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THIS WEEK'S **GOODS AND SERVICE TAX REPORTS–ONLINE** VOLUME 12

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[IN THE MADRAS HIGH COURT]

NAVIN HOUSING AND PROPERTIES (P) LTD.

v.

DESIGNATED COMMITTEE UNDER SABKA VISHWAS LEGACY DISPUTES RESOLUTION SCHEME 2019 (JOINT COMMISSIONER OF GST AND CENTRAL EXCISE AND ASSISTANT COMMISSIONER OF GST AND CENTRAL) CHENNAI AND ANOTHER

DR. ANITA SUMANTH J.

July 27, 2020.

HF ▶ Assessee

SERVICE TAX—SHOW CAUSE NOTICE—ADJUDICATING ORDER—APPEAL—PRE-DEPOSIT—FINDING OF COMMISSIONER (APPEALS) THAT NOTICES COVERED OVERLAPPING PERIODS—PRE-DEPOSIT MADE FOR APPEAL AGAINST FIRST ADJUDICATING ORDER—APPEAL AGAINST SECOND ORDER TO BE ADMITTED—NO REQUIREMENT THAT DEPARTMENT SHOULD BE HEARD IN APPEAL BY COMMISSIONER (APPEALS)—SABKA VISHWAS LEGACY DISPUTES RESOLUTION SCHEME, 2019, S. 124(1), (2)—FINANCE ACT (32 of 1994), S. 85—CENTRAL EXCISE ACT (1 of 1944), S. 35F.

The assessee was engaged in the construction and sale of residential apartments. The Service Tax Department issued show-cause notice dated October 12, 2011 calling upon the assessee to remit differential service tax for the periods December 2008 to January 2010 in regard to the services relating to two construction projects and computing the differential tax for the period December 2008 to March 2009 at Rs. 19,15,491. A second notice dated February 9, 2012 was thereafter issued calling upon the assessee to remit differential service tax for the same period, December 2008 to March 2009 and April 2009 to March 2010 and in respect of the same two projects. The differential tax was computed at figures of Rs. 19,18,375 and Rs. 9,98,350, the total demand being Rs. 29,16,716. As against the demand proposed in the first notice for an amount of Rs. 1,69,52,423, the assessee had remitted an amount of Rs. 99,94,773 and the deposit was appropriated by the adjudicating order as against the total demand. Proceedings under the second notice were initiated by a personal hearing dated February 28, 2016, four years after issue of the notice and the assessee by reply March 28, 2016, while objecting to the delay in initiating proceedings, pointed out that the receipts in regard to the same two projects sought to be brought to tax had suffered tax already

under the adjudication order passed in 2013. As regards the demand for the period April 2009 to March 2010 the assessee submitted that though there was an omission to return receipts of turnover in the service tax returns for the relevant period, the receipts had been duly included in the returns for the subsequent year, that is, 2010-11 and hence there was no short-payment. The assessing authority, notwithstanding the submissions, passed the adjudicating order dated October 14, 2016, reiterating the proposals under the second notice raising a demand for the same projects for two periods, viz., Rs. 19,18,373 in the second adjudicating order as against Rs. 19,15,471 under the first for the period December 2008 to March 2009, and Rs. 9,98,350 for the period April 2009 to March 2010 as against a demand of Rs. 80,74,333 under the first notice and the first adjudicating order which also covered the period till January 2009. The additional period covered under the second notice were the months of February and March 2010 alone. Against the first adjudicating order, the assessee filed an appeal before the Commissioner (Appeals) depositing Rs. 99,94,773 towards statutory pre-deposit. During the pendency of the appeal the Government announced the Sabka Vishwas Legacy Disputes Resolution Scheme, 2019. In terms of section 124(1) and (2) of the Scheme, the amount payable by an assessee shall take into account the amount of deposit made during enquiry or audit or investigation or pre-deposit made prior to institution of any statutory appeal. The assessee filed an appeal before the Commissioner (Appeals) challenging the second adjudicating order as well and since, according to the assessee, the demand raised in the second adjudicating order dated October 14, 2016 was a duplication of the demand already raised under the first adjudicating order, it did not effect the statutory pre-deposit, as a result of which, the appeal was returned as not maintainable. On a writ petition, the court directed the Appellate Commissioner to consider the claim of the assessee regarding duplication of demands set out under a representation dated December 16, 2016 and pass orders within a period of two weeks. This order was not complied with. Since the Scheme was announced during the pendency of the appeal, the assessee availed of the Scheme in respect of appeal challenging the second adjudicating order dated October 14, 2016 as well. However, the assessee's declaration under the Scheme was rejected directing the assessee to pay 30 per cent. of the disputed demand as computed under the Scheme, amounting to Rs. 8,75,014 by order dated December 6, 2019. On a writ petition the court impleaded the Commissioner (Appeals) and reiterated the direction to him to consider and dispose of the assessee's representation that a dual demand of service tax had been raised for the period December 2008 to January 2010 under two separate notices. In compliance with the direction the Commissioner (Appeals) disposed of the

assessee's representation finding that the demand of service tax to the extent of Rs. 19,18,375 out of the total demand of Rs. 29,16,716 in the notice dated February 9, 2012 was clearly duplicated and the assessee had already paid it and it had also been appropriated in the first adjudicating order dated January 30, 2013. The Commissioner (Appeals) therefore, held that the amount paid by the assessee to the extent of Rs. 19,18,375 for the period December 2008 to March 2009, which was appropriated by the first adjudicating order dated January 30, 2013, was well above the mandatory 7.5 per cent. of the total demand of Rs. 29,16,716, raised and confirmed, as required under section 35F of the Central Excise Act, 1944. Hence, he considered it a pre-deposit in terms of section 35F of the Central Excise Act, 1944, and admitted the appeal. Since the assessee had filed declaration under Scheme in respect of the appeal against the order on the second notice and had filed a writ petition on which the court had stayed the operation of the order dated December 6, 2019 rejecting the assessee's declaration under the Scheme, the Commissioner (Appeals) held that the appeal against the second adjudicating order was premature and therefore to be decided at a later stage :

Held, *allowing the petition, (i) that the Commissioner (Appeals) had rendered categorical findings of fact to the effect that (i) the projects dealt with under the two show-cause notices were the same, (ii) the period covered under the two show-cause notices were substantially common, viz., December 2008 to March 2009 and April 2009 to January 2010 and the additional months covered under the second notice were February and March 2010, (iii) the legal issue giving rise to the disputed demand was one and the same, (iv) the amounts in dispute as regards the first period were substantially the same, Rs. 19,18,373 in the second adjudicating order as against Rs. 19,15,471 in the first adjudicating order. As regards the second period, he stated that since there was no month wise break-up available, he was unable to render a finding in that regard. However his findings made it clear that the demands raised under the two notices and orders for period the second period were Rs. 80,74,333 (Rs. 99,90,274 less Rs. 19,15,941) and Rs. 9,98,350, respectively. He thus concluded that the amount of Rs. 19,18,375 appropriated by the revenue for the first period was above the mandatory 7.5 per cent. of the total demand of Rs. 29,16,716 raised under the second adjudicating order, thus rendering the appeal maintainable. Had this exercise been done within the time-frame fixed by the court on February 9, 2017, this controversy could have well been laid to rest by now.*

(ii) That there was no provision in section 85(5) of the Finance Act, 1994 requiring the Appellate Commissioner to hear the Department while

deciding a first appeal. The provision referred to section 35 of the Central Excise Act, 1944 which specifically stated that "the assessee" shall be heard in deciding the appeal. By comparison, in hearing an appeal by the Tribunal, section 36 of the CE Act stated that the Tribunal shall hear "the parties to an appeal" in deciding an appeal. Moreover, the direction to the Commissioner (Appeals) to dispose the assessee's appeal was issued in the presence of counsel for the respondent the court's order was specific to the effect that the assessee shall be heard. If the Department was of the view that it should also be heard, counsel could well have sought inclusion thereof since the orders were dictated in his presence in open court. Not having done so, the plea of violation of principles of natural justice could not be taken now.

(iii) That clearly, there was an overlap between the period covered under the first show-cause notice and the second, and the period December 2008 to January 2010 was common under both show-cause notices. The Commissioner (Appeals) had, after examination of the two show-cause notices and orders in original and the demands raised thereunder, held that the appeal was maintainable. The argument that there was an excess of a sum of Rs. 15,18,561 in regard to the first adjudicating order that, by application of section 130(2) shall neither be refunded nor utilised towards any other demand was not tenable. The assessee was right about the double demands raised for the two periods. Thus, the demand of Rs. 19,18,375 ought not to have been raised at all. The remaining demand of Rs. 9,98,350 corresponding to the second period was telescoped by the amount of Rs. 80,74,333 already paid for the same period earlier. The total taxable value of the two projects under both show-cause notices was identical. There being no dispute that the assessee had, admittedly, remitted the amount and the demand under the second notice and order, the computation of the assessee was to be accepted. The order under challenge was liable to be set aside.

The Dispute Resolution Scheme is an attempt to close legacy tax disputes and a certain amount of fairness should be seen in the interpretation of the provisions of the Scheme.

W. P. No. 477 of 2020 and W. M. P. Nos. 548 and 550 of 2020.

G. Natarajan for the petitioner.

V. Sundareswaran, Senior Panel Counsel, for the respondents.

ORDER

1 DR. ANITA SUMANTH J.—The petitioner challenges an order passed by the Designated Committee under the Sabka Vishwas Legacy Disputes Resolution Scheme, 2019 (Scheme) dated December 6, 2019. The background to the matter is as follows :

(i) The petitioner is engaged in the construction and sale of residential apartments and was registered as an assessee with the Service Tax Department.

(ii) A show-cause notice (SCN) dated October 12, 2011 (SCN 1) was issued calling upon the petitioner to remit differential service tax for the periods December, 2008 to January, 2010 in regard to the services relating to two construction projects, namely, Marry Lands and Dayton Heights. Specifically, the differential tax computed for the period December, 2008 to March, 2009 (period 1) was a sum of Rs. 19,15,491.

(iii) A second notice dated February 9, 2012 (SCN 2) was thereafter issued calling upon the petitioner to remit differential service tax for the same period as covered in SCN 1, viz., December, 2008 to March, 2009 (vide annexure to the SCN) and April, 2009 to March, 2010 (vide annexure 1 to the SCN) and in respect of the same two projects. The differential under the annexure was computed at a figure of Rs. 19,18,375 and the differential under annexure 1 was computed at Rs. 9,98,350, the total demand being Rs. 29,16,716. No month-wise break-up of the demand is available as regards annexure 1.

(iv) As against the demand proposed in SCN 1 for an amount of Rs. 1,69,52,423, the petitioner had remitted an amount of Rs. 99,94,773 and the aforesaid deposit/remittance was appropriated in order-in-original (O-in-O 1) dated January 30, 2013 as against the total demand.

(v) Proceedings under SCN 2 were initiated by a personal hearing dated February 28, 2016, four (4) years after issue of the notice and the petitioner, vide reply March 28, 2016, while objecting to the delay in initiating proceedings, pointed out that the receipts in regard to the same two projects sought to be brought to tax had suffered tax already under O-in-O 1 passed in 2013.

(vi) As regards the demand covered under annexure 1 (for the period April 2009 to March 2010), the petitioner submitted that though there was an omission to return receipts of turnover in the service tax returns for the relevant period, the receipts had been duly included in the returns for the subsequent year, that is, 2010-11 and hence there was no short-payment as alleged.

(vii) Submissions were also advanced on the legal issue as to whether tax would be leviable at all on receipts from construction activity and works contracts and reference made to Board circulars in this respect. I refrain from adverting to these submissions in detail as they do not concern the issue in dispute before me.

(viii) Suffice it to say that the assessing authority, notwithstanding the aforesaid submissions, proceeded to pass an order-in-original dated October 14, 2016 (O-in-O 2), reiterating the proposals under SCN 2 raising a demand for the same projects for two periods, viz., Rs. 19,18,373 in O-in-O 2 as against Rs. 19,15,471 under O-in-O 1 for the period December 2008 to March 2009 (period 1), and Rs. 9,98,350 for the period April 2009 to March 2010 (period 2) as against a demand of Rs. 80,74,333 under SCN 1 and O-in-O 1 which also covered period 2, albeit till January 2009. The additional period covered under SCN 2 were the months of February and March 2010 alone.

(ix) As against O-in-O 1, the petitioner appears to have filed a first appeal before the Commissioner of Service tax (Appeals) and availed the benefit of the deposit of Rs. 99,94,773 towards statutory pre-deposit for that appeal. During the pendency of the appeal the Government announced the Sabka Vishwas (Legacy Dispute Resolution) Scheme to settle disputes in various legacy laws including service tax law. The petitioner availed of the same.

(x) The Scheme called for the remittance of 30 per cent. of the disputed demand to be remitted, and in computing this amount, the assessee was entitled to seek adjustment of the amount remitted as pre-deposit. This relief is in terms of section 124(1) and (2) of the Scheme, sub-section (1) setting out the mode of computation of the relief and (2) stipulating that the amount payable by an assessee shall take into account the amount of deposit made during enquiry/audit/investigation or pre-deposit made prior to institution of any statutory appeal.

(xi) The petitioner filed an appeal before the Commissioner of Service Tax (Appeals) challenging O-in-O 2 as well. Since, according to the petitioner, the demand raised in O-in-O 2, dated October 14, 2016 was a duplication of the demand already raised under O-in-O 1, it did not effect the statutory pre-deposit, as a result of which, the appeal was returned as not maintainable.

(xii) The return of the appeal was challenged by the petitioner in W.P. No. 3167 of 2017 and vide order dated February 9, 2017, this court directed the Appellate Commissioner to consider the claim of the petitioner regarding duplication of demands set out under a representation dated December 16, 2016 and pass orders within a period of two weeks from date of receipt of the courts' order. This order was not complied with by the Revenue.

(xiii) Since the Legacy Scheme was announced during the pendency of the aforesaid appeal, the petitioner availed of the Scheme in respect of appeal challenging O-in-O 2, dated October 14, 2016 as well.

(xiv) The aforesaid narration was captured by the petitioner in the personal hearing prior to consideration of its declaration under the Scheme. However, the declaration came to be rejected directing the petitioner to pay 30 per cent. of the disputed demand as computed under the Scheme, amounting to Rs. 8,75,014 vide order dated December 6, 2019.

(xv) The present writ petition is filed challenging the aforesaid order dated December 6, 2019.

When the matter came up for admission, this court, vide order dated January 9, 2020 impleaded the Commissioner of Service Tax (Appeals-II) suo motu as R2 and reiterated the direction to him to consider and dispose the representation of the petitioner dated December 16, 2016 as already ordered by this court on February 9, 2017 in W. P. No. 3167 of 2017. The specific direction of the court had been that the representation be disposed within a period of two (2) weeks from date of receipt of its order and this had not been complied with by the appellate authority. **2**

The petitioner had, in the representation aforesaid, specifically averred that a dual demand of service tax had been raised for the period December 2008 to January 2010 under two separate SCNs. The order passed by me on January 9, 2020 is extracted below : **3**

> "Mr. Ramasamy, learned Junior Panel Counsel accepts notice for R1 and seeks four (4) weeks' time to obtain instructions and file a counter.
>
> 2. The impugned communication is prima facie premature insofar as the determination of the amount in dispute, based on which, 30 per cent. be deposited by the petitioner under the Sabka Vishwas Scheme (in short, "Scheme") is yet pending resolution before the Commissioner of Service Tax (Appeals-II) (CST (Appeals)).
>
> 3. This court, vide order dated February 9, 2017 in W. P. No. 3167 of 2017 has set aside communication dated December 21, 2016 directing the CST (Appeals) to go into the representation of the petitioner dated December 16, 2016 wherein the petitioner has specifically averred that a duel demand of service tax has been raised in respect of the period December, 2008 to March 2009 under two separate show-cause notices concurrently. In fact, it is seen that the petitioner has brought this courts' order to the notice of the Commissioner under communication dated February 27, 2017, despite which the representation is yet pending.
>
> 4. The rejection of the petitioners' declaration under the Scheme even prior to adjudication on this point, is prima facie incorrect.

5. In the light of the aforesaid, the Commissioner of Service Tax (Appeals-II), Newry Towers, 2054, I Block, 2nd Avenue, 12th Main Road, Anna Nagar West, Chennai 600 040 is impleaded suo motu as R2 in this writ petition.

6. Mr. Ramasamy, learned Junior Panel Counsel accepts notice for R2 and seeks four (4) weeks' time to obtain instructions and file a counter.

7. A direction is issued to R2 to consider and dispose the representation of the petitioner dated December 16, 2016 after hearing the petitioner, who will appear before him on Tuesday, the 21st of January, 2020 at 10.30 a.m. without expecting any further notice in this regard.

8. Let necessary orders be passed on the representation within a period of four (4) weeks, i. e., on or before February 11, 2020. List on February 12, 2020 for production of order. Impugned Form SVLDRS-III dated December 6, 2019 is stayed till then."

4 In compliance of the direction issued above, R2 disposed the representation of the petitioner vide order dated January 27, 2020. The issue framed for consideration was whether there was a duplication of demand in the two SCNs dated October 12, 2011 and February 9, 2012. In paragraphs 8 to 11, under the caption "Discussion and Findings", R2 states as follows :

"*Discussion and findings :*

8. . . . On verification of the two notices, I find that SCN No. 443/2011, based on an internal audit objection, sought to demand an amount of Rs. 1,69,07,927 for the period from December, 2008 to January, 2010 involving two construction projects of the appellant, viz., Marry Lands and Dayton Heights. It is also clear from the notice that an amount of Rs. 99,94,773 has already been paid by the assessee against this demand which was subsequently appropriated vide the order-in-original No. 5/2013, dated January 30, 2013. The other show-cause notice SCN No. 20/2012, dated February 9, 2012, which resulted in issue of order-in-original No. 48/16-17-ST-II, dated October 14, 2016, was issued seeking to demand an amount of Rs. 29,16,716 covering the periods 2008-09 and 2009-10 on account of CERA objection, involving the very same construction projects, viz., Marry Lands and Dayton Heights.

9. Preliminary verification reveals that the two demands involved the same periods and on the same construction projects. To decide whether the demand has been made on the very same values, i. e., if

the demands were duplicated, it is required to verify the annexures to the two show-cause notices wherein the demand was quantified.

The annexure to the SCN No. 443/2011, dated October 12, 2011 is reproduced below :

Annexure TI SCN 443/2011

(A) M/s. Navin Housing & Properties Pvt. Limited

Month	*Taxable value*		*Total value*	*Service tax @ 4.12%*
	Marry lands	*Dayton heights*		
Dec. 2008	82,12,500	0	82,12,500	3,38,355
Jan. 2009	40,52,500	0	40,52,500	1,66,963
Feb. 2009	2,500	1,51,05,000	1,51,07,500	6,22,429
Mar. 2009	60,50,000	1,50,70,000	1,91,20,000	7,87,744
Apr. 2009	0	42,00,000	42,00,000	1,73,040
May. 2009	0	28,30,000	28,30,000	1,16,598
Jun. 2009	35,79,250	36,00,000	71,79,250	2,95,785
Jul. 2009	9,16,600	67,70,000	76,86,600	3,16,689
Aug. 2009	10,02,500	32,00,000	42,02.500	1,73,143
Sep. 2009	1,04,40,000	2,17,50,000	3,21,90,000	13,26,228
Oct. 2009	62,98,500	54,50,957	1,17,49,457	4,84,078
Nov. 2009	29,16,400	3,62,62,583	3,91,78,983	1,61,47,173
Dec. 2009	1,40,01,842	4,00,87,665	5,49,89,507	2,26,55,568
Jan. 2010	1,45,73,390	1,72,10,191	3,17,83,581	1,30,09,484
Total	7,29,45,982	16,95,36,396	2,42,48,32,378	99,90,274

(B) Land owner's portion : Rs. 69,17,653

Total of (A) + (B) : Rs. 1,69,07,927

Two Annexures to the SCN No. 20/2012, dated February 9, 2012 are reproduced below :

Annexure

Month wise income and short payment of service tax year 2008-09

Month	*Income received after adjusting land cost (Rs.)*	*Income offered for service tax (Rs.)*	*Amount not shown in ST-3 return (Rs.)*
April 08	1,48,00,100	1,48,00,100	–
May 08	5,03,54,000	5,03,54,000	–
June 08	1,20,70,000	1,20,70,000	–
July 08	3,19,07,325	3,19,07,325	–
August 08	2,11,50,000	2,11,50,000	–
Sept 08	45,20,000	45,20,000	–

Oct 08	44,01,500	44,01,500	–
Nov 08	31,20,000	31,20,000	–
Dec 08	82,12,500	Nil	82,12,500
Jan 09	42,47,500	1,95,000	40,52,500
Feb 10	1,52,47,500	Nil	1,52,47,500
Mar 10	1,90,50,000	Nil	1,90,50,000
Total	18,90,80,425	14,25,17,925	4,65,62,500
Tax liability on this amount Rs. 19,18,375			

Month	*Collection reported and offered from service tax-projects wise 2009-10 excluding land cost*		*Total*
	Dayton heights	*Marry land*	
April-09	42,00,000	0	42,00,000
May-09	28,30,000	0	28,30,000
June-09	36,00,000	35,79,250	71,79,250
July-09	67,70,000	9,16,600	76,86,600
August-09	32,00,000	10,02,500	42,02,500
Sept-09	2,17,50,000	1,04,40,000	3,21,90,000
Oct-09	54,50,957	62,98,500	1,17,49,457
Nov-09	3,62,62,583	29,16,500	3,91,78,983
Dec-09	4,00,87,665	1,49,01,842	5,49,89,507
Jan-10	1,72,10,191	1,48,73,390	3,20,83,581
Feb-10	3,12,98,879	1,33,64,246	4,46,63,125
Mar-10	2,29,16,100	5,07,20,951	7,36,37,051
		Total	31,45,90,054

. . .

Senior Audit Officer/Cera VIII

10. It is seen from the annexures that the periods of demand common to both SCNs is from December 2008 to January 2010. For the period December 2008 to March 2009, the value for demand of service tax in SCN No. 443/2011 is Rs. 4,64,92,500 and for the corresponding period the value shown for demand in SCN No. 20/2012 is Rs. 4,65,62,500 (the relevant annexure indicates the months as February 10 and March 10 apparently instead of February 2009 and March 09 due to typographic error). The corresponding duty demand is Rs.19,15,491 and Rs. 19,18,373 respectively. Thus, it is evident that the demand has been clearly duplicated but for very minor variations in the figures. For the period April 2009 to January 2010, the value shown for demand of service tax in SCN No. 443/2011 is

Rs. 19,59,89,878. It is seen from the annexure of the SCN No. 20/2012 that the value for the corresponding period April 2009 to January 2010 works out to Rs. 19,62,89,878. However, gross income for the year 2009-10 was Rs. 31,45,90,054. From the corresponding CERA audit para and periodic returns. It is however seen that for the entire year 2009-10, the appellant had declared only Rs. 29,03,58,484 as per their ST3 Returns and short payment of service tax demanded in the notice on the difference between income from balance sheets and the income declared in the ST3 returns, works out to Rs. 9,98,350.

11. From the above facts it is apparent on record that the demand in respect of show-cause notice No. 443/2011 dated October 12, 2011 and show-cause notice No. 20/2012 dated February 9, 2012 inas much as they pertain to the period December 2008 to March 2009, involving service tax liability of Rs. 19,18,375 has been clearly duplicated. The balance amount of demand of Rs. 9,98,350 as per the show-cause notice No. 20/2012 dated February 9, 2012, covers the period April 2009 to March 2010 allegedly on account of the difference between the gross income as per the revenue collections and the income as shown in the ST3 returns. In the absence of any month wise quantification of demand duplication with respect to the amount is not ascertainable. In view of the above, the demand of service tax to the extent of Rs. 19,18,375 out of the total demand of Rs. 29,16,716 in the SCN No. 20/2012 dated February 9, 2012 is clearly duplicated and the appellant has already paid the same which has also been appropriated in the order-in-original No. 5/2013 dated January 30, 2013."

On the basis of the aforesaid discussion and finding, the order passed by R2 is as follows : 5

"ORDER

12.(i) Therefore, I am of the considered opinion that the amount paid by the appellant to the extent of Rs. 19,18,375 for the period December 2008 to March 2009, which is appropriated by order-in-original No. 5/2013 dated January 30, 2013, is way above the mandatory 7.5 per cent. of the total demand of Rs. 29,16,716, raised and confirmed, as required under section 35F of the Central Excise Act, 1944. Hence, the same is to be considered as a pre deposit in terms of section 35F of the Central Excise Act, 1944, and accordingly the appeal is admitted.

(ii) The appellant has apparently filed declaration under SVLDRS, 2019 in respect of the present appeal, against O-I-O No. 48/2016-17 in SCN 20/2012 and has approached the honourable High Court by

filing a Writ Petition vide WP No. 477 of 2020, which has stayed operation of the order in form SVLDRS-III dated December 6, 2019 rejecting their declaration under the Scheme. Under the circumstances, the appeal against the order-in-original No. 48/16-17 ST-II, dated October 14, 2016 is premature and therefore to be decided at later stage."

6 R2 has thus rendered categorical findings of fact to the effect that (i) the projects dealt with under the two SCNs are the same, (ii) the period covered under the two SCNs are substantially common, viz., December 2008 to March 2009 (period 1) and April 2009 to January 2010 (period 2) and the additional months covered under SCN 2 are February and March 2010, (iii) the legal issue giving rise to the disputed demand is one and the same, (iv) the amounts in dispute as regards period 1 were substantially the same, Rs. 19,18,373 in O-in-O 2 as against Rs. 19,15,471 in O-in-O 1. As regards period 2, he states that since there was no month wise break-up available, he was unable to render a fining in that regard. However his findings make it clear that the demands raised under SCN1/O-in-O 1 and SCN2/O-in-O 2 for period 2 were Rs. 80,74,333 (Rs. 99,90,274 less Rs. 19,15,941) and Rs. 9,98,350 respectively. He thus concludes that the amount of Rs. 19,18,375 appropriated by the Revenue for period 1 is "*way above the mandatory 7.5 per cent. of the total demand of Rs. 29,16,716 raised*" under O-in-O 2, thus rendering the appeal maintainable. The maintainability of the appeal is thus beyond question. Had this exercise been done within the time-frame fixed by this court on February 9, 2017, this controversy could have well been laid to rest by now.

7 The Revenue has filed a counter dated March 6, 2020. One ground taken in counter is that the order of R2, i.e., Commissioner of Service Tax (Appeals II), dated February 1, 2020 accepting the contention of the petitioner that there is duplication to the extent of Rs. 19,15,491 was in violation of the principles of natural justice, taken without hearing R1. At the outset, there is no provision under Chapter V of the Finance Act, 1994 requiring the Appellate Commissioner to hear the Revenue while deciding a first appeal. Section 85(5) of the Finance Act, that stipulates the procedure to be followed by R2 in appeal, does not require him to extend an opportunity of hearing to the Revenue. The provision moreover refers one to the provisions of section 35 of the Central Excise Act, 1944 ("the CE Act") that governs all matters in regard to a first appeal under service tax law as it would those appeals under Central excise law. Section 35(1) specifically states that "*the appellant*" shall be heard in deciding the appeal. By compa-

rison, in hearing an appeal by the Tribunal, section 36 of the CE Act states that the Tribunal shall hear *"the parties to an appeal"* in deciding an appeal.

Secondly, the direction to R2 to dispose the petitioners' appeal was issued in the presence of the panel counsel for R1 and paragraph 7 of my order is specific to the effect that the petitioner shall be heard. If at all the Revenue was of the view that they should also be heard, the panel counsel could well have sought inclusion of the same since the orders were dictated in his presence in open court. Not having done so, the plea of violation of principles of natural justice cannot be taken now. This ground is misconceived and stands rejected. **8**

On merits, clearly, there is an overlap between the period covered under SCN1 and SCN2, the former covering the period December, 2008 to January, 2010 and the latter the period April, 2008 to March, 2010. The periods December, 2008 to January, 2010 are thus common under both SCNs. **9**

The Revenue agrees in counter that the demand of Rs. 19,15,941 is duplicated. Hence, according to them, the demand under O-in-O 2 stands reduced to Rs. 10,00,775 of which 30 per cent., as per the Scheme, is a sum of Rs. 3,00,232.50. Then they say that the amount duplicated needs to be reduced from the original demand and cannot be used as pre-deposit for the present demand as it has already been used towards pre-deposit for the appeal challenging O-in-O 1. This argument is unacceptable. R2 has, after examination of the two SCNs, orders in original and the demands raised thereunder held that the appeal is maintainable and this cannot be called into question again in counter. In fact, the counter, filed after the order passed by R2, runs contrary to the officers' findings and conclusion. **10**

The Revenue relies on the provisions of section 130(1) of the Scheme that reads as under : **11**

> "130.(1) *Restriction under the Scheme* : Any amount paid under this Scheme,—
>
> (a) shall not be paid through the input-tax credit account under the indirect tax enactment or any other Act ;
>
> (b) shall not be refundable under any circumstances ;
>
> (c) shall not, under the indirect tax enactment or under any other Act,—
>
> (i) be taken as input-tax credit ; or
>
> (ii) entitle any person to take input-tax credit, as a recipient, of the excisable goods or taxable services, with respect to the matter and time period covered in the declaration.

(2) In case any pre-deposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the difference shall not be refunded."

12 According to the Revenue, there is an excess of a sum of Rs. 15,18,561 in regard to O-in-O 1 that, by application of section 130(2) shall neither be refunded nor utilised towards any other demand. This argument is also misconceived. The petitioner, as confirmed by the order of R2, is right about the double demands raised for periods 1 and 2. Thus, as far as the demand of Rs. 19,18,375 is concerned, it ought not to have been raised at all. The remaining demand of Rs. 9,98,350 corresponding to period 2 also stands covered/telescoped by the amount of Rs. 80,74,333 already paid for the same period earlier. In stating this, I have taken note of the position that the total taxable value of the two projects under both SCN 1 and 2 is identical. (See the annexures to the SCNs).

