IGST – the writ petitions stand allowed by remand

Procedural Lapse : Declaration of Intent in SBs

2021-VIL-316-GUJ-CU
ORIENTAL CARBON AND CHEMICALS LIMITED Vs UNION OF INDIA

Only lapse is with regard to inadvertent non-mention of declaration of intent in shipping bills as per Clause 3.14 of Handbook of Procedures during period between 1.4.2015 and 31.3.2015, i.e. during initial period of FTP, 2015-20

– As lapse being a technical or a procedural lapse, writ applicant should not be denied substantive benefits –

Customs : Benefit denial for Delay in procedure

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2021-VIL-178-CESTAT-BLR-CU
BULK LIQUID SOLUTIONS PVT LTD Vs BANGALORE-CUS

Customs - Can the department demand duty for non fulfillment of export obligation, incase of delay by DGFT in issue of EXPORT OBLIGATION DISCHARGE CERTIFICATE

Held by Bangalore CESTAT : No

TC Comments: The CBIC has also issued a Circular accepting Court Orders that substantiave claims cannot be denied for procedural lapses. In the same way, we have also argued a case where demand was madr due delay in endorsement of MEIS Licenses.

Recent Developments

Notification No. 28/2021 - Central Tax

Waiver of penalty for non-compliance of the provisions of Notification No.14/2020 - Central Tax relating to **Dynamic QR Code for B2C invoice** for the period 1st day of December, 2020 to the 30th day of September, 2021

Dynamic QR Code FAQs

1. Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017?

- Yes

2. UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID

- No

Dynamic QR Code FAQs

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3. In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided

- Yes.

4. In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India

- No.

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5. **In some instances of retail sales over the counter, the payment from the customer in received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number**

- the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice

6. **When part-payment has already been received by the merchant/ supplier, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for "invoice value‟**

- the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value".
- The details of total invoice value, along with details/ cross reference of the part-payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice

GUJ : YASHO INDUSTRIES LIMITED Vs UNION OF INDIA

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Scope of word 'proper officer' u/s 2(91) of the CGST Act

– as per the definition of 'proper officer' as contained in Section 2(91), a 'proper officer' means the **Commissioner or the officer of the Central Tax, who is assigned that function by the Commissioner**

- The officer of DGGI are proper officers in relation to the function to be performed under the CGST Act as contemplated under Section 2(91), and as such, was entitled to issue **summons** under Section 70 of the CGST Act in connection with the inquiry initiated against the petitioner

- The submission that the said assignment of function has to be by way of Notification and not by way of Circular in view of Section 167 of the CGST Act is thoroughly misplaced

2021-VIL-485-P&H : RAKESH GARG Vs STATE OF HARYANA AND ANOTHER

Can GST Authorities Lodge FIR?

- petitioner contends that he had ceased to be a Director of the Company and hence had no role to play in the affairs of the said Company

- Lodging of the FIR does not amount to prosecution and is clearly distinguishable from prosecution

- **trial of a case follows cognizance** and **cognizance has to be preceded by investigation. Till there is no chargesheet, there is no 'prosecution'**

- the Court is not inclined to quash the FIR in question by invoking its inherent power under Section 482 Cr.P.C – the petition stands dismissed

Circular No. 149/05/2021-GST : Clarification regarding applicability of GST on supply of food in Anganwadis and Schools

Q. whether serving of food in schools under Mid-Day Meals Scheme would be exempt if such supplies are funded by government grants and/or corporate donations.

Entry 66 clause (b)(ii) of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Services provided **to** an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory. This entry applies to pre-school and schools.

Aganwadi is covered by the definition of educational institution (as pre-school)

Services provided to an educational institution by way of serving of food (catering including mid-day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include aganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

Circular No.150/06/2021-GST: Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)

GST is exempt on service, falling under heading **9967** (service code), by way of access to a road or a bridge on payment of annuity [entry 23A of notification No. 12/2017-Central Tax]. Code **996742** covers "operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services".

Services by way of construction of road fall under heading **9954**. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities).

Said entry 23A does not apply to services falling under heading 9954 (it specifically covers heading 9967 only). Therefore, plain reading of entry 23A makes it clear that it does not cover construction of road services (falling under heading 9954), even if deferred payment is made by way of instalments (annuities).

Circular No. 151/07/2021-GST: Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)

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(i) GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution [under S. No. 66 (aa) of notif No. 12/2017-CT(R)]. Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.

(ii) **GST is also exempt on input services** relating to admission to, or conduct of examination, such as **online testing service, result publication, printing of notification for examination, admit card and questions papers** etc, when provided to such Boards [under S. No. 66 (b) (iv) of notif No. 12/2017-CT(R)].