13 The conflicting computations of the petitioner and respondents are as extracted below :

Petitioner's declaration under Scheme

Tax dues	Rs. 29,16,716
Tax relief	Rs. 20,41,701 (70%)
Tax dues less tax relief	Rs. 8,75,015 (30%)
Pre-deposit/other deposit	Rs. 19,15,491
Tax dues under SVLDRS	Rs. 0

Revenue's computation under the impugned order

Sl. No.	*Category*	*Issue involved*	*Time period*		*Tax dues*		*Tax relief*	*Pre-deposit/ any other deposit of duty*	*Estimated amount payable*	
			From period	*To period*	*Name*	*Amount*			*Name*	*Amount*
1	Litigation		14/10/2016	14/10/2016	Works contract service – 00440410	29,16,716	20,41,701.20		Works contract service – 00440410	8,75,014.80
					Grand total	29,16,716	20,41,701.20			8,75,014.80

14 The point of dispute revolves around the remittance or otherwise of the amount of Rs. 19,15,491. In the light of the detailed discussions in the para-

graphs above, there being no dispute on the position that the petitioner has, admittedly, remitted the aforesaid amount and the demand under SCN2/O-in-O 2 is a duel demand, the computation of the petitioner is accepted and the impugned order set aside.

The Dispute Resolution Scheme is an attempt to close legacy tax disputes and a certain amount of fairness should be seen in the interpretation of the provisions of the Scheme. Learned counsel for the respondent would harp on the argument that a dispute raised under one SCN cannot be settled by utilising a deposit made under a different SCN. This argument does not arise in a case such as the present, since the two SCNs relate to identical transactions, time periods and demands and constitute a duplication of proceedings. 15

This writ petition is allowed. No costs. Connected miscellaneous petitions are closed. 16

[2020] 78 GSTR 415 (All)

[IN THE ALLAHABAD HIGH COURT]

MAHESH COAL TRADERS

v.

COMMISSIONER, COMMERCIAL TAX

ALOK MATHUR J.

April 13, 2020.

HF ▶ Assessee

VALUE ADDED TAX—BEST JUDGMENT ASSESSMENT—ACCOUNT BOOKS—REJECTION—TRIBUNAL—RETURNS FILED BUT ACCOUNT BOOKS REJECTED BY ASSESSING AUTHORITY ON BASIS OF SURVEY REPORT—REJECTION UPHELD BY FIRST APPELLATE AUTHORITY AS WELL AS BY TRIBUNAL—SUBMISSION BY ASSESSEE NO BOOKS OF ACCOUNTS PRODUCED DURING SURVEY AS THEY WERE WITH ACCOUNTANT FOR UPDATING VARIOUS ENTRIES—PRODUCED IN RESPONSE TO SHOW-CAUSE NOTICE AND NO INSTANCE OF EVASION OF TAX DISCOVERED BY SBI BY LOOKING INTO IT—TRIBUNAL UPHOLDING ORDER OF ASSESSING AUTHORITY IN REJECTING ACCOUNT BOOKS WITHOUT TAKING INTO CONSIDERATION GROUNDS TAKEN BY ASSESSEE—ACCOUNT BOOKS CANNOT BE REJECTED SOLELY ON GROUND THAT THEY WERE NOT FOUND IN PREMISES DURING SURVEY—ORDER BY TRIBUNAL SET ASIDE AND MATTER REMITTED TO IT FOR FRESH CONSIDERATION—UTTAR PRADESH VALUE ADDED TAX ACT (5 of 2008).

VALUE ADDED TAX—BEST JUDGMENT ASSESSMENT—ACCOUNT BOOKS—WHEN CAN BE REJECTED.

The books of account can be rejected for various reasons ; one of them can be that the stock does not tally with the books of accounts or from a perusal of the books of account it is not possible to determine the transactions made by the assessing authority or there may be discrepancy between the various stock registers with books of account and also with the physical verification of the stock which may lead to an inference that the books of account do not reflect the true transaction of business being carried out by the assessee.

The assessee, engaged in business in coal and registered under section 17 of the U. P. Value Added Tax Act, 2008, purchased coal from outside Uttar Pradesh against form 38 and it was transported to the assessee's place of business on railway racks. After taking delivery of the coal at the railway site, it was mostly sold to the brick kiln owners who carted away coal from the railway site itself on trucks wholly arranged by them. For the assessment year 2008-09 the assessee filed returns, but the assessing authority rejected the books of account and assessed the assessee on the basis of survey reports by assessment order dated July 9, 2012. The first appellate authority allowed the appeal in part deleting the turnover in respect of alleged purchase and sale of coal made from unregistered dealers as made by the assessing authority in this regard but maintained the average selling rate which was fixed by the assessing authority as well as the order with regard to the rejection of the books of account. The assessee as well as the Department preferred a second appeal before the Tribunal. The Tribunal, upheld the rejection of books of account considering the fact that at the time of survey no books of account were produced and further that stock of coal weighing 7-8 tonnes which was found could not be verified from the account books but reduced the net turnover by reducing the average selling rate. The appeal filed by the Revenue, was dismissed. On a revision petition :

Held, *allowing the petition, that at the time of survey no books of account were found, even the persons responsible for carrying on the business were not found in the premises, but in response to the show-cause notice, the assessee appeared along with the books of account. The books of account were looked into by the SIB and no instance of evasion of tax was discovered. The books of account had been rejected solely on the ground that they were not found at the premises of the registered office, and there was all possibility of the same being tampered with or filled in subsequently as per their own convenience which might not reflect the true and correct transactions. The assessee, on the other hand, had also submitted that when the survey was*

conducted, the books of account were with the accountant for the purposes of updating the various entries and were duly produced before the SIB. The Tribunal had not given any independent finding for accepting the order of the assessing officer in rejecting the books of account, but had only said that the same had also been upheld by the first appellate authority and no interference was required without taking into consideration the grounds taken by the assessee. It was the duty of the Tribunal, which was the final fact-finding authority, to have considered the grounds raised by the assessee and to have returned a finding after considering the same. The order of the Tribunal in this regard deserved to be set aside and matter be remanded to it for fresh adjudication.

Sales/Trade Tax Revision Nos. 976 and 977 of 2013.

Kunwar Saksena and *Suyash Agarawl* for the revisionist.

B. K. Pandey for the State.

JUDGMENT

ALOK MATHUR J.—Heard Mr. Rakesh Ranjan, Senior Advocate assisted by Sri Ankur Agarwal, learned counsel for the revisionist as well as Mr. B. K. Pandey, learned counsel for the State. 1

By means of this revision the order of the Commercial Tax Tribunal dated November 23, 2013 has been assailed, whereby the appeal preferred by the Revenue was rejected and the appeal preferred by the assessee was substantially allowed. 2

The counsel for the revisionist has submitted that the revisionist carries on business in coal and is registered under section 17 of the U. P. Value Added Tax Act. He had purchased coal from outside Uttar Pradesh only against Form XXXVIII which was transported to the assessee's place of business on a railway racks. The freight amount was paid by the assessee to the railways by means of bank draft, and after taking delivery of the coal at the railway site, it was mostly sold to the brick kiln owners who carted away coal from the railway site itself on trucks wholly arranged by them. It was only in the rare case that unsold stock was transferred from the railway site to the applicant's own godown. 3

For the assessment year 2008–09 the assessee filed returns, however the assessing authority rejected the books of account and assessed the assessee on the basis of survey report dated July 28, 2009 and August 4, 2009 vide assessment order dated July 9, 2012. 4

The revisionist being aggrieved by the assessment order preferred a first appeal before the Additional Commissioner (Appeals) Commercial Tax, Ghaziabad. The first appellate authority allowed the appeal in part deleting 5

the turnover in respect of alleged purchase and sale of coal made from unregistered dealers on the ground that there was no material whatsoever to make the additions as was made by the assessing authority in this regard. The first appellate authority however maintained the average selling rate which was fixed by the assessing authority as well as the order with regard to the rejection of the books of account.

6 Against the order passed by the Additional Commissioner (Appeals) Commercial Tax, Ghaziabad, the assessee as well as the Revenue preferred a Second Appeal before the Commercial Tax Tribunal, Ghaziabad. The Tribunal by means of the impugned order dated November 23, 2013 has allowed the appeal in part filed by the assessee, upholding the rejection of books of account and the estimate of turnover, but on the other hand reduced the net turnover. The appeal filed by the Revenue, has been dismissed.

7 The Tribunal has upheld the rejection of books of account, considering the fact that at the time of survey no books of account were produced and further that stock of coal weighing 7-8 tonnes which was found could not be verified from the account books. With regard to the estimated turnover, the assessee had disclosed the average selling rate of coal at Rs. 3, 615.734 per MT, whereas the assessing authority estimated the same of Rs. 4,100 but the Tribunal reduced it to Rs. 3,850 per m.t. The dispute with regard to the average selling rate arose due to the fact that the assessee had stated that the coal was sold at the railway site itself and was carted away by the purchaser themselves taking their own arrangements, while on the other hand the assessing officer and the Tribunal were of the view that the assessee had not produced any copy of the goods receipt or any certificate from the purchaser to show whether the freight was paid by them, and therefore, added the freight charges to the rate of coal.

8 In light of the above facts the following question arises for determination in the instant revision :

> 1. whether the authorities were justified in rejecting the account books of the assessee for assessment year 2008-09 on the basis of survey report dated July 28, 2009 and August 4, 2009 which is not pertain to the above assessment period and to pass the best judgement assessment ?

9 The dispute in the present case relates to the assessment year 2008-09. The case of the assessee is that he is engaged in purchase and sale of coal. According to him, coal is purchased from outside the State, which is transported by rail. The coal is mostly sold to the brick kiln owners. On account of survey conducted on July 28, 2009 and August 4, 2009 it was found that

no books of account were present at the registered office of the assessee and responsible officer was also not present. In the said premises 7-8 tonne of coal was found. Due to the above facts, the books of account were rejected and fresh assessment was carried out. The first appellate authority and also the Tribunal have upheld the rejection of books of account and also considered the fact that the stock found on the premises could not be tallied. While rejecting the contention of the assessee, the authorities have recorded that no other fact or material was brought on record which could persuade them to reverse the finding in this regard in favour of the assessee. It recorded that in absence of books of account, bill book, etc., it was open for the assessee to purchase and sell stock without making proper entries in this regard and therefore this leads to the irrefutable conclusion that the assessee is involved in trade with unregistered dealers to evade payment of tax.

The assessee has submitted that no books of account were produced **10** before the surveying officer as no responsible person was present at the time of survey and no adverse inference of the same can be drawn against the assessee that he has not been maintaining books of account in the ordinary course of business. He has further submitted that the assessee is duly maintaining the books of account which are audited by the chartered accountants, and just because the books of account were not found at the time of survey, could not be a reason for rejection of the same.

The order of the assessing authority dated July 9, 2012 indicates that in **11** pursuance to the show-cause notice appearance was put in on behalf of the assessee, and accounts were duly produced which were tallied with the stock and it was found that in fact the coal was sold at a higher rate and no evasion of tax was found. The Tribunal, on the other hand, reiterating the above facts have also observed that the books were tallied by the SIT behind the back of the assessee.

Applying the above provisions of law the facts of the instant case I find **12** that at the time of survey no books of account were found, even the persons responsible for carrying on the business were not found in the premises, but in response to the show-cause notice, the assessee appeared along with the books of account. The books of account were looked into by the SIB and no instance of evasion of tax was discovered. The books of account have been rejected solely on the ground that they were not found at the premises of the registered office, and there is all possibility of the same being tampered with or filled in subsequently as per their own convenience which may not reflect the true and correct transactions. The assessee, on the other hand, has also submitted that when the survey was conducted,

the books of account were with the accountant for the purposes of updating the various entries and were duly produced before the SIB.

13 The books of account can be rejected for various reasons ; one of them can be that the stock does not tally with the books of account or from a perusal of the books of account it is not possible to determine the transactions made by the assessing authority or there may be discrepancy between the various stock registers with books of account and also with the physical verification of the stock which may lead to an inference that the books of account do not reflect the true transaction of business being carried out by the assessee.

14 In the instant case, it seems that the books of account were tallied and there is no mention of any deficiency in the books of account, but they have been rejected solely on the ground that the same were not found in the premises during the survey. The Tribunal has also not considered any other reason for accepting the rejection of books of account which, in my opinion, is based on apprehension, rather than due consideration of the facts of the present case. It is also borne from the record that for the financial year 2008-09 tax Invoice No. 467, dated February 5, 2009 relating to 63.225 metric tons of coal was found where the coal was sold at the rate of Rs. 3,750 per m.t. It has also been observed that during the same period other traders have sold coal at the rate of Rs. 6,200 per m.t. while the brick kiln is at the Ghaziabad and the appellants have purchased coal for Rs. 5,800 to Rs. 6, 400. It is interesting to note that no details of any trader has been specifically mentioned nor the source of the information has been disclosed or verified while observing the above.

15 The Tribunal has not given any independent finding for accepting the order of the assessing officer in rejecting the books of account, but has only said that the same has also been upheld by the first appellate authority and no interference is required without taking into consideration the grounds taken by the assessee. It was the duty of the Tribunal, which is the final fact-finding authority, to have considered the grounds raised by the assessee and to have returned a finding after considering the same. Though the Tribunal has recorded that the books of account were duly presented when the show-cause notice was given to the assessee, and no discrepancy was found in the same, but non-presentation of the books of account at the time of survey cannot be the sole reason for rejection of the books of account. The order of the Tribunal in this regard deserves to be set aside and be remanded to it for fresh adjudication.

16 In light of the above, the order of the Tribunal dated November 23, 2013 is set aside and the matter is remanded to it for fresh adjudication

expeditiously, say within a period of six months from the date a certified copy of this order is produced before it in accordance with law.

With the aforesaid observation, the revision is *allowed*. 17

[2020] 78 GSTR 421 (Delhi)

[IN THE DELHI HIGH COURT]

AMAN MOTORS

v.

UNION OF INDIA AND OTHERS

VIPIN SANGHI and **SANJEEV NARULA** JJ.

November 21, 2019.

HF ▶ Assessee

GOODS AND SERVICES TAX—TRANSITION PERIOD—TRANSITION OF CREDIT OF EXCISE DUTY—PETITIONER UNABLE TO SUBMIT DECLARATION IN FORM TRAN-1 ON GST PORTAL EVEN AFTER LAST EXTENSION UP TO DECEMBER 27, 2017 ON ACCOUNT OF FAILURE OF SYSTEM TO ACCEPT INFORMATION ON COMMON PORTAL—REQUEST TO REOPEN FORM TRAN-1—PETITIONER ASKED TO AWAIT FURTHER NOTIFICATIONS BY DEPARTMENT—WRIT PETITION—DIRECTION TO RESPONDENTS TO EITHER OPEN ONLINE PORTAL TO ENABLE PETITIONER TO FILE FORM TRAN-1 ELECTRONICALLY, OR TO ACCEPT IT MANUALLY ON OR BEFORE DECEMBER 9, 2019—CENTRAL GOODS AND SERVICES TAX ACT (12 OF 2017), S. 140(3).

In order to avail of transition of credit of the amount of excise duty in terms of section 140(3) of the Central Goods and Services Tax Act, 20017 the petitioner was required to submit a declaration in form TRAN-1 on the GST portal within the stipulated period of 90 days. Since a large number of taxpayers could not complete the process within the aforesaid period on account of technical glitches and difficulties faced by them, Government extended the time period for filing TRAN-1 several times and lastly on the recommendation of the GST Council, it was extended up to December 27, 2017. Pursuant to it the petitioner repeatedly tried to upload its form TRAN-1 on the common portal, but it was unable to do so, on account of failure of the system to accept the information on the common portal. The petitioner wrote to the Nodal officer on May 21, 2018 with the request to reopen form TRAN-1. The petitioner further wrote to the respondent on December 31, 2017 which was replied to vide e-mail dated January 2, 2018, wherein it was asked to await further notifications by GST Department. On a writ petition :

[*The court allowed the petition and directed the respondents to either open the online portal so as to enable the petitioner to file the form TRAN-1 electronically, or to accept the same manually on or before December 9, 2019.*]

BLUE BIRD PURE PVT. LTD. *v.* UNION OF INDIA [2019] 68 GSTR 340 (Delhi) *followed*.

Cases referred to :

Aadinath Industries *v.* Union of India [2020] 72 GSTR 247 (Delhi) (para 8)

Bhargava Motors *v.* Union of India [2019] 66 GSTR 114 (Delhi) (para 7)

Blue Bird Pure Pvt. Ltd. *v.* Union of India [2019] 68 GSTR 340 (Delhi) (paras 5, 7, 8)

Godrej & Boyce Mfg. Co. Ltd. *v.* Union of India [2020] 73 GSTR 107 (Delhi) (paras 5, 8)

Lease Plan India Private Limited *v.* Government of National Capital Territory of Delhi [2020] 72 GSTR 116 (Delhi) (para 8)

Tara Exports *v.* Union of India [2018] 58 GSTR 46 (Mad) (para 7)

W. P. (C) No. 2478 of 2019.

Puneet Das for the petitioner.

Amit Bansal, SCC with *Aman Rewaria* and *Ms. Vipasha Mishra* for respondent Nos. 2 and 4

JUDGMENT[1]

The judgment of the court was delivered by

1 SANJEEV NARULA J.—The present petition under articles 226 and 227 of the Constitution of India seeks the following reliefs :

> "(i) Issue a writ of mandamus or any other writ, order or direction in the nature thereof thereby directing the respondents to open the portal to enable the petitioner to file its claim of tax credit on the stock held on June 30, 2017 in form TRAN l and TRAN 2 and allow the input-tax credit which the petitioner could not do for reasons beyond its control due to glitches in the system of the respondents ;
>
> (ii) direct for such further and other reliefs, as this honourable court may deem fit and proper in the nature and circumstances of the case."

2 The case of the petitioner as set out in the petition is that it is engaged in the business of trading and servicing of two-wheelers and is registered under the Central Goods and Services Tax Act, 2017 (hereinafter referred

1. Oral.

as "the CGST Act"). The petitioner was entitled to transition of credit of the amount of Excise duty in terms of section 140(3) of the CGST Act. The input-tax credit available to the petitioner as on June 30, 2017 is Rs. 23,72,079. In order to avail transition of credit, petitioner was required to submit a declaration in form TRAN-1 on the GST portal within the stipulated period of 90 days. Since a large number of taxpayers could not complete the process within the aforesaid period on account of technical glitches and difficulties faced by them, Government extended the time period for filing TRAN-1 several times and lastly on the recommendation of GST Council, it was extended up to December 27, 2017.

Pursuant to the aforesaid extension, petitioner repeatedly tried to upload **3** its form TRAN-1 on the common portal, before the deadline. However, it was unable to do so, on account of failure of the system to accept the information on the common portal. Every time an attempt was made to upload the form TRAN-1, the portal repeatedly showed the "registration window" instead of TRAN-1 option on the menu bar.

Faced with the situation, petitioner wrote to the Nodal officer on May **4** 21, 2018 with the request to reopen form TRAN-1. The petitioner further wrote to the respondent on December 31, 2017 which was replied to vide e-mail dated January 2, 2018, wherein it was asked to await further notifications by GST Department. The copies of the letters and e-mails have been annexed along with the petition. It is averred that no action has been taken by the GST Department till date. The relevant portion of the letter dated May 21, 2018 is reproduced hereunder :

> "*Sub* : Request to open the GST TRAN-I on the portal of above mentioned firm.
>
> Respected Sir,
>
> 1. That the above mentioned firm M/s. Aman Motors is my proprietorship concern and was unable to file TRAN-I by December 27, 2017 *due to some technical glitch on the GST portal and confusion in the last date of filing of TRAN 1.*
>
> 2. That we made several efforts to file the TRAN-I by December 27, 2017 however the registered person could not submit the TRAN-I by December 27, 2017. *Last date to file TRAN-1 was reflecting as December 31, 2017 on the GST Website and we again logged in the portal on December 28, 2017 to file TRAN-l but the data could not be submitted as the window of TRAN-1 was blocked.*
>
> *That the screen shot of the GST Council website reflecting that the last date of TRAN 1 is December 31, 2017 is attached.*

3. That the e-mail was also sent to GST help desk at *helpdesk(s) gst.gov.in* requesting to open the TRAN-1 on December 31, 2017 and the automated response to the same confirming the receipt of the request was sent by the help desk on December 31, 2017 however there is no response from your end till date.

4. That thereafter Circular No. 39/13/2018-GST was issued by the Ministry of Finance by which it was decided to appoint Nodal Officer to look after the problem of taxpayers who faced problems due to system glitches.

5. *That my firm was unable to file TRAN-I due to technical glitches on GST portal ; therefore this application has been moved to open the GST TRAN-I on the portal of the assessee.*" (emphasis[1] supplied)

5 The petitioner also relies upon on CBIC Circular No. 39/13/2018-GST, dated April 3, 2018 issued by the Government to address the grievances of the taxpayers who could not file the declaration due to technical glitches on GST portal. Besides, petitioner also refers to several decisions of this court including *Blue Bird Pure Pvt. Ltd.* v. *Union of India* [2019] 68 GSTR 340 (Delhi) ; [2019] SCC OnLine Del 9250 and *Godrej & Boyce Mfg. Co. Ltd., Through its Branch Commercial Manager* v. *Union of India* [2020] 73 GSTR 107 (Delhi), W. P. C. No. 8075 of 2019 decided on October 15, 2019, to urge that the court has granted reliefs to several other similarly placed parties.

6 Mr. Harpreet Singh, learned senior standing counsel for GST submits that the case of the petitioner came up for discussion during the meeting held on August 21, 2018, wherein it was concluded that there was no evidence of error of submission/filing of TRAN-1 prior to the due date and therefore its request has been rightly rejected by the Grievance Redressal Committee.

7 We have considered the submissions of the parties. The nature of reliefs sought in the present petition and the facts disclosed hereinabove are fully covered by the decision of this court in *Blue Bird Pure Pvt. Ltd.* [2019] 68 GSTR 340 (Delhi) ; [2019] SCC OnLine Del 9250 decided on July 22, 2019, wherein the court had directed the respondents to either open the online portal or to enable the petitioner to file the rectified TRAN-1 electronically or accept the same manually. It was observed as under (pages 343 and 344 in 68 GSTR) :

"10. Having carefully examined those decisions, the court is unable to find any distinguishing feature that should deny the petitioner a

1. Here italicised.

relief similar to the one granted in those cases. In those cases also, there was some error committed by the petitioners which they were unable to rectify in the TRAN-1 form and as a result of which, they could not file the returns in TRAN-2 form and avail of the credit which they were entitled to. In both the said decisions, the court noticed that GST system is still in the 'trial and error phase' insofar as its implementation is concerned. It was observed in *Bhargava Motors* [2019] 66 GSTR 114 (Delhi) as under (pages 118 and 119 in 66 GSTR):

'10. The GST system is still in a "trial and error phase" as far as its implementation is concerned. Ever since the date the GSTN became operational, this court has been approached by dealers facing genuine difficulties in filing returns, claiming input-tax credit through the GST portal. The court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W. P. (MD) No. 18532 of 2018 (*Tara Exports* v. *Union of India* [2018] 58 GSTR 46 (Mad)) where after acknowledging the procedural difficulties in claiming input-tax credit in the TRAN-1 form that court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law".

11. In the present case also the court is satisfied that the petitioner's difficulty in filling up a correct credit amount in the TRAN-1 form is a genuine one which should not preclude him from having its claim examined by the authorities in accordance with law. A direction is accordingly issued to the respondents to either open the portal so as to enable the petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before May 31, 2019. The petitioner's claims will thereafter be processed in accordance with law . . . .'

. . . .

12. In the present case, the court is satisfied that, although the failure was on the part of the petitioner to fill up the data concerning its stock in column 7(d) of form TRAN-1 instead of column 7(a), the error was inadvertent. The respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the deadline for making the revision

coincided with the last date for filing the return, i. e., December 27, 2017. Thus, such facility was rendered impractical and meaningless."

8 The decision in *Blue Bird Pure Pvt. Ltd.* [2019] 68 GSTR 340 (Delhi) ; [2019] SCC OnLine Del 9250 has also been followed by us in *Aadinath Industries* v. *Union of India* [2020] 72 GSTR 247 (Delhi), W. P. (C) 9775 of 2019, decided on September 20, 2019 , *Lease Plan India Private Limited* v. *Government of National Capital Territory of Delhi* [2020] 72 GSTR 116 (Delhi), W. P. (C) No. 3309 of 2019, decided on September 13, 2019, *Godrej & Boyce Mfg. Co. Ltd.* [2020] 73 GSTR 107 (Delhi).

9 The factual position in the present case is not any different and thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the petitioner to file the form TRAN-1 electronically, or to accept the same manually on or before December 9, 2019.

10 The respondents are directed to process the petitioner's claim in accordance with law once the GST Form TRAN–I is filed. Accordingly, the petition stands disposed of in the aforesaid terms.

[2020] 78 GSTR 426 (Ker)

[IN THE KERALA HIGH COURT]

(1) A. F. BABU

(W. P. (C). Nos. 27940 of 2019(N))

(2) NAGA DISTRIBUTORS

(W. P. (C). Nos. 28343 of 2019(P))

v.

UNION OF INDIA AND OTHERS

A. K. JAYASANKARAN NAMBIAR J.

December 13, 2019.

HF ▸ Assessee

GOODS AND SERVICES TAX—TRANSITION PERIOD—PETITIONER FINDING THAT WEB PORTAL HAD CLOSED BY DECEMBER 27, 2017 AND SEEKING CLARIFICATION AS TO WHEN PORTAL WOULD RE-OPEN AGAIN FOR THEM TO UPLOAD NECESSARY DETAILS FOR MIGRATION OF CREDIT—CLARIFICATION BY RESPONDENTS PETITIONER'S REQUEST FOR MIGRATION OF CREDIT COULD NOT BE ACCEPTED AS THEY HAD NOT MADE ANY ATTEMPT TO LOG INTO SYSTEM BEFORE DECEMBER 27, 2017 AS REVEALED BY SYSTEM LOG—PRESS RELEASE BY GST COUNCIL, INDICATING EXTENSION OF LAST DATE UP TO DECEMBER 31, 2017 FOR UPLOADING DETAILS IN GST PORTAL FOR

carrying forward accumulated credit relied on by assessee—Clarification by respondents that press release a mistaken one, as no decision to extend time limit till December 31, 2017—Petitioner cannot be deprived of substantive benefit under GST Act merely on account of technical procedure insisted upon by respondents—Direction to respondents to either open online portal to enable petitioners to file form TRAN-1 electronically or to accept same manually on or before December 31, 2019—Central Goods and Services Tax Act (12 of 2017), ss. 139, 140, 141, 142, 143—Kerala State Goods and Services Tax Act (20 of 2017), ss. 139, 140, 141, 142, 143—Kerala State Goods and Services Tax Rules, 2017, r. 117.

The petitioners who had migrated to the GST regime pursuant to the enactment of the Goods and Services Tax Act, 2017, were entitled to carry forward the tax paid on purchase of goods during the VAT regime to the GST regime and to avail of credit under the latter regime. It was the case of the petitioners that they had come across a press release by the GST Council, which indicated that the last date for uploading the details in the GST portal for the purposes of carrying forward the accumulated credit from the erstwhile regime was extended up to December 31, 2017. Relying on the said press release, the petitioners sought a clarification from the GST Net Work, on finding that the web portal had closed by December 27, 2017, as to when the portal would reopen again for them to upload the necessary details for migration of the credit to the GST regime. The respondents however clarified that inasmuch as the petitioners had not made any attempt to log into the system before December 27, 2017 as revealed by the system log their request for migration of credit could not be accepted. On writ petitions :

Held, *allowing the petitions, that it had now been clarified by the respondents that the press release itself was a mistaken one, in that there was no decision to extend the time-limit till December 31, 2017. However, the petitioner could not be deprived of the substantive benefit under the GST Act merely on account of a technical procedure insisted upon by the respondents. This was more so when they had valid reason to assume that the facility to upload the necessary TRAN-1 form was available till December 31, 2017.*

[*The court quashed the impugned communication and directed the respondents to either open the online portal so as to enable the petitioners to file the form TRAN-1 electronically or to accept the same manually on or before December 31, 2019. In either event, the court observed that the respondents were at liberty to verify the genuineness of the claim of the petitioners and the*

claim should not be denied only on the ground that the same was not filed before December 27, 2017.]

AMAN MOTORS *v.* UNION OF INDIA [2020] 78 GSTR 421 (Delhi) *applied*.

AMAN MOTORS *v.* UNION OF INDIA [2020] 78 GSTR 421 (Delhi) (para 5) *referred to*.

W. P. (C). Nos. 27940 of 2019(N) and 28343 of 2019(P).

Pramji Paul Vazhappilly, K. S. Hariharan Nair and *Smt. Harima Hariharan* for the petitioners.

P. Vijayakumar, ASG of India and *P. R. Sreejith*, SC, Central Board of Excise and Customs, for the respondents.

JUDGMENT

1 A. K. JAYASANKARAN NAMBIAR J.—As both these writ petitions involve a common issue they are taken up for consideration together and disposed by this common judgment.

2 The petitioners in both these writ petitions were assessees under the Kerala Value Added Tax Act, 2003, who migrated to the GST regime pursuant to the enactment of the Central Goods and Services Tax/State Goods and Services Tax (CGST/SGST) Act, 2017. The petitioners, consequent to their migration to the GST regime, were entitled to carry forward the tax paid on purchase of goods during the VAT regime to the GST regime and to avail credit under the latter regime. The transition provisions, which govern the transfer of credit under the CGST/SGST Act and Rules are sections 139 to 143 of the Act and rule 117 of the SGST Rules. As part of the procedure for the transfer of credit, the petitioners had to file a declaration in form GST TRAN-1 on or before December 27, 2017 for the purposes of successfully migrating the credit to the GST regime. In both these writ petitions, the grievance of the petitioners is essentially that they had come across a press release by the GST Council, which indicated that the last date for uploading the details in the GST portal for the purposes of carrying forward the accumulated credit from the erstwhile regime was extended up to December 31, 2017. Relying on the said press release, the petitioners sought a clarification from the GST Net Work, on finding that the web portal had closed by December 27, 2017, as to when the portal would re-open again for them to upload the necessary details for migration of the credit to the GST regime. The respondents however clarified that inasmuch the petitioners had not made any attempt to log into the system before December 27, 2017 their request for migration of credit could not be accepted. In these writ petitions, the communications issued to them by

the respondents denying them the facility of transfer of accrued credit are impugned, inter alia, on the contention that the substantial rights available to them under the GST Act cannot be deprived solely on account of a technical lapse that was occasioned at the instance of the respondents.