(iii) GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorise them to provide their respective services

Circular No. 152/08/2021-GST: Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis

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Entry No 3 (vi) notification No. 11/2017-CT (R) does not apply to any works contract that is meant for the purposes of commerce, industry, business of profession, even if such service is provided to the Central Government, State Government, Union Territory, a local authority a Governmental Authority or a Government Entity.

Civil constructions, such as **rope way for tourism development shall not be covered** by said entry 3(vi) not being a structure that is meant predominantly for purposes other than business.

While road, bridge, terminal, or railways are covered by entry No. 3(iv) and 3(v) of said notification, structures like **ropeway are not covered** by these entries too.

Therefore, works contract service provided by way of construction such as of rope way shall fall under entry at sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%.

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Circular No. 153/09/2021-GST: GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS

Entry No. 3A would apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply.

It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis.

In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017).

Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

Circular No. 154/10/2021-GST: GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them

Entry No. 34A of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions."

Accordingly, as recommended by the Council, it is re-iterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is **specifically exempt** under said entry No. 34A.

Circular No. 155/11/2021-GST: Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System-regarding.

The intention of entry 8424 has been to cover laterals (pipes to be used solely with with sprinklers/drip irrigation system) and such parts that are suitable for use solely or principally with '**sprinklers or drip irrigation system**', as classifiable under heading 8424 as per Note 2 (b) to Section XVI to the HSN.

Hence, laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST of 12%, even if supplied separately.

However, any part of general use, which gets classified in a heading other than 8424, in terms of Section Note and Chapter Notes to HSN, shall attract GST as applicable to the respective heading.

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Inclusion of common names in the HSN Directory and its download in excel format by the taxpayers –

The currently available HSN Master has been updated on the GST Portal and it now includes product names commonly used in Trade corresponding to a particular HSN code.

- A download facility for the entire HSN directory in Excel Format has also been provided to the taxpayers under the link “Download HSN in Excel Format”. This facility is available as a part of the ‘Search HSN’ functionality, available both in Pre and Post Login, on the GST Portal

HSN Code	HSN Description
85171211	Mobile phone, other than push button type
85171219	Mobile phone, push button type

Cabinet approves Loan Guarantee Scheme for Covid Affected Sectors (LGSCAS) and to enhance the corpus of Emergency Credit Line Guarantee Scheme (ECLGS)

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- Loan Guarantee Scheme for Covid Affected Sectors (LGSCAS) enabling funding to the tune of Rs. 50,000 crore to provide financial guarantee cover **for brownfield expansion and greenfield projects** related to **health/ medical infrastructure**.

- Even for sectors/lenders **including those allied to better healthcare**.

- Detailed modalities would be finalized in due course.

- In addition, the Cabinet has also approved additional funding up to Rs. 1,50,000 crore under Emergency Credit Line Guarantee Scheme (ECLGS).

SC Suo Motto Order 23rd April 2021

MAD- HITACHI PAYMENT SERVICES (P) LTD Vs THE JOINT COMMISSIONER OF CENTRAL TAX (APPEALS - II)

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SC Suo Motto Order dated 27th April 2021 Applicable to GST Also

GST – Appeal before Appellate Authority, extension of period of limitation –

HELD - the impugned orders passed by the Jt. Commissioner (Appeals) are liable to be set aside in the light of the judgments of the Supreme Court wherein suo motu cognizance has been taken of the ongoing COVID-19 pandemic and limitation for various purposes including filing of statutory appeals is extended

– Respondent is directed to take it on file the appeals filed by the petitioner, hear the same and dispose the same on merits after hearing the petitioner – the writ petitions are disposed of

Intermediary Services

2021-VIL-458-BOM

DHARMENDRA M. JANI Vs UNION OF INDIA AND OTHERS

Challenge to Constitutional validity of 13(8)(b) and section 8(2) of the IGST Act, 2017 to the extent that it seeks to levy GST on services provided to, used and consumed by recipients located outside India and treating the same as intra-state supply leviable to GST

Per UJJAL BHUYAN, J. - The Constitution does not empower imposition of tax on export of services out of the territory of India by treating the same as a local supply.

Petitioner fulfils the requirement of an intermediary as defined in section 2(13) of the IGST Act. Further, all the conditions stipulated in sub-section (6) of section 2 for a supply of service to be construed as export of service are complied with. Therefore, it is an 'export of service' as is understood in ordinary common parlance

- section 13(8)(b) of the IGST Act read with section 8(2) of the IGST Act has created a fiction deeming export of service by an intermediary to be a local supply. It is apparent that section 9 of the CGST Act cannot be invoked to levy tax on cross-border transactions i.e., export of services.