3 Through statements filed on behalf of the respondents, it is stated that the complaints with regard to system error and the alleged inability of assessees to upload the necessary details for carrying forward the credit earned by them under the erstwhile regime to the GST regime on or before December 27, 2017, were considered by the respondents, who have the wherewithal to ascertain whether an assessee had in fact made an attempt to log into the system or not. It is stated that system log maintained by the respondents clearly reveals cases where an assessee attempted to log into the system but failed, and also whether or not the inability of the assessee to upload the necessary details was on account of a system error or otherwise. It is stated that inasmuch as the system logs in the instant case reveal that the petitioners had not made an attempt to log into the system before December 27, 2017, their case would be covered by category B2, in the categorization drawn up by the respondents, which are cases where the system log indicates that the assessees had not made any attempt to log into the system before December 27, 2017.

4 I have heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents.

5 On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, while it is a fact that the petitioners did not make an attempt to log into the system before December 27, 2017, the cut-off date prescribed by the respondents for uploading the TRAN-1 form to the web portal, I find that the petitioners were guided by a press release of the GST Council, which suggested that they could upload the statutory form on any date before December 31, 2017. Placing reliance on the said press release, the petitioners had submitted an e-mail on December 30, 2017, seeking a clarification as to when the web portal would open again so as to upload their respective TRAN-1 forms. The said e-mail, in my view, suggests that the petitioners would have attempted to upload the TRAN-1 form had the web portal remained open till December 31, 2017 as indicated in the press release of the GST Council. No doubt, it is now clarified by the learned standing counsel for the respondents that the press release itself was a mistaken one, in that there was no decision to extend the time-limit till December 31, 2017. I find, however, that the petitioner-assessee cannot be deprived of the substantive benefit under the GST Act merely on account of a technical procedure insisted upon by the

respondents. This is more so when they had valid reason to assume that the facility to upload the necessary TRAN-1 Form was available till December 31, 2017. I also take note of the judgment of the Delhi High Court in *Aman Motors* v. *Union of India* [2020] 78 GSTR 421 (Delhi) (W. P. (C). No. 2478 of 2019 decided on November 21, 2019), where in almost similar circumstances, the court permitted the petitioners therein to file a form TRAN-1 electronically on or before a specified date. Taking cue from the said judgment, I deem it appropriate to allow these writ petitions by quashing the impugned communications and directing the respondents to either open the online portal so as to enable the petitioners to file the form TRAN-1 electronically or to accept the same manually on or before December 31, 2019. While the respondents shall attempt to facilitate the filing of these TRAN-1 forms electronically by making the necessary arrangements in the web portal, an insistence on manual filing shall be only in circumstances where the electronic filing is not possible. In either event, the respondents are at liberty to verify the genuineness of the claim of the petitioners and the claim shall not be denied only on the ground that the same was not filed before December 27, 2017.

6 These writ petitions are allowed on the above lines.

[2020] 78 GSTR 430 (Karn)

[IN THE KARNATAKA HIGH COURT]

ASHRAYA CONSTRUCTIONS

v.

STATE OF KARNATAKA AND OTHERS

MRS. S. SUJATHA J.

October 24, 2019.

HF ▶ Assessee

VALUE ADDED TAX—RECOVERY OF TAX—BANK—BANK ATTACHMENT NOTICE—BANK OVERDRAFT LIMITS AVAILED OF BY PETITIONER-DEFAULTER—BANK UNDER NO OBLIGATION TO MAKE PAYMENT TO DEPARTMENT—ATTACHMENT OF OVERDRAFT ACCOUNT OF PETITIONER BY ISSUANCE OF BANK ATTACHMENT NOTICE—NOT SUSTAINABLE—KARNATAKA VALUE ADDED TAX ACT, 2003 (32 of 2004), s. 45—CENTRAL SALES TAX ACT (74 of 1956).

On a writ petition challenging the bank attachment notices issued under section 45 of the Karnataka Value Added Tax Act, 2003 for attachment of

overdraft bank account of the petitioner, a partnership firm and a registered dealer under the Karnataka Value Added Tax Act and the Central Sales Tax Act, 1956 relating to the assessment years 2014-15, 2015-16 and 2016-17 and for other consequential reliefs :

Held, *allowing the petition, that if at any particular point of time the bank overdraft limits were availed of by the defaulter it could not be considered that the money which was being drawn from the bank belonged to the defaulter. The bank was under no obligation to make payment to the Department. The bank did not owe the money to the defaulter and therefore attachment of the overdraft account of the petitioner by issuance of bank attachment notice could not be sustained.*

KARNATAKA BANK LTD. *v.* COMMISSIONER OF COMMERCIAL TAXES [1999] 114 STC 19 (Karn) (para 4) *referred to.*

Writ Petition No. 49850 of 2019 (T–RES).

Mallahar Rao for the petitioner.

T. K. Vedamurthy, Additional Government Advocate, for the respondents.

ORDER

MRS. S. SUJATHA J.—The learned Additional Government Advocate accepts notice for the respondents. 1

The petitioner has challenged the bank attachment notices issued under section 45 of the Karnataka Value Added Tax Act, 2003 ("the KVAT Act", for short) dated August 22, 2019 for attachment of overdraft bank account of the petitioner at annexures G, H and J, relating to the assessment years 2014-15, 2015-16 and 2016-17 and for other consequential reliefs. 2

The petitioner is a partnership-firm, registered dealer under the KVAT Act and also registered under the Central Sales Tax Act, 1956. The petitioner was subjected to assessment relating to the assessment years in question and the assessment orders were passed. It transpires that the assessee has preferred rectification application seeking rectification of the said assessment orders and the same is said to be pending. 3

It is the submission of the learned counsel for the petitioner that the attachment of bank overdraft account of the petitioner is illegal. The credit facility extended by the bank by way of overdraft or otherwise cannot be considered to be authorising the Department to realise the amount for which the Bank has agreed to give loan. Reliance is placed on the order of the cognate bench of this court in the case of *Karnataka Bank Ltd.* v. *Commissioner of Commercial Taxes, Karnataka, Bangalore* reported in [1999] 114 STC 19 (Karn) ; [1998] 45 Kant. L. J. 595. 4

5 The learned Additional Government Advocate appearing for the Revenue would submit that the bank has addressed a letter to the assessing authority stating that the bankers are unable to remit the amount called for on account of non-payment of VAT for the assessment years in question since the petitioner has availed the overdraft and other credit facility and there is no balance available in their account. The copy of the said letter is placed on record along with a memo.

6 In view of the aforesaid, it is not in dispute that the attachment of the bank account of the petitioner is in respect of overdraft facility. The cognate bench of this court has categorically observed thus (page 21 in 114 STC) :

> "4. Under section 14 of the Karnataka Sales Tax Act, 1947 any person from whom money is due or may become due to the dealer or who holds or may subsequently holding money for or on account of the dealer is liable to pay to the assessing authority the said amount. A credit facility by way of overdraft or otherwise cannot be considered to be authorising the Department to realise the amount for which the bank has agreed to give the loan. If the account of the defaulter runs in debit and there being no credit in his account, this should not be considered as the money belonging to the defaulter. The bank is under no obligation to make payment to the Commercial Tax Department. It is only when the bank or the other person holds any money on behalf of the defaulter or may be found subsequently holding. If at any particular point of time the bank overdraft limits are availed, it cannot be considered that the money which is being drawn from the bank belong to the defaulter. The bank does not owe the money to the defaulter. Sanction of overdraft facility creates an agreement between the bank and the borrower and it cannot be considered that the bank is owing the money with the borrower simply because overdraft facility has been given."

7 In the light of the said judgment, it is clear that if the account of the defaulter runs in debit and there being no credit in his account, the same should not be considered as the money belonging to the defaulter. The bank is under no obligation to make payment to the Department. The bank does not owe the money to the defaulter. Hence, the attachment of the overdraft account of the petitioner by issuance of bank attachment notice impugned cannot be held to be sustainable.

8 Hence, annexures G, H and J of even date August 22, 2019 stand quashed. The Department is at liberty to initiate the recovery proceedings in any other mode in accordance with law.

9 The writ petition stands disposed of accordingly.

[2020] 78 GSTR 433 (Guj)

[IN THE GUJARAT HIGH COURT]

CHOKSHI TEXLEN PVT. LTD.

v.

STATE OF GUJARAT

MS. HARSHA DEVANI and **MS. SANGEETA K. VISHEN** JJ.

October 18, 2019.

HF ▶ Petitioner

VALUE ADDED TAX—RECOVERY OF TAX—FIRST CHARGE—FIRST CHARGE ON PROPERTY OF DEFAULTER ON ACCOUNT OF TAX, INTEREST OR PENALTY—TRANSFER OF PROPERTY TO DEFRAUD REVENUE—PROPERTY PURCHASED BY PETITIONER BY WAY OF REGISTERED SALE DEED DATED JULY 13, 2011 AND ATTACHMENT ORDER PASSED ON SEPTEMBER 9, 2011 BY DEPARTMENT WHEREBY V, PRIOR OWNER OF PROPERTY, WAS HELD TO BE LIABLE TO PAY DUES FOR YEAR 2006-07 UNDER VAT ACT—ASSESSMENT ORDER SET ASIDE BY TRIBUNAL AND MATTER REMANDED FOR RECONSIDERATION—CHARGE REGISTERED BY RESPONDENT-AUTHORITIES, BY ORDER DATED JANUARY 7, 2013 AND APPLICATION BY PETITIONER FOR MUTATING ENTRY FOR TRANSFER OF PROPERTY IN PETITIONER'S NAME REJECTED—PETITIONERS SERVED WITH COPY OF ASSESSMENT ORDER DATED MAY 3, 2014—NO STEPS TAKEN FOR REMOVAL OF CHARGE AND ATTACHMENT OVER PROPERTY BY DEPARTMENT DESPITE REPEATED REQUESTS BY PETITIONER—WRIT PETITION—PETITIONERS NOT LIABLE TO PAY TAX, AND WOULD NOT FALL WITHIN AMBIT OF EXPRESSION "ANY OTHER PERSON" IN SECTION 48—PROVISIONS OF SECTION 155 OF CODE COULD NOT BE RESORTED TO AS V HAD NO RIGHT, TITLE OR INTEREST IN SUBJECT-PROPERTY WHEN ATTACHMENT ORDER PASSED—ATTACHMENT ORDER BASED ON ASSESSMENT ORDER ITSELF NOT SUSTAINABLE AS ASSESSMENT ORDER SET ASIDE AND MATTER REMITTED—OPEN TO RESPONDENT TO APPROACH CIVIL COURT FOR DECLARATION THAT TRANSFER VOID ON GROUND TRANSFER MADE WITH INTENTION TO DEFRAUD REVENUE—GUJARAT VALUE ADDED TAX ACT, 2003 (1 of 2005), SS. 47, 48—GUJARAT LAND REVENUE RULES, 1972—GUJARAT LAND REVENUE CODE, S. 155.

The petitioners purchased the subject property by a registered sale deed dated July 13, 2011 from V on payment of valuable consideration and on September 26, 2011, the petitioners had obtained a title clearance certificate in respect of the subject property from an advocate, who certified that there was no subsisting encumbrance on the property. Thereafter, the petitioners

came to know that by an order dated September 9, 2011, the respondent-authorities had created a charge and attached the subject property for alleged dues of V for the year 2006-07. It was the case of the petitioners that they had approached the respondent-authorities and informed them that they had already purchased the subject property by way of a registered sale deed dated July 14, 2011. However, despite oral requests being made time and again for removal of the charge and attachment there was no response from the respondent-authorities. In view of the charge registered by the respondent-authorities, by an order dated January 7, 2013, the Deputy Mamlatdar, Mandvi, rejected the application made by the petitioners for mutating the entry for transfer of the subject property in the name of the petitioners. The petitioners preferred an appeal against that order before the Deputy Collector, but it was dismissed. A revision application filed before the Collector, under rule 108(6) of the Gujarat Land Revenue Rules, 1972, also failed. The petitioners, therefore, approached the Value Added Tax Department again and made a detailed submission. Pursuant thereto, the petitioners were served with a copy of the assessment order dated May 3, 2014 for the year 2006-07. On scrutiny of that order, the petitioners found that the assessment order, on the basis of which the charge and attachment had been made on the property, had been quashed and set aside in appeal and the matter had been remanded for fresh assessment. The petitioners further noticed that the order for the year 2006-07 as well as assessment orders for the years 2009-10 and 2011-12 were passed years after the purchase of the property was made by the petitioners. The petitioners, therefore, filed an application before the Grievance Cell of the Value Added Tax Department complaining about the charge and attachment of their property not being removed even though the alleged dues of V were raised much after the purchase of the property by the petitioner. However, the Grievance Cell, informed the petitioners that they could approach the Revenue Department for resolution of their grievance. Since the Value Added Tax Department did not take any steps for removal of the charge and attachment over the property, the petitioners filed a writ petition :

Held, *allowing the petition, that in this case no charge was created prior to the subject property being transferred in favour of the petitioners. Section 48 of the Gujarat Value Added Tax Act envisaged a first charge on the property of the dealer on account of tax, interest or penalty which he was liable to pay to the Government. In the present case, the petitioners were not liable to pay any tax, interest or penalty to the Government and therefore, would not fall within the ambit of the expression "any other person" therein. The subject property was transferred in favour of the petitioner, prior to the order*

of attachment and creation of a charge thereon. Therefore, as on the date when the subject property came to be attached and a charge came to be created thereon, it did not belong to V. The provisions of section 48 of the Gujarat Value Added Tax Act, therefore, would clearly not be attracted in the facts of the present case. The attachment order dated September 9, 2011 had been passed in exercise of powers under section 154/155 of the Gujarat Land Revenue Code. Section 155 of the Code would empower the concerned officer to sell the right, title and interest of the defaulter, in any immovable property. However, on the date when the order dated September 9, 2011 came to be made, V had no right, title or interest in the subject property and hence, the question of resorting to the provisions of section 155 of the Code qua the subject property did not arise. Also the assessment order, which formed the basis for passing the attachment order came to be set aside by the Tribunal and the matter was remanded. Therefore, the very substratum of the order dated September 9, 2011 was lost and the order could not be sustained.

[The court observed that the right of the Department to have the transfer declared as void under section 47 of the Gujarat Value Added Tax Act was not taken away as it was open for the respondents to approach the civil court for a declaration that the transfer was void on the ground that it was made with an intention to defraud the Government.]

TAX RECOVERY OFFICER II *v.* GANGADHAR VISHWANATH RANADE [1998] 234 ITR 188 (SC) *applied*.

CHETNA VIJAY SHAH *v.* STATE OF GUJARAT [2020] 78 GSTR 445 (Guj) [Appx.] *followed*.

CHETNA VIJAY SHAH *v.* STATE OF GUJARAT [2020] 78 GSTR 445 (Guj) [Appx.] (para 18) *and* TAX RECOVERY OFFICER II *v.* GANGADHAR VISHWANATH RANADE [1998] 234 ITR 188 (SC) (para 16) *referred to*.

R/Special Civil Application No. 8096 of 2019.

Uchit N. Sheth (7336) for petitioner Nos. 1 and 2.

Ms. Maithili Mehta, Assistant Government Pleader, for respondent Nos. 1 and 2

JUDGMENT[1]

The judgment of the court was delivered by

MS. HARSHA DEVANI J.—Rule. Ms. Maithili Mehta, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondents. **1**

1. Oral.

2 Having regard to the controversy involved in the present petition, which lies in a very narrow compass as well as the fact that the matter was heard at length, the petition is decided finally.

3 By this petition under article 226 of the Constitution of India, the petitioners seek a direction against the respondents to withdraw the charge and attachment on property located at Plot No. 4/C, Block No. 211, Survey No. 133/2, Village Karanj, Taluka Mandvi, District Surat (hereinafter referred to as "the subject property") in respect of alleged dues of the erstwhile owners of the property, that is, Varun Filaments Private Limited under the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "the GVAT Act").

4 Petitioner No. 1 is a private limited company and is engaged in the manufacture and sale of textile articles. Petitioner No. 2 is a director and authorised signatory of the first petitioner-company. The petitioners purchased the subject property by a registered sale deed dated July 13, 2011 from one M/s. Varun Filaments Private Limited on payment of valuable consideration. On the very next day, the petitioners made an application with the Revenue Department for mutation of the entry of sale of property by registered sale deed. Subsequently, on September 26, 2011, the petitioners had obtained a title clearance certificate in respect of the subject property from an advocate, who certified that there was no subsisting encumbrance on the property. Thereafter, the petitioners came to know that by an order dated September 9, 2011, the respondent-authorities had created a charge and attached the subject property for alleged dues of the erstwhile owner of the property namely, M/s. Varun Filaments Private Limited for the year 2006-07. It is the case of the petitioners that they had approached the respondent authorities and informed them that they had already purchased the subject property by way of a registered sale deed dated July 14, 2011. However, despite oral requests being made time and again for removal of the charge and attachment there was no response from the respondent-authorities.

5 In view of the charge registered by the respondent-authorities, by an order dated January 7, 2013, the Deputy Mamlatdar, Mandvi, rejected the application made by the petitioners for mutating the entry for transfer of the subject property in the name of the petitioners. Being aggrieved, the petitioners preferred an appeal against the said order before the Deputy Collector, Mandvi Prant, Mandvi, who by an order dated August 27, 2015 dismissed the appeal. Against the said order, the petitioner filed a revision application before the Collector, Surat, under rule 108(6) of the Gujarat Land Revenue Rules, 1972, but failed. The petitioners, therefore,

approached the Value Added Tax Department again and made a detailed submission contending that since the property had already been purchased by the petitioners, no charge could be entered on the property for alleged dues of the erstwhile owners.

6 In the meantime, the petitioners also filed an application under the Right to Information Act, 2005 for getting information of the assessment order for the year 2006-07 passed in the case of the erstwhile owner of the subject property based on which the impugned attachment and charge had been entered by order dated September 9, 2011. Pursuant thereto, the petitioners were served with a copy of the assessment order dated May 3, 2014 for the year 2006-07. On scrutiny of the said order, the petitioners found that the assessment order, on the basis of which the impugned charge and attachment had been made on the subject property, had been quashed and set aside in appeal and the matter had been remanded for fresh assessment. Thus, the assessment order in respect of which the impugned charge and attachment had been made was no longer in existence. The petitioners further noticed that the order for the year 2006-07 as well as assessment orders for the years 2009-10 and 2011-12 in the case of *Varun Filaments Private Limited* were passed years after the purchase of the property was made by the petitioners. The petitioners, therefore, filed an application before the Grievance Cell of the Value Added Tax Department complaining about the charge and attachment of their property not being removed even though the alleged dues of the erstwhile owner were raised much after the purchase of the property of the petitioner. However, the grievance cell, by communication dated February 22, 2019, informed the petitioners that they can approach the Revenue Department for resolution of their grievance. Since the Value Added Tax Department did not take any steps for removal of the charge and attachment over the subject property, the petitioners have approached this court seeking the relief noted hereinabove.

7 Mr. Uchit Sheth, learned advocate for the petitioners, submitted that entering the charge and attachment on the property of the petitioners for the alleged dues under the GVAT Act of the erstwhile owner of the property is wholly without jurisdiction and illegal. It was submitted that the petitioners had purchased the subject property before the charge came to be entered on the property by the Value Added Tax Department and that no charge was registered in respect of the alleged value added tax dues of the previous seller prior to registration of the sale deed. It was submitted that the assessment order, on the basis of which the attachment was made, was passed on March 31, 2011 ; however, such order came to be set aside in appeal and the matter was remanded to the adjudicating authority and

that the order in respect of the said year as well as subsequent years were all made long after the subject property came to be transferred to the petitioners. It was contended that in the absence of any charge having been registered over the property, the petitioner had no means of knowing about the dues and that the petitioners are bona fide purchasers for consideration.

7.1 It was submitted that in any case, the dues of the erstwhile owners have arisen after the subject property was purchased by the petitioners and hence, it is not permissible for the respondents to attach the subject property and create any charge over it. It was pointed out that the respondents have placed reliance upon section 47 of the GVAT Act to contend that the transfer is a fraudulent transfer, to submit that if that be so, the respondents are required to approach the civil court to get the transfer set aside, if the transfer is void. However, they cannot seek to recover the dues of the erstwhile owner of the subject property, from the petitioners. It was, accordingly, urged that the petition deserves to be allowed by granting the reliefs noted hereinabove.

8 Opposing the petition, Ms. Maithili Mehta, learned Assistant Government Pleader placed reliance on the averments made in the affidavit-in-reply filed on behalf of respondent No. 2, wherein it has been stated that the dues of Varun Filaments Private Limited, namely, the erstwhile owner, are to the tune of Rs. 1,99,98,219 and that the company has been assessed for assessment years 2006-07, 2009-10 and 2011-12. It was submitted that the assessment notice for assessment year 2006-07 was issued on December 19, 2008 and pursuant thereto, assessment order was made on March 31, 2011 whereby Varun Filaments Private Limited was also liable to pay dues of Rs. 1,70,67,925 under the GVAT Act. It was submitted that Varun Filaments Private Limited challenged the said assessment order before the Gujarat Value Added Tax Tribunal (hereinafter referred to as "the Tribunal") which, by its order dated May 7, 2012 remanded the matter to the assessing officer for reconsideration. It was submitted that the assessing officer issued notices for assessment under section 34 of the GVAT Act for assessment years 2006-07, 2009-10, 2011-12. It was submitted that thereafter, vide order dated May 3, 2014, Varun Filaments Private Limited was held liable to pay tax of Rs. 1,48,35,312 for assessment year 2006-07 ; vide order dated March 31, 2014, it was held liable to pay tax of Rs. 28,47,276 for assessment year 2009-10 ; whereas by an order dated March 28, 2016, Varun Filaments Private Limited was held liable to pay tax of Rs. 23,15,631 for assessment year 2011-12.

8.1 It was submitted that in the light of the provisions of section 44 of the GVAT Act, the respondent-authorities had created a charge over the property in question on September 12, 2011, which came to be certified on June 16, 2012. It was submitted that Varun Filaments Private Limited was well aware of its liability under the GVAT Act as it had participated in all the assessment proceedings and was fully conversant with the fact that the assessment proceedings were initiated way back in the year 2008, despite which, Varun Filaments Private Limited sold the subject property to the present petitioners on July 14, 2011. It was submitted that Varun Filaments Private Limited has sold its property with a view to defraud the Government revenue and hence, the transaction between Varun Filaments Private Limited and the petitioners is void as the transaction is with a view to defraud the Government exchequer.

8.2 The attention of the court was invited to the provisions of section 47 of the GVAT Act, to submit that in view thereof, the transaction between Varun Filaments Private Limited and the petitioners can be termed as a void transfer as the same was made with a specific intention at the end of Varun Filaments Private Limited to defraud the Government. It was, accordingly, urged that there being no infirmity in the action taken by the respondent-authority, there is no warrant for interference by this court and that the petition being devoid of merits, deserves to be dismissed.

9 The facts are not in dispute. The petitioners purchased the subject property by way of a registered sale deed dated July 13, 2011. Thereafter, the petitioners had also obtained a title clearance certificate, which revealed that there was no encumbrance on the subject property. Undisputedly, prior to purchase of the property by the petitioners, no charge had been registered by the respondents in respect of the subject property and vide order dated September 9, 2011, the attachment came to be made subsequent to the purchase of the subject property.

10 After the petitioners purchased the subject property and were put in possession thereof, the second respondent passed the attachment order dated September 9, 2011 and a corresponding entry came to be made in the revenue record. The above attachment was made on the basis of an assessment order dated March 31, 2011, whereby Varun Filaments Private Limited was held to be liable to pay dues of Rs. 1,70,67,925 under the GVAT Act. However, by an order dated May 7, 2012, the Tribunal set aside the assessment order and remanded the matter for reconsideration. Thus, the very substratum of the attachment order dated September 9, 2011, disappeared. Subsequently, assessment orders came to be passed holding Varun Filaments Private Limited to pay an amount of Rs. 1,48,35,312 for

assessment year 2006-07 ; Rs. 28,47,276 for assessment year 2009-10 and Rs. 23,15,631 for assessment year 2011-12.

11 The impugned action of the respondents of attaching the subject property and creating a charge over it, it required to be tested in the above backdrop.

12 As noticed earlier, in this case no charge was created prior to the subject property being transferred in favour of the petitioners. Section 48 of the GVAT Act bears the heading "Tax to be first charge on property" and which lays down that notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case may be, such person, would not come into play. Thus, the section envisages a first charge on the property of the dealer on account of tax, interest or penalty which he is liable to pay to the Government. In the present case, the petitioners are not liable to pay any tax, interest or penalty to the Government and therefore, would not fall within the ambit of the expression "any other person" as contemplated in section 48 of the GVAT Act. The subject property was transferred in favour of the petitioner, prior to the order of attachment and creation of a charge thereon. Therefore, as on the date when the subject property came to be attached and a charge came to be created thereon, it did not belong to the dealer, viz., Varun Filaments Pvt. Ltd. The provisions of section 48 of the GVAT Act, therefore, would clearly not be attracted in the facts of the present case.

13 As is evident from the facts noted hereinabove, the order of attachment was made after the property came to be transferred in favour of the petitioners. The attachment order dated September 9, 2011 has been passed in exercise of powers under section 154/155 of the Gujarat Land Revenue Code (hereinafter referred to as "the Code"). Section 154 of the Code provides for distraint and sale of defaulter's moveable property, whereas section 155 provides for sale of defaulter's immovable property. Since the subject property is an immovable property, it appears that the provisions of section 155 of the Code are sought to be invoked which postulate that the Collector may also cause the right, title and interest of the defaulter in any immovable property other than the land on which the arrears is due, to be sold. Thus, section 155 of the Code would empower the concerned officer to sell the right, title and interest of the defaulter, namely, Varun Filaments Private Limited in any immovable property. However, on the date when the order dated September 9, 2011 came to be made, Varun Filaments Private Limited had no right, title or interest in the subject property and

hence, the question of resorting to the provisions of section 155 of the Code qua the subject property did not arise.

Apart from the fact that the impugned order dated September 9, 2011 is **14** invalid as it has been passed in respect of property in which the defaulter had no right, title or interest ; as noticed earlier, the assessment order, which formed the basis for passing the impugned order came to be set aside by the Tribunal and the matter was remanded. Therefore, the very substratum of the order dated September 9, 2011 was lost and hence, such order was rendered ineffective.

On behalf of the respondents, reliance has been placed on section 47 of **15** the GVAT Act, which bears the heading "Transfer to defraud revenue void" and provides that where a dealer after any tax has become due from him creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any of his property in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer. According to the respondents, since Varun Filaments Private Limited was aware that the tax has become due and payable by it and despite such position, it had parted with the possession of the subject property by way of sale in favour of the petitioner with the intention of defrauding the Government revenue, the transfer in favour of the petitioner is void as against the claim of the Department for the sum payable by Varun Filaments Private Limited.

In this regard, it may be germane to refer to the decision of the Supreme **16** Court in the case of *Tax Recovery Officer II* v. *Gangadhar Vishwanath Ranade* [1998] 234 ITR 188 (SC) ; [1998] 6 SCC 658, wherein the court, in the context of section 281 of the Income-tax Act, 1961, which is in pari materia with section 47 of the GVAT Act, held thus (pages 193, 194 and 196 in 234 ITR) :

> "7. The question which is now required to be answered is whether in a proceeding under rule 11 of the Second Schedule to the Income-tax Act, the Tax Recovery Officer can declare a transfer as void under section 281. Section 281, as it stood at the relevant time provided as follows :
>
> '*Section 281* : Where, during the pendency of any proceeding under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other

sum payable by the assessee as a result of the completion of the said proceeding :

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act.'

8. Section 281 declares as void any transfer made by the assessee during the pendency of proceedings under the Act, with the intention to defraud the Revenue. The powers of the Tax Recovery Officer, however, under rule 11 of the Second Schedule to the Income-tax Act are somewhat different. Under rule 11(1) where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection. Under rule 11(4), (5) and (6) it is provided as follows :

'Rule 11(4) : Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, *such property was not*, at the said date, *in the possession of the defaulter* or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, *it was so in his possession, not* on his own account or *as his own property, but on account of or in trust for some other person*, or partly on his own account and partly on account of some other person, *the Tax Recovery Officer shall make an order releasing the property*, wholly or to such extent as he thinks fit, from attachment or sale.

Rule 11(5) : Where the Tax Recovery Officer is *satisfied that the property was*, at the said date, *in the possession of the defaulter as his own property* and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

Rule 11(6) : Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute ; but subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.' (emphasis ours)

9. The Tax Recovery Officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in the possession of the assessee in his own right, or in the

possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under rule 11(6) to have the transfer declared void under section 281.

. . . . . .

13. In the present case the Tax Recovery Officer could not have examined whether the transfer was void under section 281 of the Income-tax Act. His adjudication of the transfer as void under section 281 is without jurisdiction. The Tax Recovery Officer has relied upon the earlier order of the Income-tax Officer dated May 9, 1974, declaring that the transaction is void under section 281 of the Income-tax Act. In the earlier proceedings, however, although the High Court has not set aside this order of the Income-tax Officer, the High Court has expressly held that the order amounted only to an intention or declaration on the part of the Department to treat the transaction as void under section 281. Such a declaration cannot affect the legal rights of the parties affected under rule 11. The High Court expressly held that the rights of the parties under rule 11 were not affected in any way by this declaration. The Department, therefore, cannot proceed on the assumption that the transaction is void under section 281, nor can the Tax Recovery Officer, while proceeding under rule 11, declare a transaction of transfer as void under section 281 by relying on the order of May 9, 1974, or otherwise. His jurisdiction relates to examining possession, and only incidentally, any question of right to possession as claimed by the Objector. The High Court has, therefore, rightly set aside the order of the Tax Recovery Officer.

14. However, the right of the Department to have the transfer declared as void under section 281 of the Income-tax Act, as it stood at the relevant time, is not thereby taken away. We are informed that the property continues to be under attachment by virtue of interim orders passed in this appeal. The Department may, if it so desires, take appropriate proceedings in accordance with law for having the transfer declared as void under section 281 of the Income-tax Act."

Thus, the Supreme Court, in the above decision, has held that the Tax **17**
Recovery Officer has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the

assessee in favour of a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the revenue, it will have to file a suit under rule 11(6) to have the transfer declared void under section 281.

18 In the opinion of this court, the above decision would be squarely applicable to the facts of the present case and if it is the case of the Department that the transfer in favour of the petitioner is void on the ground that Varun Filaments Private Limited has transferred the same to the petitioner with the intention of defrauding the Government revenue, then the respondents are required to approach the civil court for a declaration that the transfer is void. Moreover, this court in the case of *Chetna Vijay Shah* v. *State of Gujarat* [2020] 78 GSTR 445 (Guj) [Appx.], rendered on January 25, 2018 in Special Civil Application No. 14823 of 2017, has, in the context of the provisions of section 47 of the GVAT Act, held that the only recourse available to the VAT authority under section 47 of the Act is to approach the civil court to annul the transfer on the ground that it was made with an intention to defraud the Government. It is in the light of the above factual and legal position that the impugned order of attachment dated September 9, 2011, made by the second respondent cannot be sustained. However, the right of the Department to have the transfer declared as void under section 47 of the GVAT Act is not thereby taken away. If at all the respondents seek such a declaration, it is always open for them to approach the civil court by instituting appropriate proceedings.

19 In the light of the above discussion, the petition succeeds and is, accordingly, allowed. The respondents are directed to withdraw the charge and attachment on property located at Plot No. 4/C, Block No. 211, Survey No. 133/2, Village Karanj, Taluka Mandvi, District Surat, in respect of alleged dues of the erstwhile owner of the property, that is, Varun Filaments Private Limited under the Gujarat Value Added Tax Act, 2003. Rule is made absolute accordingly, with no order as to costs.

APPENDIX

[The judgment of MS. HARSHA DEVANI and A. S. SUPEHIA JJ. of the Gujarat High Court in *Chetna Vijay Shah* v. *State of Gujarat and others* (Special Civil Application No. 14823 of 2017 decided on January 25, 2018) is printed below :]

CHETNA VIJAY SHAH

v.

STATE OF GUJARAT AND OTHERS

A. S. SUPEHIA J.—*Rule*. Mr. Chintan Dave, learned Assistant Government Pleader waives service of rule for the respondent–State.

The present writ petition is directed against the notice dated July 22, 2016 issued by respondent No. 2 instructing respondent No. 3 not to issue "no objection certificate" to the petitioner apropos the property being Flat No. 1005/B Wing, in her name.

The petitioner is residing in Flat No. 204 B Wing, of respondent No. 3 Walkeshwar Chandanbala Co-operative Housing Society Ltd. In the year 2016 the petitioner came to know that her neighbour Mr. Sureshchandra N. Shah and his wife Mrs. Dharmishtaben Shah intended to sell their flat in the same society being Flat No. 1005/B Wing. Since the petitioner was interested in purchasing the flat, she approached the owners and finalized the terms of the deal. The petitioner gave public notice on February 1, 2016 in two newspapers regarding the intended purchase and any person having any claim in respect of the property was requested to inform the petitioner regarding the claim. The sale deed was thereafter, executed between the sellers of the flat in question and the petitioner, and the same was registered on April 27, 2016.

The sellers of the flat in question as well as the petitioner filed appropriate applications as required under the byelaws of the co-operative housing society for the purpose of transfer of name in the share certificate of the society. Transfer fees had also been duly paid to the society with respect to the flat in question. While the petitioner had already taken possession of the flat on the basis of the registered sale deed and she was about to initiate the process of making renovations in the flat, she was informed by the Chairman of the society that the impugned notice had been received from Commercial Tax Officer of the State of Gujarat on July 25, 2016 regarding outstanding tax dues of a partnership firm "M/s. Apurva Aluminium Corporation" in which the erstwhile owners and sellers of the flat were allegedly partners and hence the Chairman had been instructed

not to transfer the said flat in any other name or issue a no-objection certificate in respect of the property.

The petitioner immediately contacted the sellers of the flat to inquire about the issue. The sellers informed the petitioner that they were never partners in the partnership firm "Apurva Aluminium Corporation". It was their son Daxesh who was a partner but he did not have any right over the flat in question which was sold to the petitioner. The sellers further informed that they had initiated the process of joining the partnership firm but the deed was never finalized since the retiring partners did not sign the deed. The sellers said that they have in their possession the original deed which was sought to be relied upon and such deed was never fully executed. The petitioner requested the sellers to accordingly address a letter to the Commercial Tax Officer. The sellers duly addressed a letter on August 30, 2016 through their consultant. Request was made for withdrawal of the impugned notice. Since the communications addressed by the petitioner, the sellers and by respondent No. 3 Society have been not been taken into cognizance by the respondent-authorities, the petitioner has approached by filing the present writ petition.

Mr. Uchit Sheth, learned advocate for the petitioner has submitted that the impugned notice issued by the respondent-authority to the housing society is wholly without jurisdiction, bad and illegal as the petitioner is a bona fide purchaser of property for valuable consideration. No charge was or has been imposed by the respondent-authority on the property in question. The petitioner is not at all related to the sellers of the property. The petitioner gave public notice regarding the intended purchase of property before finalizing the purchase of property. The sale deed was registered on April 27, 2016 and the petitioner paid a total consideration of Rs. 7.02 crores for purchasing the property with the last instalment also paid on April 27, 2016. The ownership of the property vests with the petitioner as per the Transfer of Property Act, 1882. He has contended that the impugned notice was issued after the flat in question was already transferred in the name of petitioner, hence in such facts and circumstances the action of the respondent-authorities in denying full right of ownership to the petitioner by issuing the impugned notice is wholly without jurisdiction, bad and illegal.

The learned advocate Mr. Sheth has further submitted that the respondent-authority in any case does not have any jurisdiction under the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "the Act") to issue the impugned notice to the society of the petitioner since the petitioner

had already purchased the flat before any proceeding was initiated by the VAT authorities. It was also contended that in case, the VAT authorities intended to stake any claim over the property for the alleged VAT dues then the only recourse available to them was to approach the civil court. To strengthen his contention, he has placed reliance on the judgments in the case of *Jayesh Vadilal Parekh* v. *Commercial Tax Officer* reported in [2015] 78 VST 19 (Guj) and *Tax Recovery Officer* v. *Gangadhar Viswanath Ranade (Decd.)* [1998] 234 ITR 188 (SC). He has also placed reliance on the judgment in the case of *Ahmedabad Municipal Corporation of the City of Ahmedabad* v. *Haji Abdul Gafur Haji Hussenbhai* reported in AIR 1971 SC 1201 for the proposition of law that the petitioner cannot be fixed with any constructive notice for the arrears of VAT authorities. In view of the aforesaid submissions, he urged that the impugned letter dated July 22, 2016 may be quashed and set aside.

A fortiori, Mr. Chintan Dave, learned AGP for the respondent-authorities has submitted that the recovery proceedings for the arrears of VAT were initiated against the owner, i. e., Sureshchandra N. Shah and his wife Dharmishtaben S. Shah and the registered sale-deed executed between them on April 27, 2016 could not have been entered since the outstanding dues amount of Rs. 7,61,94,462 is due and payable from them. He has submitted that the aforesaid outstanding demand was of the partnership firm, i. e., "Apurva Aluminum Corporation" of which there were seven partners. He has submitted that assessment proceedings initiated by the respondent-authorities for the period between 1995-96, 1996-97 and 2002-03 to 2006-07, a huge amount of almost Rs. 7.61 crores was raised.

It is contended by learned AGP that there was an amendment to the nomenclature of the partnership deed on May 24, 2006, wherein Sureshchandra N. Shah, Dharmishtaben S. Shah and Jagdish N. Shah were inducted as partners in M/s. Apurva Aluminum Corporation. He has submitted that Sureshchandra N. Shah has personally attended the assessment proceedings by remaining present as a partner of M/s. Apurva Aluminum Corporation. Hence, it cannot be said that he was never a partner. A notices dated January 11, 2016 and August 3, 2016 was issued by the respondent-authorities for recovery of the outstanding amount upon Sureshchandra N. Shah and his wife Dharmishtaben S. Shah.

The learned AGP invited attention of this court to section 47 of the Act and has submitted that in order to defraud the respondent-authorities, Mr. Sureshchandra N. Shah and his wife Dharmishtaben S. Shah transferred the housing the property in favour of the petitioner for deliberating and avoiding the payment of statutory Government dues which is in violation

of section 47 of the Act, hence the respondent-authority was justified in issuing the impugned notice.

The significant undisputed facts in the present writ petition are that :

(a) The petitioner gave public notice on February 1, 2016 in two newspapers regarding the intended purchase and inviting objections/information regarding any claim. Thereafter, sale-deed was executed by the petitioner with respect of Flat No. 1005/B Wing, on April 26, 2016. The petitioner paid entire consideration of Rs. 7, 02,00,00,000 to the seller of the property in question prior to the registration of the sale-deed.

(b) The sellers Sureshchandra N Shah and Dharmishtaben S Shah are partners of M/s. Apurva Aluminum Corporation. An outstanding demand to the tune of Rs. 7,61,94,462 is due and payable by the partnership-firm. There is no relationship between the petitioner and the sellers.

(c) No charge is created on the property in question by the respondent-authorities.

Now adverting to the case before us, we notice that the affidavit filed by respondent No. 2 would suggest that the VAT dues to the tune of Rs. 7,61,94,462 have accrued for the period between the years 1995 and 2007. The respondent-authorities thus, have issued the impugned notice with respect to the aforesaid properties in the year 2016, whereas the demand was pending since the year 1995. The respondent-authorities did not respond to the public notice given by the petitioner on December 1, 2016 in two newspapers and only after the sale-deed was registered they informed respondent No. 3 Society not to issue an no objection certificate regarding property in question. Thus, it is axiomatic that the respondent-authorities are negligent in not raising any objection or providing any information of any dues in response to the notice of the petitioner though the dues had accrued since 1995. The respondent-authority has not produced any documents indicating that any steps were taken by them qua recovering the dues prior to 2016. The Supreme Court in the case of The *Ahmedabad Municipal Corporation*, AIR 1971 SC 1201 while dealing with the issue of the dues of the Corporation and in reference to section 3 of the Transfer of the Properties Act, 1882 has observed thus :

> "Now the circumstances which by a deeming fiction impute notice to a party are based on his wilful abstention to enquire or search, which a person ought to make or, on his gross negligence. This presumption of notice is commonly known as constructive notice. Though originating in equity this presumption of notice is now apart of our statute and we have to interpret it as such. Wilful abstention

suggests conscious or deliberate abstention and gross negligence is indicative of a higher degree of neglect. Negligence is ordinarily understood as an omission to take such reasonable care as under the circumstances it is the duty of a person of ordinary prudence to take. In other words it is an omission to do something which a reasonable man guided by considerations which normally regulate the conduct of human affairs would do or doing something which normally a prudent and reasonable man would not do. The question of wilful abstention or gross negligence and, therefore, of constructive notice considered from this point of view is generally a question of fact or at best mixed question of fact and law depending primarily on the facts and circumstances of each case and except for cases directly falling within the three explanations, no inflexible rule can be laid down to serve as a straitjacket covering all possible contingencies. . . . .

. . . . .

In any event the plaintiff could not reasonably have thought that the Municipal Corporation had not cared to secure payment of the taxes due since, 1949. On the facts and circumstances of this case, therefore, we cannot hold that the plaintiff as a prudent and reasonable man was bound to enquire from the Municipal Corporation about the existence of any arrears of taxes due from the receivers. It appears from the record, however, that he did in fact make enquiries from the receivers but they did not give any intimation. The plaintiff made a statement on oath that when he purchased the building in question it was occupied by the tenants and the rent used to be recovered by the receivers. There is no rebuttal to this evidence. Now, if the receivers were receiving rent from the tenants, the reasonable assumption would be that the municipal taxes which were a charge on the property and which were also given priority under section 61 of the Provincial Insolvency Act, 1920, had been duly paid by the receivers out of the rental income. The plaintiff could have no reasonable ground for assuming that they were in arrears. From the plaintiff's testimony it is clear that he did nevertheless make enquiries from the receivers if there were any dues against the property though the enquiry was not made specifically about municipal dues. Apparently he was not informed about the arrears of municipal taxes. This seems to us explainable on the ground that the receivers had, after securing appropriate orders, for some reason not clear on the record, omitted to pay the arrears of municipal taxes and they were, therefore, reluctant to disclose this lapse on their part. On these facts and circum-

stances we do not think that the plaintiff could reasonably be fixed with any constructive notice of the arrears of municipal taxes since 1949. . . . ."

In the present case it is evident that the petitioner had issued public notices dated February 1, 2016 in two newspapers inviting any claim on the property. The respondent-authorities did not respond to the same. The petitioner was never informed about the VAT dues either by the sellers or by the respondents. Therefore, in our opinion the respondents can be said to be negligent in not being attentive to the notice issued by the petitioner, hence, the petitioner cannot be fixed with any constructive notice of the VAT dues.

The learned AGP Mr. Dave has tried to justify the action of the respondents by taking shelter under section 47 of the Act, the same reads as under :

"47. *Transfer to defraud revenue void* :

Where a dealer after any tax has become due from him creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any of his property in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer."

The core component which emanates from a bare reading of the aforesaid section is that the charge or transfer of the property shall be void if it is made with an "intention of defrauding the Government revenue". Thus, the transfer of property can be declared void provided there is intention to defraud the Government revenue. The Act does not lay down any mechanism to declare the transfer as void. In our considered opinion, the only remedy available to the respondent-authorities is to approach the civil court for a declaration to treat the transfer as void by adducing evidence of an "intention to defraud". The Division Bench in the case of *Jayesh Vadilal Parekh* [2015] 78 VST 19 (Guj) while examining the provisions of sections 47 and 48 of the Act, vis-a-vis similarly worded section 218 of the Income-tax Act, 1961 has observed thus (pages 28 and 30 in 78 VST) :

". . . Quite apart from this, as would be clear from the discussion hereinafter, courts have taken a view that sub-section (1) of section 281 of the Act only provides for the eventuality of the transaction hit by the said provisions as being void. It does not create any machinery for the Revenue authorities to entertain dispute and declare the transaction to be void for which purpose, only a civil suit would lie.

> It is true that there is no explicit provision made under the GVAT Act as is provided under the Second Schedule of the Income-tax Act, however, it is a well settled law that in the event of any dispute in relation to the title of any property, it is the civil court which shall have a jurisdiction. This has also been emphatically held and observed by the apex court in *Tax Recovery Officer* v. *Gangadhar Viswanath Ranade (Decd.)* [1998] 234 ITR 188 (SC) . . ."

Unquestionably, in the present case no tax was due on the petitioner and no charge is created on the property in question in respect of the alleged dues of the erstwhile owner which is an essential requirement of the section. Hence, the applicability of the provisions of section 47 in the case of the petitioner itself is an argumentative issue. In such circumstances, the only recourse available for the VAT authorities is to approach the civil court to annul the transfer on the ground that it was made with an intention to defraud the Government.

There is yet another issue which has been perceived by us and the same necessitates observations. Respondent No. 2-authority vide the impugned notice/communication dated July 22, 2016 has instructed respondent No. 3-Society instructing it not to issue "No objection certificate" to the petitioner. The genesis of section 47 lies in section 44 which envisages special mode of recovery to be initiated by issuing notice in writing by the Commissioner to the dealer who holds or subsequently hold monies for or on account of such dealer. Sub-section (6) contemplates recovery of unpaid monies as an arrears of land revenue. Section 45 of the Act, confers power of provisional attachment of property. Sub-section (2) states that such provisional attachment shall cease to have effect after the expiry of period of one year from the date of order. Section 46 envisages special powers of tax authorities for recovery of tax as arrears of land revenue. A conspectus of the afore noted sections of the Act, will postulate that the authorities are not conferred with any powers to issue any communication/notice to the society instructing it not to issue a "No due certificate" in relation to the property. In our opinion, such notice will circumvent the provisions of the Act as they do not intend to empower or authorize the Department to issue directions/instructions directing the society to refuse "No due certificate" of the property on which charge is established. By issuing the impugned notice debarring the society from issuing the no due certificate, the authorities have conferred upon themselves with the power which is lacking in the provisions of the Act, hence, the same can be said to be extra-legal and unwarranted. Thus, the impugned notice merits to be set aside as the same travels beyond the scope of the provisions of the GVAT Act. However, the

Department may, if so desire, take appropriate proceedings in accordance with law for having the transfer to be declared as void under section 47 of the GVAT Act.

In the backdrop of the afore noted legal and factual position, the impugned notice dated July 22, 2016 is quashed and set aside. Respondent No. 3 is directed to issue "no due certificate" to the petitioner forthwith. The petition is allowed. Rule is made absolute.

(END OF VOLUME 78)

3. Post issuance of the notification, references have been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier. Therefore, the wording of the notification that "any person other than a body corporate, paying central tax at the rate of 2.5 per cent." is not free from doubt and needs amendment/clarification from the perspective of drafting.

4. The matter has been examined. When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, five per cent. with limited ITC and 12 per cent. with full ITC. The only interpretation of the notification entry in question which is not absurd would be that—

(i) where the supplier of the service charges GST at 12 per cent. from the service recipient, the service recipient shall not be liable to pay GST under RCM ; and

(ii) where the supplier of the service doesn't charge GST at 12 per cent. from the service recipient, the service recipient shall be liable to pay GST under RCM.

5. Though a supplier providing the service to a body corporate under RCM may still be paying GST at five per cent. on the services supplied to other non-body corporate clients, to bring in greater clarity, Serial No. 15 of Notification No. (13/2017) (No. FD 48 CSL 2017), dated June 29, 2017[1] has been amended vide Notification No. (29/2019) (No. FD 48 CSL 2017), dated December 31, 2019[2] to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions :

(a) is other than a body-corporate ;

(b) does not issue an invoice charging GST at 12 per cent. (6 per cent. CGST plus 6 per cent. IGST) from the service recipient ; and

(c) supplies the service to a body corporate.

6. It may be noted that the present amendment of the notification is merely clarificatory in nature and therefore for the period October 1, 2019 to December 31, 2019 also, clarification given at para 5 above shall apply, as any other interpretation shall render the RCM notification for the said service unworkable for that period which is not permissible in law.

1. See [2018] 54 GSTR (St.) 1.
2. See [2020] 78 GSTR (St.) 191.

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

Commissioner of Commercial Taxes

[No. KSA/GST.CR-05/2019-20]

CENTRAL GOODS AND SERVICES TAX (NINTH AMENDMENT) RULES, 2020

Notification No. 60/2020-Central Tax, dated 30th July, 2020[1]

G. S. R. 480(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017[3], namely :—

1. (1) These rules may be called the **Central Goods and Services Tax (Ninth Amendment) Rules, 2020**.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, for FORM GST INV-01, the following form shall be *substituted*, namely :—

"FORM GST INV–1

(*See* Rule 48)

Format/Schema for e-Invoice

Note 1 : Cardinality means whether reporting of the item(s) is mandatory or optional as explained below :

0..1 : It means that reporting of item is optional and when reported, the same cannot be repeated.

1..1 : It means that reporting of item is mandatory but cannot be repeated.

1..n : It means that reporting of item is mandatory and can be repeated more than once.

0..n : It means that reporting of item is optional but can be repeated more than once if reported. For example, *previous invoice reference is optional but if required one can mention many previous invoice references*.

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1. Gazette of India, Extry. No. 376, Part II, sec. 3(i), dated 30-7-2020, page 13.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2017] 45 GSTR (St.) 402.

Note 2 : Field Specification Number (*Max length : m, n*) indicates 'm' places before decimal point and 'n' places after decimal point. For example, Number (*Max length : 3, 3) will have the format 999.999*

Schema (Version 1.1.)							
Sl. No.	*Technical name of the field*	*Cardinality (0..1/ 1..1/0..n/ 1..n)*	*Brief description of the field*	*Whether mandatory/ optional*	*Technical field specification*	*Sample value of the field*	*Explanatory Notes*
1.	*Basic details*	*1..1*		*Mandatory*			*Header for basic details*
1.0	Version	1..1	Version number	Mandatory	String (Max. Length : 6)	1.1	This is version of the e-invoice schema. It will be used to keep track of version of Invoice specification.
1.1	IRN	1..1	Invoice reference number	Mandatory	String (Length : 64)	a5c12dca 80e 7433 217...b a 4013750f 20 46f229	This will be a unique reference number for the invoice. *However, the supplier will not be populating this field*. The registration request may not have this field populated. The Invoice Registration Portal (IRP) will generate this IRN and respond to the registration request. e-invoice is valid only when it has the IRN. Hence, this is marked as mandatory field.

1.2	Supply_ Type_ Code	1..1	Code for supply type	Mandatory	Enumerated list	B2B/B2C/ SEZWP/ SEZWOP/ EXPWP/ EXPWOP/ DEXP	This will be the code to identify type of supply. *B2B* : Business to business *B2C* : Business to consumer *SEZWP* : To SEZ with Payment *SEZWOP* : To SEZ without payment *EXPWP* : Export with payment *EXPWOP* : Export without payment *DEXP* : Deemed export
1.3	Document_ Type_ Code	1..1	Code for document type	Mandatory	Enumerated list	INV/ CRN/ DBN	Type of document: *INV* for invoice, *CRN* for credit note. *DBN* for debit note.
1.4	Document_ Num	1..1	Document number	Mandatory	String (Max. Length : 16)	Sa/1/ 2019	This is as per relevant rule in CGST/SGST/ UTGST Rules.
1.5	Document_ Date	1..1	Document date	Mandatory	String (DD/ MM/ YYYY)	21/07/ 2019	The date on which the Invoice was issued. Format "DD/MM/ YYYY"
1.6	Additional_ Currency_ Code	0..1	Additional currency code	Optional	Enumerated list	USD, EUR	The field is for reporting additional currency, if any, in which all invoice amounts can be given, along with INR. One such additional currency may

							be used in the invoice, as per list published under *ISO 4217* standard. List published and updated from time to time at *https://www.icegate.gov.in/Webappl/CUR_ENQ*
1.7	Reverse_Charge	0..1	Reverse charge	Optional	String (length : 1)	Y	Whether the tax liability payable is under reverse charge.
1.8	IGST_Applicability_despite_Supplier_and_Recipient_located_in_same_State/UT	0..1	IGST applicability despite supplier and recipient located in same State/UT	Optional	String (length: 1)	N	To report the scenarios where the supply is chargeable to IGST despite the fact that the supplier and recipient are located within same State/UT
2.	*Document_Period*	*0..1*		*Optional*			*Header for document period*
2.1	Document_Period_Start_Date	1..1	Document period start date	Mandatory	String (DD/MM/YYYY)	21/07/2019	This is the start date of the document period (delivery/invoice period). *(This field is mandatory only if this section is selected)*
2.2	Document_Period_End_Date	1..1	Document period end date	Mandatory	String (DD/MM/YYYY)	21/07/2019	This is the end date of the document period (delivery/invoice period).

							(*This field is mandatory only if this section is selected*)
3.	*Preceding document/ contract reference*	*0..1*		*Optional*			*Header for preceding document/ contract reference*
3.1	*Preceding document reference*	*0..n*		*Optional*			*Sub-header for preceding document reference*
3.1.1	Preceding_-Document_Number	1..1	Preceding document number	Mandatory	String (Max length : 16)	Sa/1/2019	This is the reference of original document/ invoice to be provided optionally in the case of debit or credit notes. Credit/debit notes, against invoices can also be referred here. (*This field is mandatory only if this section is selected*)
3.1.2	Preceding_Document_Date	1..1	Date of preceding document	Mandatory	String (DD/MM/YYYY)	21/07/2019	Date of preceding document/ invoice. (*This field is mandatory only if this section is selected*)
3.1.3	Other_Reference	0..1	Other reference	Optional	String (Max length : 20)	KOL01	This field is to provide any additional reference e.g. specific branch, their user ID, their employee ID, sales centre reference, etc.

3.2	*Receipt/ contract references*	*0..n*		*Optional*			*Sub-header for receipt/contract references*
3.2.1	Receipt_ Advice_ Refer-ence	0..1	Receipt advice refer-ence	Optional	String (Max length : 20)	CREDIT30	This reference is kept for user to provide number of their receipt advice to their customer, in lieu of advance.
3.2.2	Receipt_ Advice_ Date	0..1	Date of Receipt Advice	Optional	String (DD/ MM/ YYYY)	21/07/ 2019	Date of issue of receipt advice for advance.
3.2.3	Tender_ or_Lot_ Refer-ence	0..1	Tender or lot refer-ence	Optional	String (max length : 20)	TENDER JAN2020	This reference is kept for mention-ing number or details of lot or tender, if supp-lies are made under such Lot or tender.
3.2.4	Contract _Refe-rence	0..1	Cont-ract refe-rence	Optional	String (max length : 20)	CONT23 072019	This reference is kept for mention-ing contract number, if supp-lies are made under any speci-fic contract
3.2.5	External _Refere nce	0..1	External refe-rence	Optional	String (max length : 20)	EXT2322 2	An additional field for provi-sion of any addi-tional/external reference num-ber for the sup-ply.
3.2.6	Project_ Refer-ence	0..1	Project refer-ence	Optional	String (Max length : 20)	PJTCOD E01	This reference is kept for mention-ing project num-ber, if supplies are made under any specific pro-ject

3.2.7	PO_ Ref_ Num	0..1	PO reference number	Optional	String (max length : 16)	Vendor PO/1	This is the reference number of purchase order
3.2.8	PO_ Ref_Dat	0..1	PO reference date	Optional	String (DD/ MM/ YYYY)	21/07/ 2019	This is the date of purchase order.
4.	*Supplier information*	*1..1*		*Mandatory*			*Header for supplier information*
4.1	Supplier _Legal_ Name	1..1	Supplier legal name	Mandatory	String (max. length : 100)	XYZ Ltd.	Legal name, as appearing in PAN of the supplier
4.2	Supplier _Trade_ Name	0..1	Trade name of supplier	Optional	String (max length : 100)	ABC traders	A name by which the supplier is known, i.e. business name, other than legal name
4.3	Supplier _GSTIN	1..1	GSTIN of supplier	Mandatory	String (length : 15)	29AADF V7589C1 ZX	GSTIN of the supplier
4.4	Supplier _Address1	1..1	Supplier Address 1	Mandatory	String (max length : 100)	# 1-23-120, Flat No. 3, Nalanda Apartments, MG Road, Vasanth Nagar	Address 1 of the Supplier (Building/Flat No., Road/Street, Locality etc.)
4.5	Supplier _Address2	0..1	Supplier address 2	Optional	String (max length : 100)	# 1-23-120, Flat No. 3, Nalanda Apartments, MG Road, Vasanth Nagar	Address 2 of the supplier (building/flat no., road/ street, locality etc.), if any

4.6	Supplier_Place	1..1	Supplier place	Mandatory	String (max length : 50)	Bangalore	Location of the supplier (city/ town/village)
4.7	Supplier_State_Code	1..1	Supplier State Code	Mandatory	Enumerated list	29	State code of the supplier as per GST system List published and updated from time to time at *https://www.icegate.gov.in/Webappl/STATE_ENQ*
4.8	Supplier_Pincode	1..1	Supplier PIN code	Mandatory	Number (length : 6)	560087	PIN code of the supplier locality
4.9	Supplier_Phone	0..1	Supplier phone	Optional	String (max length : 12)	9999999999	Contact number of the supplier
4.10	Supplier_Email	0..1	Supplier e-mail	Optional	String (max length : 100)	supplier@abc.com	e-mail ID of the supplier, as per REGEX (regular expressions) pattern
5.	*Recipient information*	*1..1*		*Mandatory*			*Header for recipient information*
5.1	Recipient_Legal_Name	1..1	Recipient legal name	Mandatory	String (Max. length : 100)	PQR Pvt. Ltd.	It will be legal name of recipient, as per PAN.
5.2	Recipient_Trade_Name	0..1	Recipient trade name	Optional	String (Max length : 100)	Adarsha	It will be trade name of recipient, if available.
5.3	Recipient_GSTIN	1..1	GSTIN of recipient	Mandatory	String (length : 15)	29ABCCR1832C1ZX, URP	GSTIN of the recipient, if available. URP: In case of exports or if supplies are made to unregistered persons

5.4	Place_ Of_Supply_ State_ Code	1..1	Place of supply (State Code)	Mandatory	Enumerated list	29, 96	Code/State Code of place of supply as per GST system. List published and updated from time to time at *https://www.icegate.gov.in/Webappl/STATE_ENQ*
5.5	Recipient_ Address 1	1..1	Recipient Address 1	Mandatory	String (max length : 100)	# 1-23-120, Flat No. 3, Nalanda Apartments, MG Road, Vasanth Nagar	Address 1 of the recipient (Building/Flat No., Road/Street, Locality etc.)
5.6	Recipient_ Address 2	0..1	Recipient address2	Optional	String (Max length : 100)	# 1-23-120, Flat No. 3, Nalanda Apartments, MG Road, Vasanth Nagar	Address 2, if any, of the recipient (building/flat no., road/street, locality etc.), if any
5.7	Recipient_ Place	1..1	Recipient place	Mandatory	String (max length : 100)	Mysore	Location of the Recipient (City/ Town/Village)
5.8	Recipient _State_ Code	1..1	Recipient State code	Mandatory	Enumerated list	29	Code/State code of the recipient. List published and updated from time to time at *https://www.icegate.gov.in/Webappl/STATE_ENQ*

5.9	Recipi-ent_Pin-code	0..1	Recipi-ent PIN code	Optional	Number (length : 6)	560 002	PIN code of the recipient locality. In case of export, pincode need not be mentioned.
5.10	Country _Code_ of_-export	0..1	Country code of export	Optional	Enume-rated list	AN	Code of country of export as per ISO 3166-1 alpha-2/Indian Customs EDI system. List published and updated from time to time at *https://www.ice-gate.gov.in/ Webappl/ COUNTRY_ENQ*
5.11	Reci-pient_ Phone	0..1	Recipi-ent phone	Optional	String (max length : 12)	08022233 23	Contact number of the recipient
5.12	Reci-pient_e mail_ID	0..1	Recipi-ent e-mail ID	Optional	String (max length : 100)	*bill-ing@xyz.c om*	e-mail ID of the recipient, as per REGEX (regular expressions) pattern
6.	*Payee infor-mation*	*0..1*		*Optional*			*Header for payee information*
6.1	Payee_ Name	0..1	Payee name	Optional	String (max length : 100)	Ramesh K	Name of the person to whom payment is to be made
6.2	Payee_ Bank_ Account_ Number	0..1	Payee bank account number	Optional	String (max length : 18)	38685017 47262	Bank account number of payee
6.3	Mode_ of_Pay-ment	0..1	Mode of payment	Optional	String (max length : 18)	Direct transfer	Mode of pay-ment : Cash/ credit/direct transfer, etc.