-*Per ABHAY AHUJA, J.* - Having noted the Judgment and Order as pronounced by my Respected Learned Brother Shri Justice Ujjal Bhuyan, with greatest respect being unable to persuade myself to share the opinion of my Learned Brother, I would like to record my separate opinion in the matter - List the matter on 16th June, 2021 for pronouncement of my opinion

2020-VIL-341-GUJ

MATERIAL RECYCLING ASSOCIATION OF INDIA VS UNION OF INDIA

The person who is intermediary cannot be considered as exporter of services because he is only a broker who arranges and facilitate the supply of goods or services or both.

There is no distinction between the intermediary services provided by a person in India or outside India

There is no deeming provision as canvassed by the petitioner, there is stipulation by the Act legislated by the parliament to consider the location of the service provider of intermediary to be place of supply.

The provision of Section 13(8)(b) r/w Section 2(13) of the IGST Act, 2017 are not ultra vires or unconstitutional in any manner - While it is held that the provisions for intermediary services are constitutional, it would be open for the respondents to consider the re-presentation made by the petitioner to redress its grievance in suitable manner and in consonance with the GST provision

Intermediary Services – N. No. 9/2017 (IGST)(R)

[30] [12 AA	Heading 9961	Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory.	Nil	Following documents shall be maintained for a minimum duration of five years: 1) Copy of Bill of Lading 2) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods 3) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in non-taxable territory 4) Copy of certificate of origin issued by service recipient located in non-taxable territory 5) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory]

2021-VIL-224-AAR

DUBAI CHAMBER OF COMMERCE AND INDUSTRY

- Applicant is located in India and represents its Dubai Head Office and as a representative of the Dubai office,

- the applicant connects businesses in India with business partners in Dubai

- there is supply of services by the applicant to various businesses in India and Dubai and such supply is done by the applicant as an intermediary

- the applicant satisfies all the conditions of an intermediary – in terms of Section 13(8) of the IGST Act the place of supply in subject case of the applicant as an intermediary would be the location of the supplier of services

– activities under taken by the applicant is nothing but "Business". The term "Supply" and "Business" are defined under GST Act, in an inclusive manner and have wide connotations - Activities undertaken by the applicant are covered by the scope of word "Commerce", "Business" and also covered under the scope of "Supply"

– the applicant is required to obtain GST registration and pay applicable GST

Race Clubs

2021-VIL-445-KAR
BANGALORE TURF CLUB LIMITED Vs THE STATE OF KARNATAKA

GST – Section 2(1), 7(2), Schedule-III & Rule 31A(3) –

– Making the entire bet amount that is received by the totalisator liable for payment of GST would take away the principle that a tax can be only on the basis of **consideration**

- The consideration that the petitioners receive is by way of commission as totalisator. This can be nothing different from that of a **stock broker or a travel agent**, both of whom are liable to pay GST only on the commission income earned and not on all the monies that pass through them

- Rule 31A(3) insofar as it declares that the value of actionable claim in the form of chance to win in a horse race of a race club to be 100% of the face value of the bet is beyond the scope of the CGST Act

- Article 246A which introduced Goods and Services Act, the definitions and other provisions of the Act do not bring in the activity of the petitioners under the ambit of the Act

- Rule 31A(3) of the CGST Rules, 2017 as amended in terms of notification dated 23.01.2018 is declared ultra vires the provisions of the CGST Act, 2017 and quashed. Consequently, the Circular No.27/01/2018-GST dated 4.1.2018 is also quashed insofar as it concerns the petitioners – the writ petitions are allowed

Waybill Issue & TRAN Writs

2021-VIL-448-TEL : E-WAYBILL NOT RENEWED AFTER EXPIRY DOES NOT PROVE EVASION
M/s SATYAM SHIVAM PAPERS PVT LTD Vs ASST. COMMISSIONER ST AND 4 OTHERS

TAX CONNECT

There is no denial by the respondent of traffic blockage due to the agitation on 4.1.2020 up to 8.30 pm preventing the movement of vehicle, for otherwise the goods would have been delivered on that day itself

– it is also not in dispute that date 04.01.2020 was a Saturday, 05.01.2020 was a Sunday and next working day was only 06.01.2020

- there was no material before the respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill

- On account of non-extension of the validity of the e-way bill by petitioner or the driver, no presumption can be drawn that there was an intention to evade tax

- It was the duty of the respondent to consider the explanation offered by petitioner as to why the goods could not have been delivered during the validity of the e-way bill

- The respondents are directed to refund the amount collected from petitioner within four weeks with interest@ 6% p.a from the date when the amount was collected from petitioner till date of repayment - The respondent shall also pay costs of Rs.10,000 to the petitioner - the writ petition is allowed with cost