6.4	Bank_ Branch_ Code	0..1	Bank branch code	Optional	String (max length : 11)	SBIN987 6543	Indian Financial System Code (IFSC) of Payee's Bank Branch
6.5	Payment _Terms	0..1	Pay-ment terms	Optional	String (max length : 100)	Text	Terms of pay-ment, if any, with the recipient can be provided.
6.6	Payment _Instruc tion	0..1	Pay-ment instruc-tion	Optional	String (max length : 100)	Text	Instruction, if any, regarding payment can be provided
6.7	Credit_ Transfer _Terms	0..1	Credit transfer terms	Optional	String (max length : 100)	Text	Terms to specify credit transfer payment.
6.8	Direct_ Debit_ Terms	0..1	Direct debit terms	Optional	String (max length : 100)	Text	Terms, if any, to specify a direct debit.
6.9	Credit_ Days	0..1	Credit days	Optional	Numeric (max length : 4)	30	Number of days within which payment is due.
7.	*Delivery_ Informa-tion*	*0..1*		*Optional*			*Header for delivery information*
7.1	Ship_ To_ Details	0..1	Ship to details	Optional	Refer A 1.0		Details of loca-tion to which the supply has to be delivered.
7.2	Dispatch _From_ Details	0..1	Dis-patch from details	Optional	Refer A 1.1		Details of loca-tion from where Supply has to be dispatched.
8.	*Invoice item details*	*1..n*		*Mandato-ry*			*Header for invoice item details*
8.1	Item_-List	1..n	Item list	Manda-tory	Refer A 1.2		Provides infor-mation about the goods and ser-vices being invoiced.

9.	*Document total*	*1..1*		*Mandatory*			*Header for document total details*
9.1	Document_-Total_Details	1..1	Document total details	Mandatory	Refer A 1.3		Details of document total including taxes.
10.	*Extra information*	*0..1*		*Optional*			*Header for extra information*
10.1	Tax_-Scheme	1..1	Tax Scheme	Mandatory	String (max length : 10)	GST	To specify the tax/ levy applicable – GST (*This field is mandatory only if this section is selected*)
10.2	Remarks	0..1	Remarks	Optional	String (max length : 100)	New batch items submitted	A textual note that gives unstructured information that is relevant to the invoice as a whole, e.g., reasons for any correction or assignment note in case the invoice has been factored, etc.
10.3	Port_-Code	0..1	Port code	Optional	Enumerated list	Alpha numeric	In case of export/ supply to SEZ, port code can be mentioned as per Indian Customs EDI System (ICES), if applicable and available at the time of reporting e-invoice. Lists published and updated from time to time at below URLs : EDI Port Codes :

							https://www.ice-gate.gov.in/Web-appl/location_enq Non-EDI port codes : *https://www.ice-gate.gov.in/Web-appl/non-location_det_all.jsp*
10.4	Shipping_-Bill_ Number	0..1	Shipping bill number	Optional	String (max length : 20)	Alpha numeric	In case of export/ supply to SEZ, shipping bill number as per Indian Customs EDI System (ICES), can be mentioned, if applicable and available at the time of reporting e-invoice.
10.5	Shipping_ Bill_ Date	0..1	Shipping bill date	Optional	String (DD/ MM/ YYYY)	03/12/ 2020	Date of shipping bill as per Indian Customs EDI System (ICES)
10.6	Export_ Duty_ Amount	0..1	Export duty amount	Optional	Number (max length : 12.2)	1200000. 50	Amount of export duty in INR, if any, applicable (in case of invoices for export)
10.7	Supplier _Can_ Opt_ Refund	0..1	Supplier can opt refund	Optional	String (length : 1)	Y/N	In case of deemed export supplies, this field is for mentioning whether supplier can exercise the option of claiming refund or not.
10.8	ECOM_ GSTIN	0..1	e-commerce operator's GSTIN	Optional	String (length : 15)	29ABCC R1832C1 CX	GSTIN of e-commerce operator, if supply is made through him/her.

11.	*Additional_Supporting_Documents*	*0..n*		*Optional*			*Header for additional supporting documents*
11.1	Additional_Supporting_Documents_URL	0..1	Additional supporting documents URL	Optional	String (max length : 100)	http://www.xyz.com/abc	This is to enter URL reference of additional supporting documents, if any.
11.2	Additional_Supporting_Documents_base64	0..1	Additional supporting document in base64	Optional	String (max length : 1000)	Base 64 encoded Document	This is to add any additional document in PDF/ Microsoft Word in Base64 encoded format.
11.3	Additional_Information	0..1	Additional information	Optional	String (Max length : 1000)	Free text, remarks, identifiers, etc.	Any additional information, names, values, data, etc. that is specific for the supplier-recipient transaction e.g. CIN, trade-specific information, Drug Licence Reg. No., FOB/CIF, etc.
12.	*E-way bill details*	*0..1*		*Optional*			*Header for e-way bill details*
12.1	Transporter_ID	0..1	Transporter ID	Optional	String (length : 15)	29AADFV7589C1ZO	Registration/enrolment number of the transporter (*This field is required if Part A of e-waybill has to be generated*)
12.2	Trans_Mode	0..1	Mode of transportation	Optional	Enumerated list	1/2/3/4	Option to be provided based on mode of transport available on e-way bill portal

							1 for road ; 2 for rail ; 3 for air ; 4 for ship (*This field is required if Part B of e-way bill is also to be generated*)
12.3	Trans_-Distance	1..1	Distance of transportation	Mandatory	Number (max length : 4)	200	Distance of transportation (*This field is mandatory only if this section is selected*)
12.4	Transporter_Name	0..1	Transporter name	Optional	String (max length : 100)	Sphurthi transporters	Name of the transporter
12.5	Trans_Doc_No.	0..1	Transport document number	Optional	String (max length : 15)	As/34/746	Transport document number (*This field is mandatory if mode of transport is rail or air or ship*)
12.6	Trans_Doc_Date	0..1	Transport document date	Optional	String (DD/MM/YYYY)	21/07/2019	Date of transport document. (*This field is mandatory if mode of transport is rail or air or ship*)
12.7	Vehicle_No.	0..1	Vehicle number	Optional	String (max. length : 20)	KA12KA1234 or KA12K1234 or KA123456 or KAR1234	Vehicle registration number (*This field is mandatory if mode of transport is road)*
12.8	Vehicle_Type	0..1	Vehicle type	Optional	Enumeration list	O/R	To mention nature of vehicle : O : Over-dimensional cargo R : Regular

							(*This field is mandatory if Part B of e-way bill is also to be generated*)
A 1.0	*Ship to details*	*0..1*		*Optional*			*Header for annexure A 1.0 : Ship to details*
Sr. No.	*Parameter name*	*Cardinality*	*Description*	*Whether optional or mandatory*	*Field specifications*	*Sample value*	*Explanatory notes*
A.1.0.1	ShipTo_Legal_Name	1..1	Ship to legal name	Mandatory	String (max length : 100)	ABC-1 Ltd.	Legal name of the entity to whom the supplies are shipped to. (*This field is mandatory only if this section is selected*)
A.1.0.2	ShipTo_Trade_Name	0..1	Ship to trade name	Optional	String (max length : 100)	XYZ-1	Trade name of the entity to whom the supplies are shipped to.
A.1.0.3	ShipTo_GSTIN	0..1	Ship to GSTIN	Optional	String (Length : 15)	36AABCT2223L1ZF	GSTIN of the entity to whom the supplies are shipped to.
A.1.0.4	ShipTo_Address 1	1..1	Ship to Address 1	Mandatory	String (max length : 100)	Flat No. 2, Priya Towers, Omega Road, Srinivasa Nagar	Address 1 of the entity to whom the supplies are shipped to (*This field is mandatory only if this section is selected*)
A.1.0.5	ShipTo_Address 2	0..1	Ship to Address 2	Optional	String (max length : 100)	Flat No. 2, Priya Towers, Omega Road, Srinivasa Nagar	Address 2, if any, of the entity to whom the supplies are shipped to

A.1.0.6	ShipTo_Place	1..1	Ship to place	Mandatory	String (Max length : 100)	Bangalore	Place (city/town/village) of entity to whom the supplies are shipped to.
							(*This field is mandatory only if this section is selected*)
A.1.0.7	ShipTo_Pincode	1..1	Ship to pincode	Mandatory	Number (max length : 6)	560 001	PIN code of the location to which the supplies are shipped to. (*This field is mandatory only if this section is selected*)
A.1.0.8	Ship_To_State_Code	1..1	Ship to State Code	Mandatory	Enumerated list	29	Code/State Code (as per GST system) to which the supplies are shipped to. List published and updated from time to time at *https://www.icegate.gov.in/Webappl/STATE_ENQ* (*This field is mandatory only if this section is selected*)
A 1.1	*Dispatch from details*	*0..1*		*Optional*			*Header for annexure A 1.1 : Dispatch from details*
Sr. No.	*Parameter name*	*Cardinality*	*Description*	*Whether mandatory or optional*	*Field specifications*	*Sample value*	*Explanatory notes*
A.1.1.1	Dispatch From_Name	1..1	Dispatch from name	Mandatory	String (max length : 100)	XYZ-2	Name of the entity from which goods are dispatched. (*This field is mandatory only if this section is selected*)

A.1.1.2	Dispatch From_Address 1	1..1	Dispatch From Address 1	Mandatory	String (max length : 100)	Building No. 4/2, Flat No. 3, Kakatiya Apartments, Vasanth Nagar	Address 1 of the entity from which goods are dispatched. (*This field is mandatory only if this section is selected*)
A.1.1.3	Dispatch From_Address 2	0..1	Dispatch From Address 2	Optional	String (Max length : 100)	Building No. 4/2, Flat No. 3, Kakatiya Apartments, Vasanth Nagar	Address 2 of the entity from which goods are dispatched.
A.1.1.4	Dispatch From_Place	1..1	Dispatch from place	Mandatory	String (max length : 100)	Bangalore	Place (city/town/village) of the entity from which goods are dispatched. *(This field is mandatory only if this section is selected)*
A.1.1.5	Dispatch From_State_Code	1..1	Dispatch from State code	Mandatory	Enumerated list	29	Code/State code of the entity (as per GST system), from which goods are dispatched. List published and updated from time to time at *https://www.icegate.gov.in/Webappl/STATE_ENQ* (*This field is mandatory only if this section is selected*)

A.1.1.6	Dispatch From_Pincode	1..1	Dispatch from pincode	Mandatory	Number (Length : 6)	560 087	Pincode of the locality of entity from where goods are dispatched. *(This field is mandatory only if this section is selected)*
A 1.2	*Item details*	*1..n*		*Mandatory*			*Header for annexure A 1.2 : Item details*
Sr. No.	*Parameter name*	*Cardinality*	*Description*	*Whether mandatory or optional*	*Field specifications*	*Sample value*	*Explanatory notes*
A.1.2.1	Sl_No.	1..1	Serial number	Mandatory	String (max length: 6)	1, 2, 3	Serial number of the item
A.1.2.2	Item_Description	0..1	Item description	Optional	String (max length : 300)	Mobile	Description of the item
A.1.2.3	Is_Service	1..1	Service	Mandatory	String (length : 1)	Y/N	Specify whether supply is service or not.
A.1.2.4	HSN_Code	1..1	HSN code	Mandatory	String (max length : 8)	1122	To enter applicable HSN/SAC code of goods/ service
A.1.2.5	*Batch details*	*0..1*		*Optional*	*Refer A 1.4*		*Some manufacturers may mention batch details (in section A 1.4)*
A.1.2.6	Barcode	0..1	Barcode	Optional	String (max length : 30)	b123	Barcode, if any, of the item.
A.1.2.7	Quantity	0..1	Quantity	Optional	Number (max length : 10.3)	10	The quantity of items to be mentioned in the invoice. *This is mandatory only in case of goods.*

A.1.2.8	Free_Qty	0..1	Free quantity	Optional	Number (max length : 10,3)	99	Quantity of item(s), if any, given free of charge (FOC)
A.1.2.9	Unit_Of_Measurement	0..1	Unit of measurement	Optional	String (max length : 8)	Box	The Unit of Measurement (UOM), if any, applicable on invoiced goods.
A.1.2.10	Item_Price	1..1	Item price	Mandatory	Number (max length : 12,3)	500.5	Price per unit item.
A.1.2.11	Gross_Amount	1..1	Gross amount	Mandatory	Number (max length : 12,2)	5000	The gross price of an item (cost multiplied by quantity - rounded off to 2 decimal), exclusive of taxes.
A.1.2.12	Item_Discount_Amount	0..1	Item discount amount	Optional	Number (max length : 12,2)	10.25	Discount amount, if any, for the item.
A.1.2.13	Pre_Tax_Value	0..1	Pre-tax value	Optional	Number (max length : 12,2)	99.00	If pre-tax value is different from taxable value, mention the pre-tax value and taxable values separately. In some cases, the pre-tax value may be different from taxable value. For example, where old goods are exchanged for new ones (e.g. new phone supplied for INR 20,000 along with exchange of old phone, then pre-

							tax value would be INR 20,000 and taxable value would be INR 24,000, assuming exchange value of old phone is 4,000. Another example is in the case of real estate where pre-tax value may be different from taxable value.
A.1. 2.14	Item_ Taxable_ Value	1..1	Item taxable value	Manda-tory	Number (max length : 12,2)	5000	This is the value on which tax is computed. Value cannot be nega-tive.
A.1. 2.15	GST_ Rate	1..1	GST Rate	Manda-tory	Number (Max length : 3, 3)	5	The GST rate, represented as percentage that applies to the invoiced item. It will be IGST rate or sum of CGST and SGST Rates.
A.1. 2.16	IGST_ Amt	0..1	IGST amount	Optional	Number (max length : 12,2)	999.45	Amount of IGST payable per item (rounded off to 2 decimals). If IGST is reported, then CGST and SGST/ UTGST will be blank. For tax-able supplies, either IGST or CGST and SGST/ UTGST should be reported.
A.1. 2.17	CGST_ Amt	0..1	CGST amount	Optional	Number (max length : 12,2)	650.00	Amount of CGST payable per item (rounded off to 2 decimals).

							If CGST is reported, then SGST/UTGST has to be reported and IGST will be blank.
A.1.2.18	SGST_UTGST Amt	0..1	SGST/UTGST amount	Optional	Number (max length : 12,2)	650.00	Amount of SGST/UTGST payable per item(rounded off to 2 decimals). If SGST/UTGST is reported, then CGST must be reported and IGST will be blank
A1.2.19	Comp_Cess_Rate_Ad_valorem	0..1	Compensation Cess Rate, ad_valorem	Optional	Number (max length : 3,3)	2.5%	*Ad valorem* Rate of GST Compensation Cess, applicable, if any
A1.2.20	Comp_Cess_Amt_Ad_Valorem	0..1	Compensation cess amount, ad valorem	Optional	Number (max length : 12,2)	56.00	GST compensation cess amount, ad valorem (rounded off to 2 decimals) (*based on value of the item*)
A1.2.21	Comp_Cess_Amt_Non_Ad_Valorem	0..1	Compensation cess amount, non ad valorem	Optional	Number (max length : 12,2)	23.00	GST Compensation cess amount, computed on the basis other than value of item (*i.e. specific cess amount computed based on quantity, number, etc.*)
A1.2.22	State_Cess_Rate_ad_valorem	0..1	State cess rate, ad valorem	Optional	Number (max length : 3,3)	1.5%	*Ad valorem* rate of State/UT cess, applicable, if any

A1.2.23	State_Cess_Amt_Ad_Valorem	0..1	State cess amount, ad valorem	Optional	Number (max length : 12,2)	43.00	State/UT Cess amount, ad valorem (*based on value of the item*)
A1.2.24	State_Cess_Amt_Non_Ad_Valorem	0..1	State cess amount, non ad valorem	Optional	Number (max length : 12,2)	12.00	State/UT cess amount, computed on the basis other than value of item (*i.e., specific cess amount computed based on quantity, number, etc.*)
A.1.2.25	Other_Charges_Item_Level	0..1	Other charges (item level)	Optional	Number (max length : 12,2)	874.95	Any other charges applicable at item level. These may not be part of taxable value, e. g. in case of pure agent reimbursement.
A.1.2.26	Purchase_Order_Line_Reference	0..1	Purchase order line reference	Optional	String (max length : 50)	746/ABC/01	Reference of purchase order line
A.1.2.27	Item_Total_Amt	1..1	Item total amount	Mandatory	Number (max length : 12,2)	5000	The item total value that includes all taxes, cesses, as well as other charges. However, this value excludes discount, if any.
A.1.2.28	Origin_Country_Code	0..1	Code of country of origin	Optional	Enumerated list	DZ	This is to specify country of origin of the item, e. g., mobile phone sold in India could be manufactured in other country ;

							Code of country of export as per ISO 3166-1 alpha-2 / Indian Customs EDI system (ICES). List published and updated from time to time at *https://www.icegate.gov.in/Webappl/Country _enq*
A.1.2.29	Unique_Serial_Number	0..1	Unique serial number	Optional	String (max length : 20)	553	Serial number, in case of each item having a unique number.
A.1.2.30	*Product_Attribute_Details*	*0..n*	*Optional*	*Refer A 1.5*			*Attribute details of product*
A 1.3	*Document total details*	*1..1*		*Mandatory*			*Header for annexure A 1.3 : Document total details*
Sr. No.	*Parameter name*	*Cardinality*	*Description*	*Whether mandatory or optional*	*Field specifications*	*Sample value*	*Explanatory notes*
A.1.3.1	Taxable_Value_Total	1..1	Total taxable value	Mandatory	Number (max length : 14,2)	768439.35	This is the sum of the taxable values of all the items in the document.
A.1.3.2	IGST_Amt_Total	0..1	Total IGST amount	Optional	Number (max length : 14,2)	265.50	Total IGST amount for the invoice. Appropriate taxes based on rule will be applicable. For example, either of CGST and SGST/UTGST or IGST will be mandatory.

							As this is conditional mandatory, it is marked as 'optional'
A.1.3.3	CGST_Amt_Total	0..1	Total CGST amount	Optional	Number (max length : 14,2)	65.45	Total CGST amount for the invoice. Appropriate taxes based on rule will be applicable. For example, either of CGST & SGST/UTGST or IGST will be mandatory. *As this is conditional mandatory, it is marked as 'optional'*
A.1.3.4	SGST_UTGST_Amt_Total	0..1	Total SGST/UTGST amount	Optional	Number (max length : 14, 2)	65.45	Total SGST/UTGST amount for the invoice. Appropriate taxes based on rule will be applicable. For example, either of CGST & SGST/UTGST or IGST will be mandatory. *As it is conditional mandatory, it is marked as 'optional'*
A.1.3.5	Comp_Cess_Amt_Total	0..1	Total compensation cess amount	Optional	Number (Max length : 14,2)	24.95	Total GST compensation cess amount for the invoice (*ad valorem as well as non-ad valorem*)
A.1.3.6	State_Cess_Amt_Total	0..1	Total State cess amount	Optional	Number (max length : 14,2)	5.45	Total State cess amount for the invoice (ad valorem as well as non-ad valorem)

A.1.3.7	Discount_Amt_Invoice_Level	0..1	Invoice level discount amount	Optional	Number (max length : 14,2)	100.00	This is discount amount, if any, applicable on total invoice value
A.1.3.8	Other_Charges_Invoice_Level	0..1	Other charges (invoice level)	Optional	Number (max length : 14,2)	200.00	This is other charges, if any, applicable on total invoice value
A.1.3.9	Round_Off_Amount	0..1	Round off amount	Optional	Number (max length : 2,2)	31.21	This is round off amount of total invoice value
A.1.3.10	Total_Invoice_Value_INR	1..1	Total Invoice Value in INR	Mandatory	Number (max length : 14,2)	745249678.50	The total value of invoice including taxes/GST and rounded to two decimals maximum.
A.1.3.11	Total_Invoice_Value_FCNR	0..1	Total invoice value in FCNR	Optional	Number (max length : 14,2)	$5729.65	The total value of invoice in additional currency
A.1.3.12	Paid_Amount	0..1	Paid amount	Optional	Number (max length : 14,2)	8463.50	The amount, if any, which has been paid in advance. It must be rounded to maximum 2 decimals.
A.1.3.13	Amount_Due_	0..1	Amount due	Optional	Number (max length : 14,2)	98789.50	The outstanding amount due for payment. It must be rounded to maximum 2 decimals.
A 1.4	*Batch details*	*0..1*		*Optional*			*Header for annexure A 1.4 : Batch details*
Sr. No.	*Parameter name*	*Cardinality*	*Description*	*Whether mandatory or optional*	*Field specifications*	*Sample value*	*Explanatory notes*

A.1.4.1	Batch_Number	1..1	Batch number	Mandatory	String (max length : 20)	673927	Certain set of manufacturers may mention batch number details. (*This field is mandatory only if this section is selected*)
A.1.4.2	Batch_Expiry_Date	0..1	Batch expiry date	Optional	String (DD/MM/YYYY)	21/11/2019	Expiry date of the batch, if any
A.1.4.3	Warranty_Date	0..1	Warranty date	Optional	String (DD/MM/YYYY)	21/11/2019	Warranty date for the Item, if any.
A 1.5	*Attribute details of item*	*0..n*		*Optional*			*Header for annexure A 1.5 : Attribute details of item*
Sr. No.	*Parameter name*	*Cardinality*	*Description*	*Whether mandatory or optional*	*Field specifications*	*Sample value*	*Explanatory notes*
A.1.5.1	Attribute_Name	0..1	Attribute name	Optional	String (max length : 100)	Colour	Attribute name of the item.
A.1.5.2	Attribute_Value	0..1	Attribute value	Optional string (max length : 100)		Red, green, etc.	Attribute value of item.".

[F. No. CBEC-20/13/01/2019-GST]

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide Notification No. 3/2017-Central Tax, dated the 19th June, 2017[1], published vide No. G. S. R. 610(E), dated the 19th June, 2017 and last amended vide Notification No. 58/2020-Central Tax, dated the 1st July, 2020[2], published vide No. G. S. R. 426(E), dated the 1st July, 2020.

1. See [2017] 45 GSTR (St.) 402.
2. See [2020] 77 GSTR (St.) 18.

Class of registered person who shall prepare invoice and other prescribed documents in respect of supply of goods or services or both to a registered person—Amendment (Central)

Notification No. 61/2020-Central Tax, dated 30th July, 2020[1]

G. S. R. 481(E).—In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017[2], the Government, on the recommendations of the Council, hereby makes the following amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020-Central Tax, dated the 21st March, 2020[3], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide No. G. S. R. 196(E), dated the 21st March, 2020, namely :—

In the said notification, in the first paragraph,

(i) before the words "those referred to in sub-rules", the words "a Special Economic Zone unit and" shall be *inserted* ;

(ii) for the words "one hundred crore rupees", the words "five hundred crore rupees" shall be *substituted*.

[F. No. CBEC-20/13/01/2019-GST]

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide Notification No. 13/2020-Central Tax, dated the 21st March, 2020, published vide No. G. S. R. 196(E), dated the 21st March, 2020.

CIRCULAR (Tamil Nadu)

Circular No. 1/2019 (2018)/TNGST, dated the 7th February, 2019.

Subject: **Processing of refund applications filed by Canteen Stores Department (CSD)—Regarding.**

Ref : **CBEC, Department of Revenue, GST Policy Wing, Circular No. 60/34/2018-GST, dated September 4, 2018[4].**

As per notification issued in G. O. (Ms) No. 67, dated June 29, 2017 vide Notification No. II(2)/CTR/532(d-9)/2017, dated June 29, 2017[5] (published in the Tamil Nadu Govt. Gazette Extraordinary Issue No. 202), the State Government has specified the Canteen Stores Department (CSD for short), under the Ministry of Defence, as a person who shall be entitled to claim a

1. Gazette of India, Extry. No. 376, Part II, sec. 3(i), dated 30-7-2020, page 25.
2. See [2017] 45 GSTR (St.) 402.
3. See [2020] 75 GSTR (St.) 85.
4. See [2018] 57 GSTR (St.) 6.
5. See [2017] 106 VST (St.) 198.

refund of fifty per cent. of the applicable State tax paid by the CSD on all inward supplies of goods received by the CSD for the purposes of subsequent supply of such goods to the unit run canteens of the CSD or to the authorized customers of the CSD. Identical notification have been issued by the Central Government in Notification No. 6/2017-Central Tax (Rate)[1], No. 6/2017-Integrated Tax (Rate)[2], dated June 28, 2017, allowing refund of fifty per cent. of the Central tax/Integrated tax paid by the CSD on the inward supply of goods received by it and supplied subsequently as stated above.

2. With a view to ensuring expeditious processing of refund claims, the Board, in exercise of its powers conferred under section 168(1) of the Tamil Nadu Goods and Services Tax Act, 2017 (hereafter referred to as the "TNGST Act"), hereby specifies the manner and procedure for filing and processing of such refund claims as below :

3. *Filing application for refund* :

Invoice-based refund : It is clarified that the instant refund to be granted to the CSD is not for the accumulated input tax credit but refund based on the invoices of the inward supplies of goods received by them.

Manual filing of claims on a quarterly basis : In terms of rule 95 of the Tamil Nadu Goods and Services Tax Rules, 2017 (hereinafter referred to as "the TNGST Rules"), the CSD are required to apply for refund on a quarterly basis. Till the time the online utility for filing the refund claim is made available on the common portal, the CSD shall apply for refund by filing an application in *Form GST RFD-10A* (*Annexure-A* to this circular) manually to the jurisdictional tax office. The said form shall be accompanied with the following documents :

(i) An undertaking stating that the goods on which refund is being claimed have been received by the CSD ;

(ii) A declaration stating that no refund has been claimed earlier against the invoices on which the refund is being claimed ;

(iii) Copies of the valid return filed in *Form GSTR-3B* by the CSD for the period covered in the refund claim ;

(iv) Copies of *Form GSTR-2A* of the CSD for the period *covered in the refund claim* along with the attested hard copies of the invoices on which refund is claimed but which are not reflected in *Form GSTR-2A* ;

(v) Details of the bank account in which the refund amount is to be credited.

1. See [2017] 46 GSTR (St.) 44.
2. See [2017] 46 GSTR (St.) 89.

4. *Processing and sanction of the refund claim :*

(a) Upon receipt of the complete application in *Form GST RFD-10A*, an acknowledgement shall be issued manually within 15 days of the receipt of the application in *Form GST RFD-02* by the proper officer. In case of any deficiencies in the requisite documentary evidences to be submitted as detailed in para 3.2 above, the same shall be communicated to the CSD by issuing a deficiency memo manually in *Form GST RFD-03* by the proper officer within 15 days of the receipt of the refund application. Only one deficiency memo should be issued which should be complete in all respects.

(b) The proper officer shall validate the GSTIN details on the common portal to ascertain whether the return in *Form GSTR-3B* has been filed by the CSD. The proper officer may scrutinize the details contained in *Form RFD-10A*, *Form GSTR-3B* and *Form GSTR-2A*. The proper officer may rely upon *Form GSTR-2A* as an evidence of the accountal of the supply made by the corresponding suppliers to the CSD in relation to which the refund has been claimed by the CSD.

(c) The proper officer should ensure that the amount of refund sanctioned is 50 per cent. of the Central tax, State tax, Union territory tax and Integrated tax paid on the supplies received by CSD. The proper officer shall issue the refund sanction/rejection order manually in *Form GST RFD-06* along with the payment advice manually in *Form GST RFD-05* for each tax head separately.

5. It is clarified that the CSD will apply for refund with the jurisdictional Central tax/State tax authority to whom the CSD has been assigned. However, the payment of the sanctioned refund amount in relation to Central tax/Integrated tax shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to State Tax shall be made by the State tax. It therefore, becomes necessary that the refund order issued by the proper officer of any tax authority is duly communicated to the concerned counter-part tax authority within seven days for the purpose of payment of the remaining sanctioned refund amount.

6. The amount of refund sanctioned by the State authority for the Central tax and Integrated tax shall be communicated to the Central authorities concerned and the refund amount of State Tax under the TNGST shall be processed in the same manner as mandated for refund of ITC utilised on account of zero rated supplies vide Circular No. 2/2018-TNGST refund, dated February 2, 2018[1] and Circular No. 3/2018-TNGST refund both dated February 2, 2018[2] issued from the Commissioner of State Tax, Tamil Nadu.

7. This circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

(Encl : Annexure-A)

COMMISSIONER OF STATE TAX.

[RC No. 11/2018/A3/Taxation]

ANNEXURE A

FORM GST RFD-10A

(*See* rule 95)

Application for refund by Canteen Stores Department (CSD)

1. GSTIN :
2. Name :
3. Address :
4. Tax period (Quarter) : From <dd/mm/yy>
   To <dd/mm/yy>
5. Amount of refund claim : <INR><In words>
6. Details of inward supplies of goods received :

GSTIN of supplier	*Invoice/debit note/ credit note details*			*Rate*	*Taxable value*	*Amount of tax*		
	No.	*Date*	*Value*			*Integrated tax*	*Central Tax*	*State/Union territory Tax*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
6A. Invoices received								
6B. Debit/Credit note received								
Total								

7. Refund applied for :

Central Tax	*State/Union territory tax*	*Integrated tax*	*Total*
<Total>	<Total>	<Total>	<Total>

8. Details of bank account :
   (a) Bank account number :

1. See [2018] 52 GSTR (St.) 125.
2. See [2018] 52 GSTR (St.) 130.

(b) Bank account type :

(c) Name of the bank :

(d) Name of the account holder :

(e) Address of bank branch :

(f) IFSC :

(g) MICR :

9. Attachment of the following documents with the refund application :

(a) Copy of Form GSTR-3B for the period for which application has been filed.

(b) Copy of Form GSTR-2A for the period for which application has been filed.

10. *Verification*

I . . . . . as an authorised representative of <<Name of Canteen Store Department>> hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom. I further declare that all the goods, in respect of which the refund is being claimed, have been received by us and that no refund has been claimed earlier against any of the invoices against which refund has been claimed in this application.

Date : Signature of Authorised Signatory :

Place : Name :

Designation/Status :

Instructions :

1. Application for refund shall be filed on quarterly basis.

2. Applicant should ensure that all the invoices declared by them have the GSTIN of the supplier and the GSTIN of the respective CSD clearly marked on them.

Circular No. 3(2017)/2019-TNGST, dated 28th March, 2019.

Subject: **System based reconciliation of information furnished in Form GSTR-1 and Form GSTR-2 with FORM GSTR-3B—Regarding**

Ref : **CBEC, Department of Revenue, GST Policy Wing, Circular No. 7/7/2017, dated September 1, 2017**[1]**.**

1. See [2017] 47 GSTR (St.) 158.

Sections 37, 38 and section 39 of the TNGST Act, 2017 (hereinafter referred to as "the Act") read with rules 59, 60 and 61 of the TNGST Rules, 2017(hereinafter referred to as 'the Rules') require every registered person to furnish details of outward supplies made in a month in FORM GSTR-1, details of inward supplies received in a month in FORM GSTR-2 and a return in *Form GSTR-3* by the 10th, 15th and 20th of the next month respectively. Keeping in view that taxpayers may face certain issues in the initial days after the introduction of GST, the GST Council extended the date for filing of *Form GSTR-1* and *Form GSTR-2* for the months of July and August, 2017 and approved the filing of a simplified return in *Form GSTR-3B* for these two months by the notified due dates after making the due payment of tax.

2. Registered persons opting to utilise transitional credit available under section 140 of the Act read with the Rules made there under for discharging the tax liability for the month of July, 2017 were required to file Form GST TRAN-1 on or before 28th August, 2017. This transitional credit was to be credited to the electronic credit ledger and be available for discharging the tax liability.

3. As per the provisions of sub-rule (5) of rule 61 of the Rules, the return in Form GSTR-3B was required to be furnished when the due dates for filing of Form GSTR-1 and Form GSTR-2 have been extended. After the return in Form GSTR-3B has been furnished, the process of reconciliation between the information furnished in Form GSTR-3B with that furnished in Form GSTR-1 and Form GSTR-2 would be carried out in accordance with the provisions of sub-rule (6) of rule 61 of the Rules.

4. The detailed procedure for reconciliation of information furnished in Form GSTR-3 and Form GSTR-3B is detailed in succeeding paras.

Furnishing of information in Form GSTR-1 and Form GSTR-2 :

5. It may be noted that after the registered person has filed his return in FORM GSTR-3B and the statement of outward supplies in FORM GSTR-1, the inward supplies shall be auto drafted for all registered persons (corresponding recipients of supply) and made available to them in FORM GSTR-2A as per sub-rule (3) of rule 59 of the Rules. FORM GSTR-2A is the exact replica of FORM GSTR-2 containing only those details that are auto populated from the details furnished in FORM GSTR-1 by the corresponding suppliers. Based on the details communicated in FORM GSTR-2A, the registered person shall prepare the statement of inward supplies in FORM GSTR-2 by :—

(a) adding, deleting or modifying the invoice level details communicated in FORM GSTR-2A ;

(b) adding information pertaining to details that are required to be furnished in GSTR-2 but are not part of FORM GSTR-2A like details of imports, details of supplies attracting reverse charge that have been received by registered person ;

(c) providing details of supplies received from composition suppliers and exempt, nil-rated and non-GST inward supplies ;

(d) providing details of advances paid on inward supplies attracting reverse charge, if any, along with adjustments ;

(e) providing details of reversal of ITC as per the provisions of rules 37, 39, 42 and 43 of the Rules, if any ; and

(f) providing HSN wise summary details of inward supplies.

Correction of erroneous details furnished in FORM GSTR-3B :

6. In case the registered person intends to amend any details furnished in FORM GSTR-3B, it may be done in the FORM GSTR-1 or FORM GSTR-2, as the case may be. For example, while preparing and furnishing the details in FORM GSTR-1, if the outward supplies have been under reported or excess reported in FORM GSTR-3B, the same may be correctly reported in the FORM GSTR-1. Similarly, if the details of inward supplies or the eligible ITC have been reported less or more than what they should have been, the same may be reported correctly in the FORM GSTR-2. This will get reflected in the revised output tax liability or eligible ITC, as the case may be, of the registered person. The details furnished in FORM GSTR-1 and FORM GSTR-2 will be auto-populated and reflected in the return in FORM GSTR-3 for that particular month.

Action on the system-based reconciliation

7. After the registered person has furnished the statement of inward supplies in FORM GSTR-2 by the extended date, the common portal shall auto-draft Part-A of the return in FORM GSTR-3 for the said month based on the information furnished in FORM GSTR-1 and FORM GSTR-2. Based on the revised figures of output tax liability and eligible input tax credit, Table 12 of Part B of FORM GSTR-3 shall be made available. The common portal would populate the correct figures of tax payable in column (2) of Table 12 of FORM GSTR-3, based on the information furnished in FORM GSTR-1 and FORM GSTR-2. The tax paid through the electronic cash ledger and electronic credit ledger in the return in FORM GSTR-3B shall be displayed by the system in columns (3) to (7) of Table 12 of Part B of FORM GSTR-3. Where there is no difference between the details of output tax liability and eligible input tax credit furnished in FORM GSTR-3B and the details furnished in FORM GSTR-1 and FORM GSTR-2, the amount of tax

payable and tax paid shall be the same in FORM GSTR-3B and FORM GSTR-3. The person can sign and submit FORM GSTR-3 without any additional payment of tax.

Additional payment of taxes

8. Where the tax payable by a registered person as per FORM GSTR-3 is more than what has been paid as per FORM GSTR-3B, the common portal would show another instance of Table 12 for making additional payment of taxes, in accordance with the mandate of clause (b) of sub-rule (6) of rule 61. As the tax payable in column (2) of Table 12 of FORM GSTR-3 is more than what was shown in FORM GSTR-3B, the additional amount of tax payable can be paid by debiting the electronic cash or credit ledger as per the provisions contained in section 49 of the Act along with applicable interest on delayed payment of tax starting from 26th day of August, 2017 till the date of debit in the electronic cash or credit ledger. If the eligible ITC claimed by the person in FORM GSTR-2 is less than the ITC claimed and utilised by the registered person in FORM GSTR-3B, the same would be added to his output tax liability and shall have to be paid by him along with interest by debiting the electronic cash or credit ledger as per the provisions contained in section 49 of the Act before submitting the return in FORM GSTR-3 to complete the process. It may be noted that where the transitional credit as declared in FORM GST TRAN-1 is credited to the electronic credit ledger, the same can be utilised for the payment of the said additional tax liability.

Additional claim of eligible ITC

9. Where the eligible ITC claimed by the taxpayer in FORM GSTR-3B is less that the ITC eligible as per the details furnished in FORM GSTR-2, the additional amount of ITC shall be credited to the electronic credit ledger of the registered person when he submits the return in FORM GSTR-3 (in accordance with clause (c) of sub-rule (6) of rule 61). However, simultaneously, if there is an increase in the output tax liability, the registered person can utilise this additional amount of ITC eligible as per the details furnished in FORM GSTR-2 along with the balance in the electronic cash ledger, if required, for the payment of the increased output tax liability and submit his return in FORM GSTR-3.

Reduction in output tax liability

10. Where the output tax liability of the registered person as per the details furnished in FORM GSTR-1 and FORM GSTR-2 is less than the output tax liability as per the details furnished in the FORM GSTR-3B and the same is not offset by a corresponding reduction in the input tax credit to which he is entitled, the excess shall be carried forward to the next

month's return to be offset against the output liability of the next month by the taxpayer when he signs and submits the return in FORM GSTR-3. However, simultaneously, if there is a decrease in the eligible input tax credit, the same will be adjusted against the above mentioned reduction in output tax liability and the balance, if any, of the reduction in output tax liability shall be carried forward to the next month's return to be offset against the output liability of the next month.

Submission of GSTR-3B without payment of taxes

11. Where, for some reasons, the registered person has only submitted the return in FORM GSTR-3B and has not made the payment of taxes by debiting the same from his electronic cash or credit ledger, the return shall still be subjected to the reconciliation process as detailed above. Such registered person should furnish the details in FORM GSTR-1, FORM GSTR-2 and sign and submit the return in FORM GSTR-3 along with the payment of the due taxes as per the provisions of section 49 of the Act. However, since the payment was not made on or before the due date, the registered person shall be liable for payment of interest on delayed payment of tax starting from 26th day of August, 2017 till the date of debit in the electronic cash and/or credit ledger but will not be liable to pay any late fee provided the requisite return in FORM GSTR-3B was submitted on or before the due date.

12. Where the registered person has not submitted the return in FORM GSTR-3B, he is required to furnish the details in FORM GSTR-1 and FORM GSTR-2 and sign and submit the return in FORM GSTR-3 along with the payment of the due taxes as per the provisions of section 49 of the Act. However, since the payment was not made on or before the due date, the registered person shall be liable for payment of interest on delayed payment of tax starting from 26th day of August, 2017 till the date of debit in the electronic cash and/or credit ledger. No late fee, however, would be levied for late filing of return in terms of section 47 of the Act, in accordance with the recommendation of the GST Council.

Processing of information furnished

13. After submission of the information in FORM GSTR-1 and FORM GSTR-2, the process of matching as per sections 41, 42 and 43 of the Act read with rules 69 to 76 of the Rules shall be carried out as if these details were submitted in the regular course. Any amendment in the details furnished in FORM GSTR-1 and GSTR-2 shall be done following the procedure laid down under sub-section (3) of section 37 and sub-section (5) of section 38 of the Act respectively. The return shall be considered to be a valid

return when the tax payable as per FORM GSTR-3 has been paid in full after which the return shall be taken up for matching.

14. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX.
[RC No. 085/2017/A1/Taxation]

Circular No. 4(2017)/2019-TNGST, dated 28th March, 2019.

Subject: **Officer authorised for enrolling or rejecting application for goods and services tax practitioner—Regarding**

Ref : **CBEC, Department of Revenue, GST Policy Wing, Circular No. 9/9/2017, dated October 18, 2017[1].**

In pursuance of clause (91) of section 2 of the Tamil Nadu Goods and Services Tax Act, 2017 TN Act (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 Central Act (13 of 2017) and subject to sub-section (2) of section 5 of the Tamil Nadu Goods and Services Tax Act, 2017, the Commissioner of State Tax, hereby specifies the Assistant Commissioner/Deputy Commissioner, having jurisdiction over the place declared as address in the application for enrolment as Goods and Service Tax Practitioner in FORM GST PCT-1 submitted in terms of sub-section (1) of section 48 of the Tamil Nadu Goods and Services Tax Act, 2017 read with sub-rule (2) of rule 83 of the Tamil Nadu Goods and Service Tax Rules, 2017 as the officer authorized to approve or reject the said application.

2. It is also clarified than the applicant shall be at liberty to choose either the Centre or the State as the enrolling authority. The choice will have to be specified by the applicant in Item 1 of Part B of FORM GST PCT-1.

3. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX.
[RC No. 085/2017/A1/Taxation]

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1. See [2017] 47 GSTR (St.) 589.

Circular No. 5(2017)/2019-TNGST, dated the 28th March, 2019.

Subject: **Clarification on taxability of printing contracts—Regarding**

Ref : **CBEC, Department of Revenue, Tax Research Unit Circular No. 11/11/2017-GST, dated October 20, 2017**[1]**.**

Requests have been received to clarify whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes, etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods falling under Chapter 48 or 49 of the First Schedule to the Customs Tariff Act, 1975 (51of 1975) or supply of services falling under Heading 9989 of the scheme of classification of services annexed to Notification No. II(2)/CTR/532(d-14)/ 2017, dated June 29, 2017[2].

2. In the above context, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes, etc., printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

3. Principal supply has been defined in section 2(90) of the Tamil Nadu Goods and Services Tax Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

4. In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing (of the content supplied by the recipient of supply) is the principal supply and, therefore, such supplies would constitute supply of service falling under Heading 9989 of the scheme of classification of services.

5. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper, etc. falling under Chapter 48 or 49, printed with design, logo, etc., supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content (supplied by the recipient of supply) is ancillary to the principal supply of goods and

1. See [2017] 47 GSTR (St.) 591.
2. See [2017] 106 VST (St.) 201.

therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

6. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST council in the reference cited.

COMMISSIONER OF STATE TAX.

[RC No. 085/2017/A1/Taxation]

Circular No. 6(2017)/2019-TNGST, dated 28th March, 2019.

Subject: **Clarification regarding applicability of GST on the superior kerosene oil (SKO) retained for the manufacture of linear alkyl benzene (LAB)—Regarding**

Ref : **Department of Revenue, Tax Research Unit Circular No. 12/12/2017-GST, dated October 26, 2017**[1]**.**

Briefly stated, references have been received related to applicability of GST on the superior kerosene oil (SKO) retained for the manufacture of linear alkyl benzene (LAB).

2. In this context, LAB manufacturers have stated that they receive superior kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n-Paraffin (C9-C13 hydrocarbons) from SKO and return back the remaining of SKO to the refinery. In this context, the issue has arisen as to whether in this transaction GST would be levied on SKO sent by IOC for extracting n-paraffin or only on the n-paraffin quantity extracted by the LAB manufactures. Further, doubt have also been raised as to whether the return of remaining kerosene by LAB manufactures would separately attract GST in such transaction.

3. The matter was examined. LAB manufacturers generally receive superior kerosene oil (SKO) from a refinery through a dedicated pipeline ; on an average about 15 to 17 per cent. of the total quantity of SKO received from refinery is retained and balance quantity ranging from 83 per cent. to 85 per cent. is returned back to refinery. The retained SKO is towards extraction of normal paraffin, which is used in the manufacturing of LAB. In this transaction consideration is paid by LAB manufactures only on the quantity of retained SKO (n-paraffin).

4. In this context, the GST Council in its 22nd meeting held on October 6, 2017 discussed the issue and recommended for issuance of a clarification that in this transaction GST will be payable by the refinery on the value of

1. See [2018] 48 GSTR (St.) 1.

net quantity of superior kerosene oil (SKO) retained for the manufacture of linear alkyl benzene (LAB).

5. Accordingly, it is here by clarified that, in aforesaid case, GST will be payable by the refinery only on the net quantity of superior kerosene oil (SKO) retained for the manufacture of linear alkyl benzene (LAB). Though, refinery would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person.

6. This clarification is issued in the context of goods and service tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

7. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX.

[RC No. 085/2017/A1/Taxation]

Circular No. 7(2017)/2019-TNGST, dated 28th March, 2019.

Subject: **Clarification on unstitched salwar suits—Regarding**

Ref : **CBEC, Department of Revenue, GST Policy Wing, Circular No. 13/13/2017-GST, dated October 27, 2017**[1]**.**

Doubts have been raised regarding the classification of cut pieces of fabrics under GST.

1. It has been represented that before becoming ready-made articles or an apparel, the fabric is cut from bundles or thans and sold in that unstitched state. The consumers buy these sets or pieces and get it stitched to their shape and size.

2. Fabrics are classifiable under Chapters 50 to 55 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of five per cent. with no refund of the unutilised input tax credit.

3. Mere cutting and packing of fabrics into pieces of different lengths from bundles or thans, will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric and attract the five per cent. GST rate.

1. See [2018] 48 GSTR (St.) 2.

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX

[RC No. 085/2017/A1/Taxation]

Circular No. 8(2017)/2019-TNGST, dated 28th March, 2019.

Subject: **Procedure regarding procurement of supplies of goods from DTA by Export-oriented Unit (EOU)/Electronic Hardware Technology Park (EHTP) unit/Software Technology Park (STP) unit/Bio-technology Parks (BTP) Unit under deemed export benefits under section 147 of SGST Act, 2017—Regarding**

Ref : **CBEC, Department of Revenue, GST Policy Wing, Circular No. 14/14/2017-GST, dated November 6, 2017[1].**

In accordance with the decisions taken by the GST Council in its 22nd meeting held on October 6, 2017 at New Delhi to resolve certain difficulties being faced by exporters post-GST, it has been decided that supplies of goods by a registered person to EOUs, etc., would be treated as deemed exports under section 147 of the TNGST Act, 2017 (hereinafter referred to as "the Act") and refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies. Accordingly, Notification No. II(2)/CTR/868(f-2)/2017, dated October 18, 2017[2] published in Tamil Nadu Government Gazette No. 336A, dated October 18, 2017 has been issued to treat such supplies to EOU/EHTP/STP/BTP units as deemed exports. Further, rule 89 of the TNGST Rules, 2017 (hereinafter referred to as "the Rules") has been amended by Notification No. SRO A-46(e-1)/2017 dated October 18, 2017 published in Tamil Nadu Government Gazette No. 336, dated October 18, 2017 to allow either the recipient or supplier of such supplies to claim refund of tax paid thereon.

2. For supplies to EOU/EHTP/STP/BTP units in terms of Notification No. II(2)/CTR/868(f-2)/2017, dated October 18, 2017 published in Tamil Nadu Government Gazette No. 336A, dated October 18, 2017 the following procedure and safeguards are prescribed—

(i) the recipient EOU/EHTP/STP/BTP unit shall give prior intimation in a prescribed proforma in "Form–A" (appended herewith) bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before

1. See [2018] 48 GSTR (St.) 3.
2. See [2018] 50 GSTR (St.) 166.

such deemed export supplies are made. The said intimation shall be given to—

(a) the registered supplier ;

(b) the jurisdictional GST officer in charge of such registered supplier ; and

(c) its jurisdictional GST officer.

(ii) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU/EHTP/STP/BTP unit.

(iii) On receipt of such supplies, the EOU/EHTP/STP/BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to—

(a) the registered supplier ;

(b) the jurisdictional GST officer in charge of such registered supplier ; and

(c) its Jurisdictional GST Officer.

(iv) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU/EHTP/STP/BTP unit.

(v) The recipient EOU/EHTP/STP/BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B" (appended herewith). The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods being received in, utilised by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required. A digital copy of Form–B containing transactions for the month, shall be provided to the Jurisdictional GST Officer, each month (by the 10th of month) in a CD or pen drive, as convenient to the said unit.

3. The above procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU/EHTP/STP/BTP unit in terms of the Foreign Trade Policy, 2015-20 and the duty exemption notification being availed by such unit.

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX

[RC No. 085/2017/A1/Taxation]

FORM A

(Intimation for procurement of supplies from the registered person by export-oriented unit (EOU)/electronic hardware technology park (EHTP) unit/software technology park (STP) unit/bio-technology parks (BTP) Unit under deemed export benefits under section 147 of the TNGST, 2017 read with Notification No. II(2)/CTR/868(f-2)/2017, dated October 18, 2017 published in Tamil Nadu Govt. Gazette No. 336A, dated October 18, 2017).

(as per Circular . . . . . dated . . . . . .)

Running Sl. No. of intimation and date . . . . . .

LOP No. . . . . and valid up to . . . . . .

GSTIN . . . . . .

We the, M/s. . . . . (name of EOU/EHTP/STP/BTP unit and address) wish to procure the goods, namely, (tariff description, quantity and value) . . . . . ., as allowed under Foreign Trade Policy and Handbook of Procedures 2015-2020, and approved by Development Commissioner from M/s. . . . . (name of supplier, address and goods and Services Tax Identification Number (GSTIN)). Such supplies on receipt would be used in manufacturing of goods or rendering services by us. We would also abide by procedure set out in Circular No. . . . . ., dated . . . . . .

Signatures of the owner of EOU/EHTP/
STP/BTP unit or his Authorised officer

To :

1. The GST officer having jurisdiction over the EOU/EHTP/STP/BTP unit.

2. The GST officer having jurisdiction over the registered person intending to supply the goods.

3. The registered person intending to supply goods to EOU/EHTP/STP/BTP unit.

For the month of . . . . . .

FORM-B

Form to be maintained by EOU/EHTP/STP/BTP unit for the receipt, use and removal of goods received under deemed export benefit under section 147 of the SGST, 2017 read with Notification No. II(2)/CTR/868 (f-2)/2017, dated October 18, 2017 published in Tamil Nadu Govt. Gazette No. 336A, dated October 18, 2017).

(as per Circular . . . . . ., dated. . . . . .)

Name of EOU/EHTP/STP/BTP unit and address :

GSTIN No. :

Address of Jurisdiction GST Officer :

Sl. No.	*Date of prior intimation given for procuring deemed export supplies*	*Details of registered person*			*Jurisdictional GST officer details of registered person*		*Invoice No. and date of registered person*	
		Name	*Address*	*GSTIN*	*Designation*	*Jurisdictional Identifier such as Division name/No.*	*No. of invoice*	*Date*
1.	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*

Details of supplies received			*Amount of GST paid by supplier*				*Date of sending endorsed copy of tax invoice by EOU*	*Removal for processing*		
Description	*Value*	*Quantity*	*Central tax*	*State Tax/ Union Territory Tax*	*Integrated tax*	*Cess*		*Date and time of removal*	*Quantity*	*value*
10	*11*	*12*	*13*	*14*	*15*	*16*	*17*	*18*	*19*	*20*

Remarks (the goods removed for processing shall be accounted in a manner that enables the verification of input-output norms, extent of waste, scrap generated, etc.)	*Other removals/returns*				*Balance in stock*	
	Purpose of removal	*Date and time*	*Quantity*	*value*	*Quantity*	*Value*
21	*22*	*23*	*24*	*25*	*26*	*27*

Circular No. 9(2017)/2019-TNGST, dated 28th March, 2019.

Subject: **Due date for generation of FORM GSTR-2A and FORM GSTR-1A in accordance with the extension of due date for filing FORM GSTR-1 and GSTR-2 respectively—Regarding**

Ref : **CBEC, Department of Revenue, GST Policy Wing, Circular No. 15/15/2017-GST, dated November 6, 2017**[1]**.**

Please refer to Notification No. 7, dated September 12, 2017 whereby the dates for filing FORM GSTR-1, FORM GSTR-2 and FORM GSTR-3 for

1. See [2018] 48 GSTR (St.) 6.

the month of July, 2017 were extended. Queries have been received regarding the due dates for the generation of FORM GSTR-2A and FORM GSTR-1A in light of the said extension of dates. Therefore, in exercise of the powers conferred by sub-section (1) of section 168 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act'), for the purpose of uniformity in the implementation of the Act, the following is clarified :

1. Sub-section (1) of section 37 of the Act read with sub-rule (3) of rule 59 of the Tamil Nadu Goods and Services Tax Rules, 2017 (hereinafter referred to as "the Rules") provides that the details furnished in FORM GSTR-1 by the supplier shall be made available electronically to the registered person (hereinafter referred to as "the recipient") in FORM GSTR-2A after the due date for filing of FORM GSTR-1. Sub-section (2) of section 38 read with sub-rule (1) of rule 60 of the said Rules provides for furnishing of details in FORM-GSTR-2 after 10th but before 15th of the month succeeding the tax period. Further, sub-section (1) of section 38 read with sub-rule (1) of rule 60 provides that on the basis of the details contained in FORM GSTR-2A, the recipient shall prepare and furnish the details of inward supply in FORM GSTR-2 after verifying, validating, modifying or deleting, the details, if required. Since the due dates for furnishing the details in FORM GSTR-1 and FORM GSTR-2 have been extended, it is hereby clarified that the due date of FORM GSTR-2A is also extended. The details furnished in FORM GSTR-1 are available to the recipient in FORM GSTR-2A from 11th of October, 2017. These details are also available in FORM GSTR-2 and can be verified, validated, modified or deleted to prepare details in FORM GSTR-2 which is required to be furnished not later than November 30, 2017. It is further clarified that the details in FORM GSTR-2A are also available in his FORM GSTR-2 and the recipient may take necessary action on the same, prior to furnishing the details in his FORM GSTR-2. FORM GSTR-2A is a read-only document made available to the recipient electronically so that he has a record of all the invoices received from various suppliers during a given tax period.

2. Sub-section (3) of section 38 of the Act read with sub-rule (4) of rule 59 of the Rules provides that the details of inward supplies added, corrected or deleted by the recipient in FORM GSTR-2 shall be made available to the concerned supplier electronically in FORM GSTR-1A. Further, sub-section (2) of section 37 of the Act read with sub-rule (4) of rule 59 of the Rules provides that once these details are made available electronically through the common portal to the supplier in FORM GSTR-1A, the supplier shall either accept or reject the modifications made by the recipient on

or before 17th day of the month succeeding the tax period but not before 15th day, and accordingly, FORM GSTR-1 shall stand amended to the extent of modifications accepted by the supplier. In this regard, it is hereby clarified that as the dates for furnishing the details in FORM GSTR-1 and FORM GSTR-2 have been extended, the due date for furnishing of FORM GSTR-1A for July 2017 is also extended. Therefore, the details in FORM GSTR-1A shall be made available to the supplier from 1st of December to December 6, 2017 for the month of July, 2017.

3. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited

COMMISSIONER OF STATE TAX
[RC No. 085/2017/A1/Taxation]

Circular No. 10(2017)/2019-TNGST, dated 28th March, 2019.

Subject: **Clarifications regarding applicability of GST and avail ability of ITC in respect of certain services—Regarding.**

Ref : **Department of Revenue, Tax Research Unit, Circular No. 16/16/2017-GST, dated November 15, 2017[1].**

I am directed to issue clarification with regard to certain issues brought to the notice of Commissioner of State Tax as under :

Sl. No.	*Issue*	*Comment*
1.	Is GST applicable on warehousing of agricultural produce such as tea (i.e., black tea, white tea, etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts, etc. ?	1. As per TNGST Notification No. II(2)/CTR/532(d-14)/2017[1], Sl. No. 24 and Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017[2] Sl. No. 54, dated 28th June, 2017 published in Tamil Nadu Government Gazette No. 202, dated June 29, 2017, the GST rate on loading, unloading packing, storage or warehousing of agricultural produce is Nil. 2. Agricultural produce in the notification has been defined to mean "any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food,

1. See [2018] 48 GSTR (St.) 316.

Sl. No.	Issue	Comment
		fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market". 3. Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing, etc., on green leaf and is the processed output of the same. 4. Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans. 5. Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce. 6. Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of de-husking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However whole pulse grains such as whole gram, rajma, etc. are covered in the definition of agricultural produce. 7. In view of the above, it is hereby clarified that processed products such as tea (i.e., black tea, white tea, etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts, etc. fall outside the definition of agricultural produce given in

Sl. No.	*Issue*	*Comment*
		Notification No. TNGST Notification No. II(2)/CTR/532(d-14)/2017[1], and No. II(2)/CTR/532(d-15)/2017[2], dated June 29, 2017, published in Tamil Nadu Government Gazette No. 202 dated June 29, 2017 and therefore the exemption from GST is not available to their loading, packing, warehousing, etc., and that any clarification issued in the past to the contrary in the context of service tax or VAT/sales tax is no more relevant.
2.	Is GST leviable on inter-State transfer of aircraft engines, parts and accessories for use by their own airlines ?	1. Under Schedule I of the TNGST Act, supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, even if, without consideration, attracts GST. 2. It is hereby clarified that credit of GST paid on aircraft engines, parts and accessories will be available for discharging GST on inter-State supply of such aircraft engines, parts and accessories by way of inter-State stock transfers between distinct persons as specified in section 25 of the TNGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5 per cent.
3.	Is GST leviable on General Insurance policies provided by a State Government to employees of the State Government/police personnel, employees of Electricity Department or students of colleges/private schools, etc. (a) where premium is paid by State Government ? and (b) where premium is paid by employees, students etc. ?	It is hereby clarified that services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Sl. No. 40 of Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017[2] published in Tamil Nadu Government Gazette No. 202, dated June 29, 2017. Further, services provided by State Government by way of general insurance

Sl. No.	*Issue*	*Comment*
		(managed by Government) to employees of the State Government/Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. II(2)/ CTR/532(d-15)/2017, dated June 29, 2017[2] published in Tamil Nadu Government Gazette No. 202, dated June 29, 2017 which exempts Services by Central Government, State Government, Union territory or local authority to individuals.

1. See [2017] 106 VST (St.) 201.
2. See [2017] 106 VST (St.) 248.

2. This circular is issued based on the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX

[RC No. 085/2019/A1/Taxation]

Circular No. 11(2017)/2019-TNGST, dated 28th March, 2019

Subject: **Clarification on refund of unutilized input tax credit of GST paid on inputs in respect of exporters of fabrics—Regarding.**

Ref : **Govt. of India, Department of Revenue, Tax Research Unit, Circular No. 18/18/2017-GST, dated November 16, 2017[1].**

Doubts have been raised regarding the restrictions of refund of unutilized input tax credit of GST paid on inputs to manufacturer exporters of fabrics (falling under Chapters 50 to 55 and 60 and Headings 5608, 5801, 5806) under GST.

2.1 The matter has been examined. In this context, sub-section (3) of section 54 of the TNGST Act, 2017 provides as under :

"(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any *unutilised input tax credit* at the end of any tax period :

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

1. See [2018] 48 GSTR (St.) 329.

(i) zero rated supplies made without payment of tax ;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council."

2.2 Based on the recommendations of the GST Council, Notification No. II(2)/CTR/532(d-8)/2017, dated June 29, 2017[1] published in Tamil Nadu Govt. Gazette No. 202, dated 29th June, 2017 (as amended from time to time) has been issued under clause (ii) of the proviso to sub-section (3) of section 54 of the TNGST Act, 2017 restricting refund of unutilised input tax credit of GST paid on inputs in respect of certain specified goods, including input-tax credit of GST paid on inputs.

2.3 However, the aforesaid notification having been issued under clause (ii) of the proviso to sub-section (3) of section 54 of the TNGST Act, 2017, restriction on refund of unutilised input tax credit of GST paid on inputs will not be applicable to zero rated supplies, that is (a) exports of goods or services or both ; or (b) supply of goods or services or both to a Special Economic Zone Developer or a Special Economic Zone unit.

2.4 Accordingly, as regards export of fabrics it is clarified that, subject to the provisions of sub-section (10) of section 54 of the TNGST Act, 2017, a manufacturer of such fabrics will be eligible for refund of unutilized input tax credit of GST paid on inputs (other than the input tax credit of GST paid on capital goods) in respect of fabrics manufactured and exported by him.

3. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX

[RC No. 085/2017/A1/Taxation]

Circular No. 12(2017)/2019-TNGST, dated 28th March, 2019

Subject: **Clarification on taxability of custom milling of paddy—Regarding.**

Ref : **Department of Revenue, Tax Research Unit, Circular No. 19/19/2017-GST, dated November 20, 2017[2].**

1. See [2017] 106 VST (St.) 196.
2. See [2018] 48 GSTR (St.) 330.

Representations have been received seeking clarification on whether custom milling of paddy by Rice millers for Civil Supplies Corporation is liable to GST or is exempted under Sl. No 55 of Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017[1] published in Tamil Nadu Govt. Gazette No. 202, dated 29th June 2017.