2021-VIL-436-DEL – ALL TRAN ONE PETITIONS ALLOWED IN BATCHES
SUPER INDIA PAPER PRODUCTS Vs UNION OF INDIA THROUGH MINISTRY OF FINANCE

TAXCONNECT

- In first batch of cases petitioners have genuinely attempted to file TRAN-1 Form within time and have also taken care to preserve some evidence which is now being relied upon in support of their contention

- Even though petitioners do not have any document to support their attempt in filing the TRAN-1 Form, the benefit has been given by this Court to similarly placed taxpayers in other matters. Accordingly, the said petitions are allowed

– petitioners were precluded from claiming their transitional credit on account of inadvertent error on their part due to filling in of wrong details or omissions - a genuine mistake should not result in the petitioners losing out on their accumulated credit which is protected by Article 300A of the Constitution. The lack of an effective revisional mechanism would leave the taxpayers remediless, which could not be the intention of the law – All the petitions in the first, second and third batch are allowed

- a genuine mistake should not result in the petitioners losing out on their accumulated credit which is protected by Article 300A of the Constitution. The lack of an effective revisional mechanism would leave the taxpayers remediless, which could not be the intention of the law – All the petitions in the first, second and third batch are allowed

Customs

Circular No. 12/2021-Customs : Implementation of the Sea Cargo Manifest and Transhipment Regulations

Board has decided that following messages by the Custodian i.e.,

1. Stuffing Message (SF)
2. ASR Filing
3. DP Filing
4. AR filing

by the Custodians and VCN message by the Terminal Operators will be made mandatory w.e.f. 20th July 2021. The detailed guidelines and FAQs for different categories of stakeholders are available on ICEGATE (https://www.icegate.gov.in/SeaManifestRegulation.html) and may be kindly referred to.

Circular No. 13/2021-Customs : Subject: - Online filing of AEO T2 and AEO T3 applications

- Updated version of the existing web application will be made accessible for both applicants and the customs officials from 07.07.2021 - https://www.aeoindia.gov.in/

- AEO T2 and AEO T3 applicants, on submission of the physical documents in the jurisdictional Principal Chief Commissioner/ Chief Commissioner's office (AEO Cell), shall register on AEO web application. the applicant shall upload the duly filled relevant annexures for their AEO T2 or AEO T3 application, as the case may be

- the applicant will be able to monitor the processing of their application at each stage in real time on their dashboard

- till 31.07.2021, the AEO T2 & AEO T3 applicants would be allowed to physically file AEO application without registering on the AEO portal as a transition measure. However, from 01.08.2021, it will be mandatory for AEO T2 and AEO T3 applicants to register on the portal for AEO certification.

2020-VIL-15-SC-CU : Customs – Valuation – Importation of turnkey projects
COMMISSIONER OF CUSTOMS (PORT) KOLKATA Vs M/s STEEL AUTHORITY OF INDIA LTD

– whether entire contract value have to be treated as the transaction value for the purpose of charging customs duty

- whether the basic design, drawings & technical documents and foreign supervision charges are liable to be added to the invoice values of imported equipment

- the provisions of Rule 9 (1) (e) cannot be automatically applied to every import which has surface features of a turnkey contract.

- the subject drawings and specifications did not relate to the equipments imported and was meant for post importation activities and there was no condition laid down that the import of the equipment were to be supplemented by post-importation work – there is no reason to interfere with the order of the Tribunal. The revenue appeal is dismissed

Guidelines for conduct of personal hearings in virtual mode under Customs Act, 1962
27.04.2020

TAXCONNECT

Broad guidelines to conduct such virtual hearing are being provided so that ongoing Customs work of appeals and adjudications are completed expeditiously for quick delivery of justice

1. The party should give **consent** and indicate his **email** address for correspondence etc.

2. The date and time of hearing along with a **link** for the video conference shall be informed in advance. This link should not be shared with any other person without the approval of the adjudicating/appellate authority.

3. The advocate should file his **vakalatnama** along with a copy of his photo ID card and contact details through official e-mail address of the concerned authority.

4. **The submissions made by the appellant or their representative through the video conference will be reduced in writing and a statement of the same will be prepared,** which shall be known as "record of personal hearing‟ and sent for modifications if any within 3 days.

5. **Additional submissions** during the virtual hearing may be done by self-attesting

DGFT

NOTIFICATION No. 11/2015-2020

Extension in period of modification of IEC till 31.07.2021 and waiver of fees for IEC updation during July, 2021

- An IEC holder has to ensure that details in its IEC is updated electronically every year, during April-June period. In cases where there are no changes in IEC details same also needs to be confirmed online

THANK YOU

CONSULTease™ TAXCONNECT

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