2. The matter has been examined. Sl. No. 55 of Notification No. II(2)/CTR/532(d-15)/2017 exempts carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. Agricultural produce has been defined in the notification to mean, *any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market*. Job work has been defined under section 2(68) of the TNGST Act to mean *any treatment or process undertaken by a person on goods belonging to another registered person*. Further, under Schedule II (para 3) of the TNGST Act, *any treatment or process which is applied to another person's goods is a supply of service*.

3. Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce. In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under Sl. No. 55 of Notification No. II(2)/CTR/532(d-15)/2017, dated June 29, 2017 and corresponding notifications issued under IGST and UTGST Acts.

4. GST rate on services by way of job work in relation to all food and food products falling under Chapters 1 to 22 has been reduced from 18 per cent. to 5 per cent. vide Notification No. II(2)/CTR/858(a-5)/2017, dated October 13, 2017[2] (Notification No. II(2)/CTR/532(d-15)/2017, Sl. No. 26 refers). Therefore, it is hereby clarified that milling of paddy into rice on job

1. See [2017] 106 VST (St.) 248.
2. See [2018] 48 GSTR (St.) 197.

work basis, is liable to GST at the rate of five per cent., on the processing charges (and not on the entire value of rice).

5. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 085/2017/A1/Taxation]

Circular No. 13(2017)/2019-TNGST, dated 28th March, 2019

Subject: **Issue related to classification and GST rate on Terracotta idols—Regarding**

Ref : **CBEC, Department of Revenue, Tax Research Unit, Circular No. 20/20/2017-IGST, dated November 22, 2017[1].**

The GST rate on idols made of clay is *Nil* (S. No.135A of Schedule Notification No. II(2)/CTR/532(d-5)/2017, dated June 29, 2017[2] and as amended in Notification No. II(2)/CTR/793(d-2)/2017, dated September 22, 2017[3]).

2. In this connection, references have been received as to whether this entry would cover idols made of terracotta.

3. The matter has been examined. As terracotta is clay based, terracotta idols will be eligible for *Nil* rate under Sl. No. 135A of Notification No. II(2)/CTR/532(d-5)/2017, dated June 29, 2017[2].

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No.085/2017/A1/Taxation]

Circular No. 14(2017)/2019-TNGST, dated 28th March, 2019

Subject: **Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries—Regarding**

Ref : **CBEC, Department of Revenue, GST Policy Wing, Circular No. 22/22/2017-GST, dated December 21, 2017[4].**

1. See [2018] 48 GSTR (St.) 331.
2. See [2017] 106 VST (St.) 180.
3. See [2018] 48 GSTR (St.) 186.
4. See [2018] 48 GSTR (St.) 333.

Various representations have been received regarding taxation of the supply of art works by artists in different States other than the State in which they are registered as a taxable person. In such cases, if the art work is selected by the buyer, then the supplier issues a tax invoice only at the time of supply. It has been represented that the artists give their work of art to galleries where it is exhibited for supply. There seems to be confusion regarding the treatment of this activity whether it is taxable in the hands of the artist when the same is given to the art gallery or at the time of actual supply by the gallery. Therefore, in exercise of the powers conferred under section 168 of the Tamil Nadu Goods and Services Tax Act, 2017, for the purpose of uniformity in the implementation of the Act, it has been decided to clarify this matter.

2. It is seen that clause (c) of sub-rule (1) of rule 55 of the Central Goods and Services Tax Rules, 2017[1] (hereafter referred as "the said Rules") provides that the supplier shall issue a delivery challan for the initial transportation of goods where such transportation is for reasons other than by way of supply. Further, sub-rule (3) of the said rule provides that the said delivery challan shall be declared as specified in rule 138 of the said Rules. It is also seen that sub-rule (4) of rule 55 of the said Rules provides that where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

3. A combined reading of the above provisions indicates that the art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work.

4. It is also clarified that the supplies of the art work from one State to another State will be inter-State supplies and attract integrated tax in terms of section 5 of the Integrated Goods and Services Tax Act, 2017[2].

5. It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

1. See [2017] 45 GSTR (St.) 402.
2. See [2017] 44 GSTR (St.) 397 ; [2017] 100 VST (St.) 148.

6. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX

[RC No. 085/2017/A1/Taxation]

Circular No. 15 (2018)/2019-TNGST, dated 29th March 2019

Subject: **Clarifications regarding levy of TNGST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, home stays, printing, legal services, etc.—Reg.**

Ref **: Circular No. 27/01/2018-GST, dated January 4, 2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**.

Representations were received from trade and industry for clarification on certain issues regarding levy of GST on supply of services.

2. In this context, it is stated that the following clarifications, inter-alia, were published as FAQ at *http://www.cbec.gov.in/resources//htdocs-cbec/gst/om-clarification.pdf*.

S. No.	*Questions/clarifications sought*	*Clarifications*
1	1. Will GST be charged on actual tariff or declared tariff for accommodation services ? 2. What will be GST rate if cost goes up (more than declared tariff) owing to additional bed. 3. Where will the declared tariff be published ? 4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then ? 5. If tariff changes between booking and actual usage, which rate will be used ? 6. GST at what rate would be levied if an upgrade is provided to the customer at a lower rate ?	1. Declared or published tariff is relevant only for determination of the tax rate slab. GST will be payable on the actual amount charged (transaction value). 2. GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged from the customer. For example, if the declared tariff is Rs. 7,000 per unit per day but the amount charged from the customer on account of extra bed is Rs. 8,000, GST shall be charged at 18 per cent. on Rs. 8,000.

1. See [2018] 49 GSTR (St.) 170.

S. No.	*Questions/clarifications sought*	*Clarifications*
		3. Tariff declared anywhere, say on the websites through which business is being procured or printed on tariff card or displayed at the reception will be the declared tariff. In case different tariff is declared at different places, highest of such declared tariffs shall be the declared tariff for the purpose of levy of GST. 4. In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply. 5. Declared tariff at the time of supply would apply. 6. If declared tariff of the accommodation provided by way of upgrade is Rs. 10,000, but amount charged is Rs. 7,000, then GST would be levied at 28% on Rs 7,000.
2	Vide Notification No. II(2)/CTR/532(d-14)/2017) dated June 29, 2017[1] entry 34, GST on the service of admission into casino under Heading 9996 (Recreational, cultural and sporting services) has been levied at 28%. Since the Value of supply rule has not specified the method of determining taxable amount in casino, Casino Operators have been informed to collect 28% GST on gross amount collected as admission charge or entry fee. The method of levy adopted needs to be clarified.	Relevant part of entry 34 of the said TNGST notification reads as under : *"Heading 9996 (Recreational, cultural and sporting services)—. . .* *(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting,* **casinos**, *race-course, ballet, any sporting event such as Indian Premier League and the like.—14%* (iv) . . . (v) Gambling.—14%" As is evident from the notification, "entry to casinos" and "gambling" are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per section 15 of the SGST Act. Thus, GST at 28% would apply on entry to casinos as well as on betting/gambling services being provides by casinos on the transaction value

S. No.	*Questions/clarifications sought*	*Clarifications*
		of betting, i. e., the total bet value, in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/drinks, etc., at the casinos). Betting, in pre-GST regime, was subjected to betting tax on full bet value.
3	The provision in rate schedule Notification No. II(2)/CTR/532(d-14)/2017), dated June 29, 2017[1] does not clearly state the tax base to levy GST on horse racing. This may be clarified.	GST would be leviable on the entire bet value, i.e., total of face value of any or all bets paid into the totalisator or placed with licensed book makers, as the case may be. *Illustration* : If entire bet value is Rs. 100, GST leviable will be Rs. 28.
4	1. Whether for the purpose of entries at Sl. Nos. 34(ii) (admission to cinema) and 7(ii)(vi)(viii) (Accommodation in hotels, inns, etc.), Notification No. II(2/CTR/532(d-14)/2017), dated June 29, 2017, price/declared tariff includes the tax component or not ? 2. Whether rent on rooms provided to in-patients is exempted ? If liable to tax, please mention the entry of TNGST Notification II(2)/CTR/532(d-14)/2017) dated June 29, 2017. 3. What will be the rate of tax for bakery items supplied where eating place is attached—manufacturer for the purpose of composition levy ?	1. Price/declared tariff does not include taxes. 2. Room rent in hospitals is exempt. 3. Any service by way of serving of food or drinks including by a bakery qualifies under section 10(1)(b) of SGST Act and hence GST rate of composition levy for the same would be 5%.
5	Whether home stays providing accommodation through an Electronic Commerce Operator, below threshold limit are exempt from taking registration ?	Notification No. II(2)/CTR/532(d-20)/2017), dated June 29, 2017[1], has been issued making ECOs liable for payment of GST in case of accommodation services provided in hotels, inns guest houses or other commercial places meant for residential or lodging purposes provided by a person having turnover below Rs. 20 lakhs (Rs. 10 lakhs in special category States) per

S. No.	*Questions/clarifications sought*	*Clarifications*
		annum and thus not required to take registration under section 22(1) of SGST Act. Such persons, even though they provide services through ECO, are not required to take registration in view of section 24(ix) of the TNGST Act, 2017.
6	To clarify whether supply in the situations listed below shall be treated as a supply of goods or supply of service : 1. The books are printed/published/ sold on procuring copyright from the author or his legal heir. (e.g., White Tiger Procures copyright from Ruskin Bond) 2. The books are printed/published/ sold against a specific brand name. (e.g., Manorama Year Book) 3. The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian edition (same language) of foreign books. (e.g., Penguin (India) Ltd. pays fees to Routledge (London)) The books are printed/ published/sold on paying copyright fees to a foreign publisher for publishing Indian language edition (translated). (e.g., Ananda Publishers Ltd. pays fees to Penguin (NY))	The supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to sell those books on his own account.
7	Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism ?	Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i. e., the business entity.

1. See [2017] 106 VST (St.) 201.

3. The above clarifications are reiterated for the purpose of levy of GST on supply of services.

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No.151/2018/A1/Taxation]

Circular No. 16 (2018)/2019-TNGST, dated 29th March, 2019.

Subject: **Clarifications regarding GST on college hostel mess fees—Reg.**

Ref : **1. Circular No. 28/02/2018-GST, dated January 8, 2018[1] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

2. Corrigendum to Circular No. 28/02/2018-GST, dated January 18, 2018 issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.

1. Queries have been received seeking clarification regarding the taxability and rate of GST on services by a college hostel mess. The clarification is as given below :

2. The educational institutions have mess facility for providing food to their students and staff. Such facility is either run by the institution/students themselves or is out sourced to a third person. Supply of food or drink provided by a mess or canteen is taxable at five per cent. without input tax credit (Serial No. 7(i) of Notification No. II(2)/CTR/532(d-4)/2017), dated June 29, 2017[2] as amended vide G. O. Ms. No. 162, dated November 14, 2017[3] refers).

2.1 If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition given under paragraph 2(y) of Notification No. 12/2017-Central Tax (Rate), then the same is exempt. (Sl. No. 66(a) of Notification No. 12/2017-Central Tax (Rate)[4] refers)

2.2 If the catering services, i. e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service at entry 7(i) of Notification No. 11/2017-CT (Rate)[5]

1. See [2018] 49 GSTR (St.) 174.
2. See [2017] 106 VST (St.) 96.
3. See [2018] 50 GSTR (St.) 137.
4. See [2017] 46 GSTR (St.) 192.
5. See [2017] 46 GSTR (St.) 144.

(as amended vide Notification No. 46/2017-CT (Rate), dated November 14, 2017[1]) to the concerned educational institution and attracts GST of five per cent. provided that credit of input tax charged on goods and services used in supplying the service has not been taken, effective from November 15, 2017."

This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 17(2018)/2019-TNGST, dated 29th March, 2019.

Subject: **Clarification regarding applicability of TNGST on polybutylene feedstock and liquefied petroleum gas retained for the manufacture of poly iso butylene and propylene or di-butyl para cresol—Regarding.**

Ref : **Circular No. 29/3/2018-GST, dated January 25, 2018[2] issued by Department of Revenue, Ministry of Finance, Government of India, New Delhi**

References have been received related to the applicability of GST on the Polybutylene feedstock and liquefied petroleum gas retained for the manufacture of poly iso butylene and propylene or di-butyl para cresol.

2. In this context, manufacturers of propylene or di-butyl para cresol and poly iso butylene have stated that the principal raw materials for manufacture of such goods are liquefied petroleum gas and poly butylene feed stock respectively, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines while a portion of the raw material is retained by these manufacturers, the remaining quantity is returned to the oil refineries. In this regard an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of propylene or di-butyl para cresol and poly iso butylene.

3. The GST Council in its 25th meeting held on January 18, 2018 discussed this issue and recommended for issuance of a clarification stating that in such transactions, GST will be payable by the refinery on the value of net quantity of polybutylene feedstock and liquefied petroleum gas

1. See [2017] 47 GSTR (St.) 557.
2. See [2018] 49 GSTR (St.) 428.

retained for the manufacture of poly iso butylene and propylene or di-butyl para cresol.

4. Accordingly, it is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of polybutylene feedstock and liquefied petroleum gas retained by the manufacturer for the manufacture of poly iso butylene and propylene or di-butyl para cresol. Though, the refinery would be liable to pay GST on such returned quantity of polybutylene feedstock and liquefied petroleum gas, when the same is supplied by it to any other person.

5. This clarification is issued in the context of the Goods and Services Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

6. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 18/2018-TNGST, dated 29th March, 2019.

Subject: **Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86 —Regarding.**

Ref : **Circular No. 30/4/2018-GST, dated January 25, 2018**[1] **issued by Department of Revenue, Ministry of Finance, Government of India, New Delhi**

Representations have been received that certain suppliers are making supplies to the railways of items classifiable under any Chapter other than chapter 86, charging the GST rate of five per cent.

2. The matter has been examined. Vide Notification No. II(2)/CTR/532(d-4)/2017), dated June 29, 2017[2], read with Notification No. II(2)/CTR/532(d-8)/2017), dated June 29, 2017[3], goods classifiable under Chapter 86 are subjected to five per cent. GST rate with no refund of unutilised input tax credit (ITC). Goods classifiable in any other chapter attract the applicable GST, as specified under Notification No. II(2)/CTR/532(d-4)/2017), June 29, 2017 or Notification No. II(2)/CTR/532(d-5)/2017), dated June 29, 2017[4].

1. See [2018] 49 GSTR (St.) 429.
2. See [2017] 106 VST (St.) 96.
3. See [2017] 106 VST (St.) 196.
4. See [2017] 106 VST (St.) 180.

3. The GST Council during its 25th meeting held on 18th January, 2018, discussed this issue and recorded that a clarification regarding applicable GST rates on various supplies made to the Indian Railways may be issued.

4. Accordingly, it is hereby clarified that—

- only the goods classified under Chapter 86, supplied to the railways attract five per cent. GST rate with no refund of unutilised input tax credit and
- other goods [falling in any other Chapter], would attract the general applicable GST rates to such goods, under the aforesaid notifications, even if supplied to the railways.

5. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 19(2018)/2019-TNGST, dated 29th March, 2019.

Subject: **Clarifications regarding GST in respect of certain services—Regarding.**

Ref : **Circular No. 32/6/2018-GST, dated February 12, 2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**.

I am directed to issue clarification with regard to the following issues approved by the GST Council in its 25th meeting held on 18th January 2018 :—

Sl. No.	*Issue*	*Clarification*
1.	Is hostel accommodation provided by Trusts to students covered within the definition of charitable activities and thus, exempt under Sl. No. 1 of Notification No. II(2)/CTR/532(d-10)/2017), dated June 29, 2017[1].	Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. II(2)/CTR/532(d-10)/2017), dated June 29, 2017). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equiva-

1. See [2018] 50 GSTR (St.) 1.

Sl. No.	*Issue*	*Clarification*
		lent are exempt. Thus, accommodation service in hostels including by trusts having declared tariff below one thousand rupees per day is exempt. (Sl. No. 14 of notification No. II(2)/CTR/532(d-10)/2017), dated June 29, 2017 refers
2.	Is GST leviable on the fee/amount charged in the following situations/ cases : (1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission Office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account. (2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required. (3) When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50 per cent. of total amount imposed by the District Forum or Rs. 25,000 whichever is less, is required to be paid.	Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services. Consumer Disputes Redressal Commissions (National/State/District) may not be tribunals literally as they may not have been set up directly under article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal on account of the following : (1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasi-judicial machinery is sought to be set up at District, State and Central levels. (2) The President of the District/State/ National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively. (3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/ witnesses, reception of evidence, discovery/production of documents, examination of witnesses, etc. (4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC. (5) The Commissions have been deemed to be a civil court under Cr PC.

Sl. No.	*Issue*	*Clarification*
		(6) Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court. In view of the aforesaid, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.
3.	Whether the services of elephant or camel ride, rickshaw ride and boat ride should be classified under heading 9964 (as passenger transport service) in which case, the rate of tax on such services will be 18 per cent. or under the heading 9996 (recreational, cultural and sporting services) treating them as joy rides, leviable to GST at 28 per cent. ?	Elephant/camel joy rides cannot be classified as transportation services. These services will attract GST at 18 per cent. with threshold exemption being available to small service providers. (Sl. No. 34(iii) of Notification No. II(2)/CTR/532(d-14)/2017), dated June 29, 2017[2] as amended by Notification No. II((2)/CTR/532(d-4)/2017), dated June 29, 2017[3] *refers*)
4.	What is the GST rate applicable on rental services of self-propelled access equipment (Boom Scissors/Telehandlers) ? The equipment is imported at GST rate of 28 per cent and leased further in India where operator is supplied by the leasing company, diesel for working of machine is supplied by customer and transportation cost including loading and unloading is also paid by the customer.	Leasing or rental services, with or without operator, for any purpose are taxed at the same rate of GST as applicable on supply of like goods involving transfer of title in goods. Thus, the GST rate for the rental services in the given case shall be 28 per cent., provided the said goods attract GST of 28 per cent. IGST paid at the time of import of these goods would be available for discharging IGST on rental services. Thus, only the value added gets taxed. (Sl. No. 17(vii) of Notification No. II(2)/CTR/532(d-14)/2017, dated June 29, 2017[2] as amended as amended *refers*).
5.	Is GST leviable in following cases : (1) Hospitals hire senior doctors/consultants/technicians independently, without any contract of such persons with the patient ; and pay them consultancy charges, without	Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. (Sl. No. 74 of Notification No. II(2)/CTR/532(d-14)/2017, dated June 29, 2017[2] as amended *refers*).

Sl. No.	*Issue*	*Clarification*
	there being any employer-employee relationship. Will such consultancy charges be exempt from GST ? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST ? (2) Retention money : Hospitals charge the patients, say, Rs. 10,000 and pay to the consultants/technicians only Rs. 7,500 and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Will GST be applicable on such money retained by the hospitals ?	(1) Services provided by senior doctors/ consultants/technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt. (2) Healthcare services have been defined to mean 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 (para 2(zg) of Notification No. II(2)/CTR/532(d-14)/ 2017 dated June 29, 2017[2]). Therefore, hospitals also provide health care services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors, etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.
	(3) Food supplied to the patients : Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food ; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.	(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

Sl. No.	*Issue*	*Clarification*
6.	Appropriate clarification may be issued regarding taxability of cost petroleum.	As per the Production Sharing Contract (PSC) between the Government and the oil exploration and production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "cost petroleum". The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se. However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.

1. See [2017] 106 VST (St.) 198.

2. See [2017] 106 VST (St.) 201
3. See [2017] 106 VST (St.) 96

2. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 20 (2018)/2019-TNGST, dated 29th March, 2019

Subject: **Clarifications regarding GST in respect of certain services—Regarding**

Ref : **1. Ministry of Finance, Government of India, New Delhi, Circular No. 34/8/2018-GST, dated March 1, 2018**[1]

2. Ministry of Finance, Government of India, New Delhi, Circular No. 46/20/2018-GST, dated June 6, 2018[2].

I am directed to issue clarification with regard to the following issues as approved by the Fitment Committee to the GST Council in its meeting held on 9th, 10th and 13th January 2018 :

S. No.	*Issue*	*Clarification*
1.	Whether activity of bus body building, is a supply of goods or services ?	In the case of bus body building there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.
2.	Whether retreading of tyres is a supply of goods or services ?	In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply

1. See [2018] 50 GSTR (St.) 316.
2. See [2018] 54 GSTR (St.) 104.

S. No.	Issue	Clarification
		and which element of the supply imparts that essential nature to the composite supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST at 28 per cent.)
3.	Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable ?	In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4th February, 2016. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT. GST rate of 18 per cent. under the residual entry at S. No. 453 of Schedule III of Notification No. II(2)/CTR/532(d-4)/2017, dated 29th June, 2017[1] applies only to those goods which are not covered under any other entries of Schedule I, II, IV, V, or VI of the notification. In other words, if any goods are covered under any of the entries of Schedule I, II, IV, V, or VI, the GST rate applicable on them will be decided accordingly, without resorting to the residual entry 453 of Schedule III. Renewable energy certificates (recs) and priority sector lending certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST. The duty credit scrips, however, attract Nil GST under Sl. No. 122A of Notification No. II(2)/CTR/532(d-5)/2017, dated 29th June 2017[2].
4.	(1) Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST ?	(1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Notification No. II(2)/CTR/532(d-15)/2017, dated 29th June 2017[3], Sl. No. 25. The other services such as,—

S. No.	*Issue*	*Clarification*
	(2) Whether the guarantee provided by State Government to State owned companies against guarantee commission, is taxable under GST ?	(i) Application fee for releasing connection of electricity ; (ii) Rental charges against metering equipment ; (iii) Testing fee for meters/ transformers, capacitors, etc. ; (iv) Labour charges from customers for shifting of meters or shifting of service lines ; (v) Charges for duplicate bill ; provided by DISCOMS to consumer are taxable. (2) The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.

1. See [2017] 106 VST (St.) 96.
2. See [2017] 106 VST (St.) 180.
3. See [2017] 106 VST (St.) 248.

2. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 22(2018)/2019-TNGST, dated 29th March, 2019.

Subject: **Setting up of an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on GST Portal—Reg.**

Ref **: Circular No. 39/13/2018-GST, dated April 3, 2018[1] issued by Department of Revenue, Ministry of Finance, Government of India, New Delhi**

It has been decided to put in place an IT-Grievance Redressal Mechanism to address the difficulties faced by a section of taxpayers owing to technical glitches on the GST Portal and the relief that needs to be given to them. The relief could be in the nature of allowing filing of any form or

1. See [2018] 52 GSTR (St.) 9.

return prescribed in law or amending any form or return already filed. The details of the said grievance redressal mechanism are provided below :

2. Introduction

Where an IT related glitch has been identified as the reason for failure of a class of taxpayer in filing of a return or a form within the time-limit prescribed in the law and there are collateral evidences available to establish that the taxpayer has made bona fide attempt to comply with the process of filing of form or return, GST Council has delegated powers to the IT Grievance Redressal Committee to approve and recommend to the GSTN the steps to be taken to redress the grievance and the procedure to be followed for implementation of the decision.

3. Scope

Problems which are proposed to be addressed through this mechanism would essentially be those which relate to Common Portal (GST Portal) and affect a large section of taxpayers.

Where the problem relates to individual taxpayer, due to localised issues such as non-availability of internet connectivity or failure of power supply, this mechanism shall not be available.

4. IT-Grievance Redressal Committee

Any issue which needs to be addressed through this mechanism shall be identified by GSTN and the method of resolution approved by the GST Implementation Committee (GIC) which shall act as the IT Grievance Redressal Committee. In GIC meetings convened to address IT issues or IT glitches, the CEO, GSTN and the DG (Systems), CBEC shall participate in these meetings as special invitees.

5. Nodal officers and identification of issues

5.1 GSTN, Central and State Government would appoint nodal officers in requisite number to address the problem a taxpayer faces due to glitches, if any, in the Common Portal. This would be publicized adequately.

5.2 Taxpayers shall make an application to the field officers or the nodal officers where there was a demonstrable glitch on the Common Portal in relation to an identified issue, due to which the due process as envisaged in law could not be completed on the Common Portal.

5.3 Such an application shall enclose evidences as may be needed for an identified issue to establish bona fide attempt on the part of the taxpayer to comply with the due process of law.

5.4 These applications shall be collated by the nodal officer and forwarded to GSTN who would on receipt of application examine the same. GSTN shall after verifying its electronic records and the applications

received, identify the issue involved where a large section of tax payers are affected. GSTN shall forward the same to the IT Grievance Redressal Committee with suggested solutions for resolution of the problem.

6. Suggested solutions

6.1 GST Council Secretariat shall obtain inputs of the Law Committee, where necessary, on the proposal of the GSTN and call meeting of GIC to examine the proposal and take decision thereon.

6.2 The committee shall examine and approve the suggested solution with such modifications as may be necessary.

6.3 IT-Grievance Redressal Committee may give directions as necessary to GSTN and field formations of the tax administrations for implementation of the decision.

7. Legal issues

7.1 Where an IT related glitch has been identified as the reason for failure of a taxpayer in filing of a return or form prescribed in the law, the consequential fine and penalty would also be required to be waived. GST Council has delegated the power to the IT Grievance Redressal Committee to recommend waiver of fine or penalty, in case of an emergency, to the Government in terms of section 128 of the TNGST Act, 2017 under such mitigating circumstances as are identified by the committee. All such notifications waiving fine or penalty shall be placed before GST Council.

7.2 Where adequate time is available, the issue of waiver of fee and penalty shall be placed before the GST Council with recommendation of the IT-Grievance Redressal Committee.

8. Resolution of stuck TRAN-1s and filing of GSTR-3B

8.1 A large number of taxpayers could not complete the process of TRAN-1 filing either at the stage of original or revised filing as they could not digitally authenticate the TRAN-1s due to IT related glitches. As a result, a large number of such TRAN-1s are stuck in the system. GSTN shall identify such taxpayers who could not file TRAN-1 on the basis of electronic audit trail. It has been decided that all such taxpayers, who tried but were not able to complete TRAN-1 procedure (original or revised) of filing them *on or before December 27, 2017* due to IT-glitch, shall be provided the facility to complete TRAN-1 filing. It is clarified that the last date for filing of TRAN-1 is not being extended in general and only these identified taxpayers shall be allowed to complete the process of filing TRAN-1.

8.2 The taxpayer shall not be allowed to amend the amount of credit in TRAN-1 during this process vis-a-vis the amount of credit which was recorded by the taxpayer in the TRAN-1, which could not be filed. If needed, GSTN may request field formations of Centre and State to collect

additional document/data, etc., or verify the same to identify taxpayers who should be allowed this procedure.

8.3 GSTN shall communicate directly with the taxpayers in this regard and submit a final report to GIC about the number of TRAN-1s filed and submitted through this process.

8.4 The taxpayers shall complete the process of filing of TRAN-1 stuck due to IT glitches, as discussed above, and the process of completing filing of GSTR 3B which could not be filed for such TRAN-1 shall be completed as per the recommendations of the GST council..

9. The decisions of the honourable High Courts of Allahabad, Bombay, etc., where no case specific decision has been taken, may be implemented in-line with the procedure prescribed above, subject to fulfilment of the conditions prescribed therein. Where these conditions are not satisfied, honourable courts may be suitably informed and if needed review or appeal may be filed.

10. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 23(2018)/ 2019-TNGST, dated March 29, 2019.

Subject: **Clarification on issues related to furnishing of Bond/ Letter of Undertaking for exports—Reg.**

Ref **: Circular No. 40/14/2018-GST, dated April 6, 2018**[1] **issued by Department of Revenue, Ministry of Finance, Government of India, New Delhi**

Various communications have been received from the field formations and exporters that the LUTs being submitted online in *Form GST RFD-11* on the common portal are not visible to the jurisdictional officers of Central Board of Indirect Taxes and Customs and of a few States. Therefore, a need was felt for a clarification regarding the acceptance of LUTs being submitted online in *Form GST RFD-11*.

2. Accordingly, in partial modification of Circular No. 2/2017-GST dated 10th October, 2017[2], sub-paras (c), (d) and (e) of para 2 of the said circular are hereby replaced by the following :

1. See [2018] 52 GSTR (St.) 12.
2. See [2018] 52 GSTR (St.)16.

"(c) *Form for LUT* : The registered person (exporters) shall fill and submit *Form GST RFD-11* on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.

(d) *Documents for LUT* : No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

(e) *Acceptance of LUT/bond* : An LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per CCT TN Notification No. 14/2017, dated 25th October, 2017, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio."

This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No.151/2018/A1/Taxation]

Circular No. 24(2018)/2019-TNGST, dated 29th March, 2019.

Subject: **Clarification regarding procedure for the existing law and reversal of inadmissible input tax credit—Regarding.**

Ref : **Circular No. 42/16/2018-GST, dated April 13, 2018**[1] **issued by Department of Revenue, Ministry of Finance, Government of India, New Delhi**

Kind attention is invited to the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "the TNGST Act") relating to the recovery of arrears of Central excise duty/service tax and Cenvat credit thereof, Cenvat credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal, etc., initiated before, on or after the appointed date under the provisions of the existing law. In this regard, representations have been received seeking clarification on the procedure for recovery of such arrears in the GST regime.

2. The issues have been examined and to ensure uniformity in the implementation of the provisions of the law across the field formations, the

1. See [2018] 52 GSTR (St.) 110.

Board, in exercise of its powers conferred under section 168(1) of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "the TNGST Act"), hereby specifies the procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

3. *Legal provisions relating to the recovery of arrears of TNVAT, CST, TN luxury tax, entry tax, entertainment tax and input tax credit under the TNVAT Act carried forward erroneously thereof arising out of proceedings under the existing law (TNVAT Act, CST Act, TN Luxury Tax Act, Entry Tax Act and Entertainment Tax Act)* :

(i) Recovery of arrears of wrongly availed input-tax credit :

In case where any proceeding of appeal, review or reference relating to a claim for Cenvat credit had been initiated, whether before, on or after the appointed day, under the existing law, any amount of such credit becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the TNGST Act (*section 142(6)(b) of the TNGST Act refers*).

(ii) *Recovery of input-tax credit carried forward wrongly* :

Input tax credit availed under the existing law may be carried forward in terms of transitional provisions as per section 140 of the TNGST Act subject to the conditions prescribed therein. Any credit which is not admissible in terms of section 140 of the TNGST Act shall not be allowed to be transitioned or carried forward and the same shall be recovered as an arrear of tax under section 79 of the TNGST Act.

(iii) *Recovery of arrears of TNVAT, CST, TN Luxury tax, Entry tax, and Emtertainment tax :*

(a) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the TNGST, CST, TN Luxury and Entry Tax Act, Entertainment Tax and the amount so recovered shall not be admissible as input tax credit under this Act (*section 142(8)(a) of the TNGST Act refers*).

(b) If due to any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, any amount of output duty or tax becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the TNGST Act and the amount so recovered shall not be admissible as input tax credit under this Act (section 142(7)(a)of the TNGST Act refers).

(iv) *Recovery of arrears due to revision of return under the existing law* : Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of TNVAT, CST, TN luxury tax, entertainment tax and entry tax credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the TNGST Act and the amount so recovered shall not be admissible as input tax credit under this Act (*section 142(9)(a) of the TNGST Act refers*).

4. In view of the above legal provisions, recovery of TNVAT, CST, TN luxury tax, entertainment tax and entry tax credit thereof arising out of the proceedings under the existing law, unless recovered under the existing law, and that of inadmissible transitional credit, is required to be made as an arrear of tax under the TNGST Act. The following procedure is hereby prescribed for the recovery of arrears :

4.1 *Recovery of TNVAT, CST, TN Luxury tax, Entry tax, Entertainment tax and wrongly availed input-tax credit thereof under the existing law and inadmissible transitional credit* :

(a) The TNVAT, TN luxury tax, CST, entry tax, entertainment tax and input tax credit wrongly carried forward as transitional credit shall be recovered as Central tax liability to be paid through the utilization of amounts available in the *electronic credit ledger or electronic cash ledger* of the registered person, and the same shall be recorded in *Part II* of the Electronic Liability Register (*Form GST PMT-01*).

(b) The arrears of TNVAT, TN luxury tax, CST, entry tax, entertainment tax or wrongly availed input tax credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as Central tax liability to be paid through the utilization of amounts available in the *electronic credit ledger or electronic cash ledger* of the registered person, and the same shall be recorded in *Part II* of the Electronic Liability Register (*Form GST PMT-01*).

4.2 *Recovery of interest, penalty and late fee payable* :

(a) The arrears of interest, penalty and late fee in relation to TNVAT, TN luxury tax, CST, entry tax, entertainment tax, TNVAT, TN luxury tax, and input tax credit wrongly carried forward, arising out of any of the situations discussed in para 3 above, shall be recovered as interest, penalty and late fee of Central tax to be paid through the utilization of the amount available in *electronic cash ledger* of the registered person and the same shall

be recorded in *Part II* of the Electronic Liability Register (*Form GST PMT-01*).

(b) The arrears of interest, penalty and late fee in relation to arrears of TNVAT, CST, TN luxury tax, entry tax, entertainment tax and wrongly availed input-tax credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of Central tax to be paid through the utilization of the amount available in the *electronic cash ledger* of the registered person and the same shall be recorded in *Part II* of the Electronic Liability Register (*Form GST PMT-01*).

4.3 *Payment of TNVAT, CST, TN luxury tax, entry tax and entertainment Tax on account of returns filed for the past period* :

The registered person may file TNVAT, CST, TN luxury tax and entry tax return for the period prior to 1st July, 2017 by logging onto *www.ctd.tn.gov.in* and make payment relating to the same through the portal (*www.ctd.tn.gov.in*), as per the practice prevalent for the period prior to the introduction of GST. However, with effect from 1st of April, 2018, the return filing shall continue on *www.gst.gov.in* but the payment shall be made through *www.gst.gov.in.* As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

4.4 *Recovery of arrears from assessees under the existing law in cases where such assessees are not registered under the TNGST Act, 2017* :

Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in para 4.3 supra.

This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

Circular No. 25(2018)/2019-TNGST, dated 29th March, 2019

Subject: **Issue related to taxability of "tenancy rights" under GST—Regarding**

Ref : **Circular No. 44/18/2018-GST, dated May 2, 2018**[1] **issued by the CBEC, Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Doubts have been raised as to,—

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate ?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST ?

2. The issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as *"pagadi system"* is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

3. As per section 9(1) of the TNGST Act there shall be levied Central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and 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 and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II, i.e., any lease, tenancy, easement, licence to occupy land is a supply of services.

4. The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building

1. See [2018] 52 GSTR (St.) 273.

declared as neither a supply of goods nor of services in para 5 of Schedule III to TNGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.

5. To sum up, the activity of transfer of "tenancy rights" is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt (Sl. No. 12 of Notification No. II(2)/CTR/532(d-15)/ 2017, dated 29th June, 2017[1]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

6. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No.151/2018/A1/Taxation]

Circular No. 26(2018)/2019-TNGST, dated 29th March, 2019

Subject: **Clarifications on refund related issues—Regarding**

Ref : **Circular No. 45/19/2018-GST, dated May 30, 2018[2] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

The Commissioner of State Tax vide Circular No. 1/2018-GST, dated February 2, 2018[3], No. 2/2018-GST, dated February 2, 2018[4] and No. 4/ 2018-GST, dated March 27, 2018[5] has laid down the procedure for manual filing and processing of different types of refund claims under GST and clarified the exports related refund issues.

2. Representations have been received seeking clarification on certain refund related issues. In order to clarify these issues and with a view to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred by

1. See [2017] 106 VST (St.) 248.
2. See [2018] 54 GSTR (St.) 99.
3. See [2018] 52 GSTR (St.)115
4. See [2018] 52 GSTR (St.) 125.
5. See [2018] 52 GSTR (St.) 134.

section 168(1) of the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act for short) hereby clarifies the issues raised as below :

3. *Claim for refund filed by an input service distributor, a person paying tax under section 10 or a non-resident taxable person* :

3.1 Doubts have been raised in case of claims for refund filed by an input service distributor (ISD for short), a person paying tax under section 10 of the TNGST Act (composition taxpayer for short) or a non-resident taxable person in light of para 2.0 of Circular No. 2/2018-GST, dated February 2, 2018[1] which mandates that the refund claim for a tax period may be filed only after filing the details in *Form GSTR*-1 for the said tax period and that it is also to be ensured that a valid return in *Form GSTR-3*B has been filed for the last tax period before the one in which the refund application is being filed.

3.2 In this regard, attention is invited to sub-section (1) of section 37 of the TNGST Act read with rule 59 of the Tamil Nadu Goods and Services Tax Rules, 2017 (TNGST Rules for short) which mandates that every registered person, other than an input service distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish the details of outward supplies of goods or services or both effected during a tax period in *Form GSTR-1*. Further, as per sub-section (2) of section 39 of the TNGST Act read with rule 62 of the TNGST Rules, a composition taxpayer is required to furnish the return in Form GSTR-4 ; as per sub-section (4) of section 39 of the TNGST Act read with rule 65 of the TNGST Rules, an ISD is required to furnish the return in *FORM GSTR-6* and as per sub-section (5) of section 39 of the TNGST Act read with rule 63 of the TNGST Rules, a non-resident taxable person is required to furnish the return in FORM GSTR-5.

3.3 Thus, it is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer ; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in *Form GSTR-1* and the return in *Form GSTR-3B* is not mandatory. Instead, the return in *Form GSTR-4* filed by a composition taxpayer, the details in *Form GSTR-6* filed by an ISD and the return in *Form GSTR-5* filed by a non-resident taxable person shall be sufficient for claiming the said refund.

4. *Application for refund of integrated tax paid on export of services and supplies made to a special economic zone developer or a special economic zone unit* :

1. See [2018] 52 GSTR (St.) 125

4.1 It has been represented that while filing the return in *Form GSTR -3B* for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero-rated supplies made to a special economic zone developer or a special economic zone unit on payment of integrated tax. They have shown such supplies in the table under column 3.1(a) instead of showing them in column 3.1(b) of *Form GSTR-3B* whilst they have shown the correct details in Table 6A or 6B of *Form GSTR-1* for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in Form GST RFD-01A for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of *Form GSTR-3B* (zero rated supplies) filed for the corresponding tax period.

4.2 In this regard, it is clarified that for the tax periods commencing from July 1, 2017 to March 31, 2018, such registered persons shall be allowed to file the refund application in *Form GST RFD-01A* on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of *Form GSTR-3B* filed for the corresponding tax period.

5. *Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess* :

5.1 Doubts have been raised whether an exporter is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminium products, whereas cess is not levied on aluminium products.

5.2 In this regard, section 16(2) of the Integrated Goods and Services Tax Act, 2017[1] (IGST Act for short) states that, subject to the provisions of section 17(5) of the TNGST Act, credit of input tax may be availed for making zero rated supplies. Further, as per section 8 of the Goods and Services Tax (Compensation to States) Act, 2017[2] (hereafter referred to as the Cess Act), all goods and services specified in the Schedule to the Cess Act are leviable to cess under the Cess Act ; and vide section 11(2) of the Cess Act, section 16 of the IGST Act is mutatis mutandis made applicable

1. See [2017] 44 GSTR (St.) 397.
2. See [2017] 44 GSTR (St.) 439 ; [2017] 100 VST (St.) 190.

to inter-State supplies of all such goods and services. Thus, it implies that all supplies of such goods and services are zero rated under the Cess Act. Moreover, as section 17(5) of the TNGST Act does not restrict the availment of input tax credit of compensation cess on coal, it is clarified that a registered person making zero rated supply of aluminium products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal.

5.3 Such registered persons may also make zero-rated supply of aluminium products on payment of integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

6. *Whether bond or letter of undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods* ?

6.1 As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per section 2(47) of the TNGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

6.2 However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax ; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e., Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

6.3 Further, the exporter would be eligible for refund of unutilized input tax credit of Central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

7. *What is the scope of the restriction imposed by rule 96(10) of the TNGST Rules, regarding non-availment of the benefit of Notification No. II(2)/CTR/868(f-2)/2017, dated 18th October, 2017*[1], *Notification No. II(2)/*

1. See [2018] 50 GSTR (St.) 166.

CTR/868(d)/2017, dated 23rd October, 2017[1], *41/2017-Integrated Tax (Rate), dated October 23, 2017*[2], *78/2017-Customs, dated October 13, 2017 or 79/2017-Customs, dated October 13, 2017.*

7.1 Sub-rule (10) of rule 96 of the TNGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This is to ensure that the exporter does not utilise the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

7.2 However, the said restriction is not applicable to an exporter who has procured goods from suppliers who have not availed the benefits of the specified notifications for making their outward supplies. Further, the said restriction is also not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax.

7.3 Thus, the restriction under sub-rule (10) of rule 96 of the TNGST Rules is only applicable to those exporters who are directly receiving goods from those suppliers who are availing the benefit under *Notification No. II(2)/CTR/868(f-2)/2017, dated 18th October 2017, Notification No. II(2)/CTR/868(d)/2017, dated 23rd October, 2017, or Notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017*[2] or Notification No. 78/2017-Customs, dated the 13th October, 2017[3] or Notification No. 79/2017-Customs, dated the 13th October, 2017[4].

7.4 Further, there might be a scenario where a manufacturer might have imported capital goods by availing the benefit of Notification No. 78/2017-Customs, dated October 13, 2017 or 79/2017-Customs, dated October 13, 2017. Thereafter, goods manufactured from such capital goods may be supplied to an exporter. It is hereby clarified that this restriction does not apply to such inward supplies of an exporter.

8. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No. 151/2018/A1/Taxation]

1. See [2018] 50 GSTR (St.) 97.
2. See [2017] 47 GSTR (St.) 571.
3. See [2018] 3 GSTR-OL (St.) 443.
4. See [2018] 4 GSTR-OL (St.) 2.

Circular No. 27(2018)/2019-TNGST, dated 29th March, 2019.

Subject: **Clarifications of certain issues under GST—Regarding**

Ref : **Circular No. 47/21/2018-GST, dated June 8, 2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below :

Sl. No.	*Issue*	*Clarification*
1	Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case ?	1.1 Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furthe rance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM. 1.2 It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act for short). 1.3 However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such

1. See [2018] 54 GSTR (St.) 105.

Sl. No.	*Issue*	*Clarification*
		moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.
2	How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?	2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case. 2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.
3	In case of auction of tea, coffee, rubber, etc., whether the books of accounts are required to be maintained at every place of business by the principal and the auctioneer, and whether they are eligible to avail input tax credit ?	3.1 The requirement of maintaining the books of accounts at the principal place of business and additional place(s) of business is clarified as below : (a) For the purpose of auction of tea, coffee, rubber, etc., the principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business. The buyer is also required to disclose such warehouse as his additional place of business if he wants to store the goods purchased through auction in such warehouses. For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions. (b) The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, are required to maintain the books of accounts relating to each and every place of business in that place itself in terms of the first proviso to sub-section (1) of section 35 of the TNGST Act. However, in case difficulties are faced in maintaining the books of account, it is clarified that they

Sl. No.	*Issue*	*Clarification*
		may maintain the books of accounts relating to the additional place(s) of business at their principal place of business instead of such additional place(s). (c) The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall intimate their jurisdictional officer in writing about the maintenance of books of accounts relating to the additional place(s) of business at their principal place of business. 3.2 It is further clarified that the principal and the auctioneer for the purpose of auction of tea, coffee, rubber, etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall be eligible to avail input tax credit subject to the fulfilment of other provisions of the TNGST Act read with the rules made thereunder.
4	In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery ?	As per proviso to rule 138(2A) of the Tamil Nadu Goods and Services Tax Rules, 2017 (TNGST Rules for short), the railways shall not deliver the goods unless the e-way bill is produced at the time of delivery.
5	Whether e-way bill is required in the following cases— (i) Where goods transit through another State while moving from one area in a State to another area in the same State. (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.	(i) It may be noted that e-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated. (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted under rule 138(14)(d) of the TNGST Rules.

2. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX (GST)
[RC No.151/2018/A1/Taxation]

Circular No. 28(2018)/2019-TNGST, dated 29th March, 2019.

Subject: **Circulars clarifying miscellaneous issues related to SEZ and refund of unutilized ITC for job workers—Regarding.**

Ref **: Circular No. 48/22/2018-GST, dated June 14, 2018[1] issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below :

Sl. No.	*Issue*	*Clarification*
1.	Whether services of short-term accommodation, conferencing, banqueting, etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017) ?	1.1 As per section 7(5)(b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/Union territory, it would be treated as an intra-State supply. 1.2 It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

1. See [2018] 55 GSTR (St.) 202.

		1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies. 1.4 It is therefore, clarified that services of short term accommodation, conferencing, banqueting, etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.
2.	Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables, etc. ?	2.1 As per section 16(1) of the IGST Act, "zero rated supplies" means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the Tamil Nadu Goods and Services Tax Rules, 2017 ("TNGST Rules" in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the : (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone ; (b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone. 2.2 A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid,

		as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the zone. 2.3 Therefore, subject to the provisions of section 17(5) of the TNGST Act, if event management services, hotel, accommodation services, consumables, etc., are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.
3.	Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the TNGST Act, 2017, even if the goods (fabrics) supplied are covered under Notification No. II(2)/CTR/532(d-8)/2017, dated 29th June, 2017[1] ?	3.1 Notification No. II(2)/CTR/532(d-8)/2017, dated 29th June, 2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the TNGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics). 3.2 Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the TNGST Act even if the goods (fabrics) supplied to them are covered under Notification No. II(2)/CTR/532(d-8)/2017, dated 29th June 2017[1].

1. See [2017] 106 VST (St.) 196.

2. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX
[RC No.151/2018/A1/Taxation]

Circular No. 29(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Clarifications regarding GST on College Hostel Mess Fees—Reg.**

Ref : **1. Circular No. 50/24/2018-GST, dated July 31, 2018**[1] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.**

2. Order No. 2/2018-Central Tax, dated March 31, 2018[2] **issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi**.

The Circular No. 16/2018-TNGST, dated March 29, 2019[3] was issued to clarify GST rate applicable on catering services, i.e., supply of food or drink in a mess or canteen in an educational institute.

2. Consequent to the decisions of 28th GST Council Meeting held on July 21, 2018, the contents of Circular No. 16/2018-TNGST, dated March 29, 2019 have been incorporated in Sl. No. 7(i) of Notification No. II(2)/CTR/662(a-1)/2018, dated July 26, 2018[4] amending Notification No. II(2)/CTR/532(d-13)/2018, dated July 26, 2018.

3. Also, the contents of Order No. 2/2018-Central Tax, dated March 31, 2018 issued by the GOI clarifying "that the GST rate on supply of food and/or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms (static units), will be five per cent. without ITC" have been incorporated in Sl. No. 7(ia) of Notification No. II(2)/CTR/662(a-1)/2018, dated July 26, 2018[4] amending the Notification No. II(2)/CTR/532(d-14)/2017, dated June 29, 2017[5].

4. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

COMMISSIONER OF STATE TAX

[RC No. 151/2018/A1/Taxation]

Circular No. 30(2018)/2019-TNGST, dated 5th April, 2019.

Subject: **Clarification regarding applicability of GST on various goods and services—Reg.**

1. See [2018] 56 GSTR (St.) 222.
2. See [2018] 56 GSTR (St.) 218.
3. See page 251 *supra*.
4. See [2019] 64 GSTR (St.) 188.
5. See [2017] 106 VST (St.) 201.

Ref : **CBEC, Department of Revenue, Ministry of Finance, Government of India, Circular No. 52/26/2018-GST, dated August 9, 2018**[1]**.**

Representations have been received seeking clarification in respect of applicable GST rates on the following items :

(i) Fortified toned milk

(ii) Refined beet and cane sugar

(iii) Tamarind kernel powder (modified and unmodified form)

(iv) Drinking water

(v) Plasma products

(vi) Wipes using spun lace non-woven fabric

(vii) Real zari kasab (thread)

(viii) Marine engine

(ix) Quilt and comforter

(x) Bus body building as supply of motor vehicle or job work

(xi) Disc brake pad

2. The matter has been examined. The issue-wise clarifications are discussed below :

(i) *Applicability of GST on fortified toned milk* : Representations have been received seeking clarification regarding applicability of GST on fortified toned milk.

Milk is classified under Heading 0401 and as per Sl. No. 25 of Notification No. II(2)/CTR/532(d-4)/2017, dated June 29, 2017[2], fresh milk and pasteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk falling under Tariff Head 0401 attracts NIL rate of GST. Further, as per HSN Explanatory Notes, milk enriched with vitamins and minerals is classifiable under HSN Code 0401. Thus, it is clarified that toned milk fortified (with vitamins 'A' and 'D') attracts NIL rate of GST under HSN Code 0401.

(ii) *Applicable GST rate on refined beet and cane sugar* : Doubts have been raised regarding GST rate applicable on refined beet and cane sugar. Vide Sl. No. 91 of Schedule I of Notification No. II(2)/CTR/ 532(d-4)/2017, dated June 29, 2017, five per cent. GST rate has been prescribed on all kinds of beet and cane sugar falling under heading 1701.

1. See [2018] 56 GSTR (St.) 225.
2. See [2017] 106 VST (St.) 96.

Doubts seem to have arisen in view of Sl. No. 32A of the Schedule II of Notification No. II(2)/CTR/532/(d-4)/2017, dated June 29, 2017[1], which prescribes 12 per cent. GST rate on "All goods, falling under tariff items 1701 91 and 1701 99 including refined sugar containing added flavouring or colouring matter, sugar cubes (other than those which attract five per cent. or Nil GST)".

It is clarified that by virtue of specific exclusion in Sl. No. 32A, any sugar that falls under five per cent. category [at the said Sl. No. 91 of Schedule I of Notification No. II(2)/CTR/532(d-4)/2017, dated June 29, 2017) gets excluded from the Sl. No. 32A of Schedule II. As all kinds of beet and cane sugar falling under heading 1701 are covered by the said entry at Sl. No. 91 of Schedule I, these would get excluded from Sl. No. 32A of Schedule II, and thus would attract GST at five per cent.

Accordingly, it is clarified that beet and cane sugar, including refined beet and cane sugar, will fall under heading 1701 and attract five per cent. GST rate.

(iii) *Applicable GST rate on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder* : Representation have been received seeking clarification regarding GST rate applicable on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder.

There are two grades of Tamarind Kernel Powder (TKP) : Plain (unmodified) form (hot, water soluble) and Chemically treated (modified) form (cold, water soluble).

As per Sl. No. 76 A of Schedule I of Notification No. II(2)/CTR/532(d-4)/2017, dated June 29, 2017, five per cent. GST rate was prescribed on Tamarind Kernel powder falling under Chapter 13. However, certain doubts have been expressed regarding GST rate on tamarind kernel powder, as the said notification does not specifically mention the word "*modified*".

As both plain (unmodified) tamarind kernel powder and treated (modified) tamarind kernel powder fall under chapter 13, it is hereby clarified that both attract five per cent. GST in terms of the said notification.

(iv) *Applicability of GST on supply of safe drinking water for public purpose* : Representations have been received seeking clarification regarding applicability of GST on supply of safe drinking water for public purpose.

1. See [2017] 106 VST (St.) 96.

Attention is drawn to the entry at Sl. No. 99 of Notification No. II(2) /CTR/532(d-5)/2017, dated June 29, 2017[1], by virtue of which water (other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container) falling under HS Code 2201 attracts Nil rate of GST.

Accordingly, supply of water, other than those excluded from Sl. No. 99 No. II(2)/CTR/532(d-5)/2017, dated June 29, 2017, would attract GST at "Nil" rate. Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from GST.

(v) *GST rate on human blood plasma* : References have been received about the varying practices being followed in different parts of the country regarding the GST rates on "human blood plasma".

Plasma is the clear, straw coloured *liquid* portion of blood that remains after red blood cells, white blood cells, platelets and other cellular components have been removed. As per the explanatory notes to the Harmonized System of Nomenclature (HSN), plasma would fall under the description antisera and other blood fractions, whether or not modified or obtained by means of biotechnological processes and would fall under HS Code 3002.

Normal human plasma is specifically mentioned at Sl. No. 186 of List I under Sl. No. 180 of Schedule I of Notification No. II(2)/CTR/532(d-4)/2017, dated June 29, 2017[2], and attracts five per cent. GST. Other items falling under HS Code 3002 (including plasma products) would attract 12 per cent. GST under Sl. No. 61 of Schedule II of the said notification, not specifically covered in the said List I.

Thus, a harmonious reading of the two entries would mean that normal human plasma would attract five per cent. GST rate under List I (Sl. No. 186), whereas plasma products would attract 12 per cent. GST rate, if otherwise not specifically covered under the said List.

(vi) *Appropriate classification of baby wipes, facial tissues and other similar products* : Varied practices are being followed regarding the classification of baby wipes, facial tissues and other similar products, and references have been received requesting for correct classification of these products. As per the references, these products are currently being classified under different HS codes namely 3307, 3401 and 5603 by the industry.

Commercially, wipes are categorized into various types such as baby wipes, facial wipes, disinfectant wipes, make-up remover wipes, etc. These

1. See [2017] 106 VST (St.) 180.
2. See [2017] 106 VST (St.) 96.

products are generally made by using non-woven fabrics of viscose and poly viscous blend and are sprinkled with demineralized water and various chemicals and fragrances, which impart the essential character to the product. The base raw materials are moisturising and cleansing agents, preservatives, aqua base, cooling agents, perfumes, etc. The textile material is present as a carrying medium of these cleaning/wiping components.

According to the General Rules for Interpretation (GRI-3(b)) of the First Schedule to the Customs Tariff Act (CTA), 1975, "*Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*" Since primary function of the article should be taken into consideration while deciding the classification, it is clear that the essential character of the wipes in the instant case is imparted by the components which are to be mixed with the textile material.

As per the Explanatory Notes to the HSN, the HS Code 5603 clearly excludes non-woven, impregnated, coated or covered with substances or preparations such as perfumes or cosmetics, soaps or detergents, polishes, creams or similar preparations. The HSN is reproduced as follows : "*The heading also excludes : Non-woven, impregnated, coated or covered with substances or preparations (i.e., perfumes or cosmetics (Chapter 33), soaps or detergents (heading 3401), polishes, creams, or similar preparations (heading 3405), fabric, softeners (heading 3809)) where the textile material is present merely as a carrying medium. Further, HS Code 3307 covers wadding, felt and non-woven, impregnated, coated or covered with perfumes or cosmetics. The HS Code 3401, would cover paper, wadding, felt and non-woven impregnated, coated or covered with soap or detergent whether or not perfumed*".

Further, as per the explanatory notes to the HSN, the heading 3307 includes *wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics.* Similarly, as per explanatory notes to the HSN, the heading 3401 includes *wipes made of paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale.*

Thus, the wipes of various kinds (as stated above) are classifiable under heading 3307 or 3401 depending upon their constituents as discussed above. Therefore, if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract

18 per cent. GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS Code 3401 and would attract 18 per cent. GST.

(vii) *Classification and applicable GST rate on real zari Kasab (thread)*: Certain doubts have been raised regarding the classification and applicable GST rate on Kasab thread (a metallised yarn) as yarn falling under heading 5605 attracts 12 per cent. GST, as per entry 137 of the Schedule II—12 per cent. of Notification No. II(2)/CTR/532/(d-4)/2017, dated June 29, 2017[1], while specified embroidery product falling under 5809 and 5810 attracts GST at five per cent., as per Entry No. 220 of the Schedule-I—5 per cent. of the above-mentioned notification.

The heading 5809 and 5810 cover embroidery and zari articles. These heading do not cover yarn of any kinds. Hence, while these headings apply to embroidery articles, embroidery in piece, in strips, or in motifs, they do not apply to yarn, including kasab yarn.

Further all types of metallised yarns or threads are classifiable under tariff heading 5605. Kasab (yarn) falls under this heading. Under heading 5605, real zari manufactured with silver wire gimped (vitai) on core yarn namely pure silk and cotton and finally gilted with gold would attract five per cent. GST under Tariff Item 5605 00 10, as specified at entry No. 218A of Schedule-I—five per cent. of the GST rate schedule. Other goods falling under this heading attract 12 per cent., GST. Accordingly, kasab (yarn) would attract 12 per cent. GST along with other metallised yarn, whether or not gimped, being textile yarn, combined with metal in the form of thread, strip or powder or covered with metal including imitation zari thread (Sl. No. 137 of the Schedule II—12 per cent.). Therefore, it is clarified that imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, would attract a uniform GST rate of 12 per cent. under Tariff Heading 5605.

(Viii) *Applicability of GST on marine engine* : Reference has been received seeking clarification regarding GST rates on marine engine. The fishing vessels are classifiable under heading 8902, and attract GST at five per cent., as per Sl. No. 247 of Schedule I of Notification No. II(2)/CTR/532/(d-4)/2017, dated June 29, 2017. Further, parts of goods of heading 8902, falling under any chapter also attracts GST rate of five per cent., vide Sl. No. 252 of Schedule I of the said notification. The marine engine for fishing vessel falling under Tariff Item 8408 1093 of the Customs Tariff Act, 1975 would attract a GST rate of five per cent. by virtue of Sl. No. 252 of Schedule I of Notification No. II(2)/CTR/532/(d-4)/2017, dated June 29, 2017.

1. See [2017] 106 VST (St.) 96.

Therefore, it is clarified that the supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts five per cent. GST.

(ix) *Applicable GST rate on cotton quilts under Tariff Heading 9404-Scope of the term "cotton quilt"*.

Cotton quilts falling under Tariff Heading 9404 attract a GST rate of five per cent. if the sale value of such cotton quilts does not exceed Rs.1,000 per piece (as per Sl. No. 257 A of Schedule I of Notification No. II(2)/CTR/532/(d-4)/2017, dated June 29, 2017). However, such cotton quilts, with sale value exceeding Rs. 1,000 per piece attract a GST rate of 12 per cent. (as per Sl. No. 224A of Schedule II of the said notification). Doubts have been raised as to what constitutes cotton quilt, i.e., whether a quilt filled with cotton with cover of cotton, or filled with cotton but cover made of some other material, or filled with material other than cotton.

The matter has been examined. The essential character of the cotton quilt is imparted by the filling material. Therefore, a quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt. The GST rate would accordingly apply.

(X) *Applicable GST rate for bus body building activity* : Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18 per cent., the supply of motor vehicles attracts GST at 28 per cent.

Buses [motor vehicles for the transport of ten or more persons, including the driver] fall under headings 8702 and attract 28 per cent. GST. Further, chassis fitted with engines (8705) and whole bodies (including cabs) for buses (8707) also attract 28 per cent. GST. In this context, it is mentioned that the services of bus body fabrication on job work basis attracts 18 per cent. GST on such service. Thus, fabrication of buses may involve the following two situations :

(a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

(b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

In the above context, it is hereby clarified that in case as mentioned at para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST at 28 per cent. In the case as mentioned at para 12.2(b)

above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18 per cent. GST as applicable will be charged accordingly.

(xi) *Applicable GST rate on disc brake pad* : Representations have been received seeking clarification on disc brake pad for automobiles. It is stated that divergent practices of classifying these products, in Chapter 68 or heading 8708 are being followed. Chapter 68 attracts a GST rate of 18 per cent., while heading 8708 attracts a GST rate of 28 per cent.

Parts and accessories of motor vehicles of headings 8701 to 8705 are classified under heading 8708 and attract 28 per cent. GST. Further, friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textiles or other mineral substances or of cellulose, whether or not combined with textiles or other materials are classifiable under Heading 6813 and attract 18 per cent. GST.

In the above context, it is mentioned that as per HSN Explanatory Notes, Heading 8708 covers "Brakes (shoe, segment, disc, etc.) and parts thereof (plates, drums, cylinders, mounted linings, oil reservoirs for hydraulic brakes, etc.) ; servo-brakes and parts thereof, while Chapter 68 covers articles of stone, plaster, cement, asbestos, mica or similar materials. Further, HSN Explanatory Notes to the Heading 6813 specifically excludes:

- Friction materials not containing mineral materials or cellulose fibre (e.g., those of cork) ;
- Mounted brake linings (including friction material fixed to a metal plate provided with circular cavities, perforated tongues or similar fittings, for disc brakes) which are classified as parts of the machines or vehicles for which they are designed (e.g., Heading 8708).

Thus, it is clear, in view of the HSN Explanatory Notes that the said goods, namely "disc brake pad" for automobiles, are appropriately classifiable under Heading 8708 of the Customs Tariff Act, 1975 and would attract 28 per cent. GST.

This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

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